



ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, April 15, 2024

MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is tentatively scheduled to meet on May 14, 2024, at 1:00 p.m. in room 149 Capitol Annex. **ARRS Tentative Agenda – 2143** [Online agenda updated as needed](#)

INDEXES & OTHER INFORMATION

Regulation Review Procedure	2145	KRS Index.....	K - 13
ARRS Report.....	2340	Certifications	K - 26
Other Committee Reports	2343	Technical Amendments	K - 27
Locator Index - Effective Dates.....	K - 2	Subject Index.....	K - 28

EMERGENCIES

State Board of Elections

- 031 KAR 002:010. Preparation of ballots and voting systems prior to election day..... 2147
- 031 KAR 003:041. Electronic Voter Registration System..... 2150
- 031 KAR 004:031. Reporting..... 2152
- 031 KAR 004:220. Recount procedures 2154
- 031 KAR 005:026. Ballot standards and election security 2158
- 031 KAR 005:040. Questions regarding voter eligibility . 2161

AMENDED IN-PROCESS EMERGENCIES

None

AS AMENDED

Board of Landscape Architects

- 201 KAR 010:030. Code of ethics 2165
- 201 KAR 010:040. Applications..... 2166
- 201 KAR 010:050. Fees 2167
- 201 KAR 010:070. Seals 2167

Board of Nursing

- 201 KAR 020:370. Applications for licensure 2169

Board of Licensed Professional Counselors

- 201 KAR 036:100. Counseling compact..... 2170

Tourism, Arts and Heritage Cabinet - Department of Fish and Wildlife Resources

- 301 KAR 001:140. Special commercial fishing permit for Kentucky and Barkley lakes 2170
- 301 KAR 001:146. Commercial fishing gear 2172

Soil and Water Conservation Commission

- 416 KAR 001:001. Definitions for 416 KAR Chapter 1 ... 2173
- 416 KAR 001:010. Administration of Kentucky Soil Erosion and Water Quality Cost-share Fund 2173
- 416 KAR 001:020. Equipment Revolving Loan Program 2176

Justice and Public Safety Cabinet

- 500 KAR 013:020. Internal Investigations Branch..... 2179

Board of Education, Department of Education

- 704 KAR 003:095. The Use of a Multitiered System of Supports..... 2182

Cabinet for Health and Family Services

- 900 KAR 007:030. Data reporting by health care providers 2183
- 900 KAR 007:040. Release of public data sets for health facility and services data..... 2185

Department for Public Health

- 902 KAR 020:048. Operation and services; nursing homes 2186
- 902 KAR 020:086. Operation and services; intermediate care facilities for individuals with intellectual disabilities 2196

Department for Medicaid Services

- 907 KAR 001:065. Payments for price-based nursing facility services 2207
- 907 KAR 001:479. Medical supplies, equipment, and appliances covered benefits and reimbursement 2213
- 907 KAR 003:066. Nonemergency medical transportation waiver services and payments..... 2218
- 907 KAR 013:010. Private duty nursing service coverage provisions and requirements 2219

Department for Developmental Health, Developmental and Intellectual Disabilities

- 908 KAR 001:410. Recovery housing 2220

AMENDED AFTER COMMENTS

Department for Community-based Services

- 922 KAR 001:140. Permanency services..... 2223
- 922 KAR 001:145. Subsidized permanent custody 2226
- 922 KAR 001:495. Training requirements for foster parents, adoptive parents, and respite care providers for children in the custody of the cabinet..... 2229
- 922 KAR 001:565. Service array for a relative or fictive kin caregiver..... 2233

PROPOSED AMENDMENTS

Kentucky Higher Education Assistance Authority
011 KAR 004:080. Student aid applications..... 2238
011 KAR 015:090. Kentucky Educational Excellence
Scholarship (KEES) program 2240
011 KAR 015:110. Scholarships for Registered
Apprenticeship and Qualified
Workforce Training programs..... 2245

State Board of Elections
031 KAR 002:010. Preparation of ballots and voting
systems prior to election day..... 2247
031 KAR 005:026. Ballot standards and election
security 2250

Personnel
101 KAR 001:335. Employee actions 2253
101 KAR 001:345. Disciplinary actions..... 2255
101 KAR 001:375. Employee grievances and
complaints 2257

Kentucky Public Pension Authority
105 KAR 001:001. Definitions for 105 KAR Chapter 1 ... 2259
105 KAR 001:120. Participation of County Employees
Retirement System employers 2262
105 KAR 001:190. Qualified domestic relations orders.. 2265
105 KAR 001:411. Hospital and medical insurance for
retired members and Kentucky
Retirement Systems Insurance Fund
Trust 2276

Board of Pharmacy
201 KAR 002:015. Continuing education..... 2282
201 KAR 002:030. License transfer and Non-Resident
Pharmacist License..... 2284
201 KAR 002:050. Licenses and permits; fees 2287

Department of Fish and Wildlife Resources
301 KAR 001:001. Definitions for 301 KAR Chapter 1 ... 2289
301 KAR 001:152. Harvest and sale of invasive carp 2292
301 KAR 005:022. License, tag, and permit fees..... 2296

Department of Education
704 KAR 007:140. Authentic high school diploma to an
honorably discharged veteran of
World War II, the Korean conflict, or
Vietnam War..... 2300

Department for Technical Education
780 KAR 003:030. Appointments 2302
780 KAR 003:035. Employee evaluations..... 2304
780 KAR 003:100. Employee actions 2305
780 KAR 003:120. Appeals and hearings 2308
780 KAR 003:130. Employee grievances 2310
780 KAR 006:010. Classification plan..... 2312
780 KAR 006:020. Compensation plan..... 2314

Department of Financial Institutions
808 KAR 010:260. Examination requirement for
individuals advising the public on
securities, broker-dealers, and
agents..... 2316

NEW ADMINISTRATIVE REGULATIONS

State Board of Elections
031 KAR 003:041. Electronic Voter Registration System 2319
031 KAR 004:031. Reporting..... 2321
031 KAR 004:220. Recount procedures 2323
031 KAR 005:040. Questions regarding voter eligibility . 2326

Personnel
101 KAR 001:396. Repeal of 101 KAR 1:395 2328

General Government Cabinet
201 KAR 002:465. Non-resident pharmacy applications
and waivers 2330

Department of Education
704 KAR 003:550. Minimum qualifications for
paraprofessionals 2332

Department for Technical Education
780 KAR 002:031. Repeal of 780 KAR 2:010 2333

Department for Medicaid Services
907 KAR 015:100. Crisis continuum of care 2335

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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
Tuesday, May 14, 2024 at 1 p.m.
Annex Room 149



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

EDUCATION AND LABOR CABINET

Education Professional Standards Board

Teaching Certificates

[016 KAR 002:120](#). Emergency certification and out-of-field teaching.

[016 KAR 002:160](#). Probationary certificate for teachers of exceptional children.

Certification Procedures

[016 KAR 004:030](#). Out-of-state educator preparation.

OFFICE OF THE GOVERNOR

Department of Veterans' Affairs

Veterans' Programs

[017 KAR 006:020](#). Kentucky Women Veterans Program and coordinating committee, administrative procedures. (Amended After Comments) (Deferred from February)

[017 KAR 006:030](#). Kentucky Wounded or Disabled Veterans Program, administrative procedures. (Amended After Comments) (Deferred from February)

BOARDS AND COMMISSIONS

Board of Dentistry

[201 KAR 008:533](#). Licensure of dentists. (Not Amended After Comments)

TOURISM, ARTS AND HERITAGE CABINET

Department of Fish and Wildlife Resources

Game

[301 KAR 002:132](#). Elk hunting seasons, permits, zones, and requirements.

Hunting and Fishing

[301 KAR 003:030](#). Year-round season for wildlife.

[301 KAR 003:130](#). Public use of Conservation Camp Properties.

JUSTICE AND SAFETY CABINET

Department of Corrections

Class D and Class C Felons

[501 KAR 002:060](#). Procedures for housing of Class C and D felons.

Jail Standards for Full-Service Facilities

[501 KAR 003:010](#). Definitions for 501 KAR Chapter 3.

[501 KAR 003:040](#). Personnel.

[501 KAR 003:060](#). Security; control.

[501 KAR 003:080](#). Sanitation; hygiene.

[501 KAR 003:090](#). Medical services.

[501 KAR 003:100](#). Food services.

[501 KAR 003:140](#). Prisoner rights.

Jail Standards for Restricted Custody Center Facilities

[501 KAR 007:010](#). Definitions for 501 KAR Chapter 7.

[501 KAR 007:040](#). Personnel.

[501 KAR 007:080](#). Sanitation; hygiene.

[501 KAR 007:090](#). Medical services.

Jail Standards for Life Safety Facilities

[501 KAR 013:010](#). Life safety issues.

TRANSPORTATION CABINET

Department of Vehicle Regulation

Certification of Title

[601 KAR 023:040](#). Application form to become Kentucky Electronic License Title Entity; and application form for electronic motor vehicle title application submission.

PUBLIC PROTECTION CABINET

**Department of Housing, Buildings and Construction
Kentucky Building Code**

[815 KAR 007:120](#). Kentucky Building Code.

[815 KAR 007:125](#). Kentucky Residential Code.

CABINET FOR HEALTH AND FAMILY SERVICES

**Department for Medicaid Services
Medicaid Services**

[907 KAR 001:044](#). Coverage provisions and requirements regarding community mental health center behavioral health services. (Amended After Comments) (Deferred from March)

Behavioral Health

[907 KAR 015:005](#). Definitions for 907 KAR Chapter 015. (Amended After Comments) (Deferred from March)

**Department for Aging and Independent Living
Aging Services**

[910 KAR 001:270](#). Hart-Supported Living grant program.

**Department for Community Based Services
Protection and Permanency**

Child Welfare

[922 KAR 001:140](#). Permanency services. (Amended After Comments)

[922 KAR 001:145](#). Subsidized permanent custody. (Amended After Comments)

[922 KAR 001:495](#). Training requirements for foster parents, adoptive parents, and respite care providers for children in the custody of the cabinet. (Amended After Comments)

[922 KAR 001:565](#). Service array for a relative or fictive kin caregiver. (Amended After Comments)

Adult Services

[922 KAR 005:120](#). Vulnerable adult maltreatment registry and appeals. (Not Amended After Comments)

3. REGULATIONS ~~REMOVED~~ FROM MAY'S AGENDA

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)

TOURISM, ARTS AND HERITAGE CABINET

**Department of Fish and Wildlife Resources
Fish**

[301 KAR 001:150](#). Waters open to commercial fishing. (Comments received, SOC ext., due 5-15-2024)

CABINET FOR HEALTH AND FAMILY SERVICES

**Office of Inspector General
Health Services and Facilities**

[902 KAR 020:036](#). Operation and services; personal care homes. (Not Amended After Comments) (Deferred from May)

**Department for Medicaid Services
Behavioral Health**

~~[907 KAR 015:090](#). Crisis continuum services provided or mediated by an administrative service organization. (Comments Received; SOC ext. due 04-15-2024) (Withdrawn by Agency; 04-15-2024)~~

**Office of the Secretary
General**

[915 KAR 001:001](#). Definitions for 915 KAR Chapter 1. (Comments Received, SOC ext., due 05-15-2024)

[915 KAR 001:030](#). Cultivator. (Comments Received, SOC ext., due 05-15-2024)

[915 KAR 001:040](#). Processor. (Comments Received, SOC ext., due 05-15-2024)

[915 KAR 001:050](#). Producer. (Comments Received, SOC ext., due 05-15-2024)

[915 KAR 001:060](#). Safety compliance facility. (Comments Received, SOC ext., due 05-15-2024) [915 KAR 001:070](#). Dispensary. (Comments Received, SOC ext., due 05-15-2024)

[915 KAR 001:080](#). Transportation and delivery of medicinal cannabis. (Comments Received, SOC ext., due 05-15-2024)

[915 KAR 001:090](#). Advertising. (Comments Received, SOC ext., due 05-15-2024)

[915 KAR 001:100](#). Packaging and labeling of medicinal cannabis. (Comments Received, SOC ext., due 05-15-2024)

[915 KAR 001:110](#). Medicinal cannabis testing. (Comments Received, SOC ext., due 05-15-2024)

Department for Community Based Services

K-TAP, Kentucky Works, Welfare to Work, State Supplementation

[921 KAR 002:015](#). Supplemental programs for persons who are aged, blind, or have a disability. (Not Amended After Comments) (Deferred from May)

**STANDARD ADMINISTRATIVE REGULATION REVIEW PROCEDURE
Overview for Regulations Filed under KRS Chapter 13A**

(See KRS Chapter 13A for specific provisions)

Filing and Publication

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

Public Hearing and Public Comment Period

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

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

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

Review Procedure

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

EMERGENCY ADMINISTRATIVE REGULATIONS

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

STATEMENT OF EMERGENCY
31 KAR 2:010E.

This emergency regulation is being promulgated pursuant to both KRS 13A.190(1)(a)(1), to meet an imminent threat to public welfare, as well as, KRS 13A.190(1)(a)(3), to meet an imminent deadline for the promulgation of an administrative regulation established by state statute. Section 150 of the Kentucky Constitution requires free and fair elections in the Commonwealth; KRS 118.025(4) sets May 21, 2024, as the date for the next primary election. In recent years, the General Assembly has amended the various Kentucky Revised Statutes related to voting in the Commonwealth. As election administrators adapt to these new changes, the need for administrative changes becomes apparent, so that Kentuckians may continue to cast their ballots with the highest degrees of ease and security. This is being filed as an emergency administrative regulation to ensure the administrative regulations and procedures required by statute to promote free and fair elections are in effect for the upcoming election. This emergency administrative regulation is temporary in nature and will be replaced by an ordinary administrative regulation. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
KAREN SELLERS, Director

STATE BOARD OF ELECTIONS
(Emergency Amendment)

31 KAR 2:010E. Preparation of ballots and voting systems prior to election day.

EFFECTIVE: April 15, 2024

RELATES TO: KRS 116.025, 116.065, 117.075, 117.085(5), 117.125, 117.145, 117.155, 117.165, 117.175, 117.195, 117.205, 117.255, 117.275, 117.285, 117.375, 117.377, 117.379, 117.381, 117.383, 117.385, 117.387, 117.389, 117.391, 117.393, 118.015, 118.215(1), 118.770, 118A.010, 119.005, 424.290

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.383

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to administer the election laws of the state. KRS 117.383(4) requires the State Board of Elections to promulgate rules and administrative regulations to achieve and maintain the maximum degree of correctness, impartiality, and efficiency of the procedures of voting. KRS 117.383(1)(2) requires the State Board of Elections to promulgate rules and administrative regulations to count, tabulate, and record votes. KRS 117.383(2)(3) requires the State Board of Elections to promulgate rules and administrative regulations to establish a method for placing items on any ballot~~[the electronic voting device]~~, which shall, as closely as possible, follow the requirements pertaining to ballots~~[ballot labels]~~. KRS 117.383(5)(6) requires the State Board of Elections to promulgate rules and administrative regulations to provide for checking the accuracy of the equipment. This administrative regulation establishes the procedures for the county clerk and the county board of elections to follow in preparing the ballots and the voting systems prior to each election.

Section 1. Definitions.

(1) "Accuracy Board" means the county board of elections, or at least two (2) individuals appointed by the county board of elections, assigned with the duty of overseeing the accuracy testing of the voting machines and the voting systems required by 31 KAR 2:020.

(2) "Accuracy test" means the procedures established by 31 KAR 2:020 for checking the accuracy of the voting equipment required by KRS 117.383(6), and the testing of the automatic tabulating equipment and voting systems required by KRS 117.389.

(3) "Ballot accountability statement" means a form created by the county clerk in accordance with Section 4 of this administrative regulation.

(4) "Ballot template" means a printout created by the program administrator of the voting systems that shows the results of the steps taken by the program administrator to place all candidates, races, and ballot questions on each ballot based on the information provided by the county clerk.

(5) "Certification" means the information provided by the county clerk to the program administrator that includes an accurate listing of all federal, state, county, and local candidates, offices and ballot questions to be placed on the ballot for each voting machine or voting system for each precinct within five (5) days of receiving the certification of candidates by the Secretary of State, pursuant to KRS 118.215(1), or immediately after receiving the Secretary of State's certification pursuant to KRS 118.770.

(6) "Program administrator" means the county clerk or authorized assistant designated to configure the voting machines and voting systems.

(7) "Scan voting system" means a tabulating device that reads paper ballots by electronically detecting voters' marks.

(8) "Voting machine" means hardware, which is a component of the voting system, used or relied upon by a voter in casting and recording his or her votes in a precinct in an election, which has been approved by the State Board of Elections for use in elections in the Commonwealth of Kentucky pursuant to KRS 117.379 and 117.381.

(9) "Voting system" means a system of components of hardware and software, including the voting machine, used by a voter to cast a ballot and by the election officials to tabulate the votes on election day, which has been approved by the State Board of Elections for use in elections in the Commonwealth of Kentucky pursuant to KRS 117.379 and 117.381.

(10) "Zero-file" means a computer-based electronic file type listing all electoral contests and questions, displaying precinct-by-precinct vote totals registering as zero, which includes all candidates, offices, and ballot questions in the order under which they have been certified pursuant to KRS 118.215(1) or KRS 118.770, for all mail-in absentee ballots, excused in-person absentee ballots, no-excuse in-person absentee ballots, and election day ballots.

Section 2. Preparation of Each Voting Machine and Voting System.

(1) The county clerk shall designate a program administrator to configure the voting machines and voting systems for each election.

(2)

(a) Within five (5) days of receiving the certification of candidates by the Secretary of State, pursuant to KRS 118.215(1), or immediately after receiving the Secretary of State's certification pursuant to KRS 118.770, the county clerk shall provide a certification to the program administrator that includes an accurate listing of all federal, state, county, and local candidates, offices, and ballot questions.

(b) The program administrator shall place the information in the certification in the ballot template for each voting system and precinct.

(3) The program administrator, if other than the county clerk, shall provide a ballot template for each ballot to the county clerk not less than three (3) days before the deadline for printing ballots established in KRS 117.085(5) and 117.145(1).

(4) The county clerk shall compare the prepared ballots and ballot screens, if applicable, for each voting system with the ballot

VOLUME 50, NUMBER 11– May 1, 2024

template and the certification supplied by the county clerk to the program administrator to ascertain that all federal, state, county, and local candidates, offices and ballot questions shall be the same as listed on the certification and shall appear in the correct positions.

(5) Once the county clerk has ascertained that all federal, state, county, and local candidates, offices and ballot questions are the same as listed on the certification and appear in the correct position, the program administrator shall electronically transmit to the State Board of Elections a zero-file in a format designated by the State Board of Elections.

(6) The county clerk shall provide the ballot templates to the county board of elections or designated Accuracy Board prior to the conduct of the accuracy tests required by 31 KAR 2:020.

(7) The county board of elections, or designated review board, shall review the ballot template and the certification supplied by the county clerk to the program administrator to ascertain that all federal, state, county, and local candidates, offices and ballot questions shall be the same as listed on the certification and shall appear in the correct positions prior to the conduct of the accuracy tests required by 31 KAR 2:020.

(8) The county clerk shall review and verify the audio ballots to be placed on the accessible voting systems by listening to the audio ballot through a headset to ensure proper pronunciation of all candidate names and to confirm that all federal, state, county, and local candidates, offices and ballot questions shall be the same as listed on the certification and shall appear in the correct positions.

Section 3. Number of Ballots to be Printed. In addition to the requirements established in KRS 117.145, the county clerk shall provide a sufficient number of printed ballots for each precinct in a county that uses scan voting systems for each election. The number of ballots required to be printed and distributed to each precinct with scan voting systems shall be determined as follows:

(1) For a primary, the number of ballots shall be at least ten (10) percent more than the total number of votes cast in each party's primary and nonpartisan race in the most recent presidential primary election;

(2) For the general election, the number of ballots shall be at least ten (10) percent more than the total number of votes cast in the most recent general election in which votes were cast for the electors for the President of the United States; and

(3) For a special election, the number of ballots shall be a sufficient number as determined by the county clerk considering the number of registered voters in the precinct and the type of special election to be held.

Section 4. Preparation and Delivery of Ballots.

(1) The county clerk shall place into a container the paper ballots, if applicable, for each precinct.

(2) The container shall be secured with a seal and contain a certificate signed by the county clerk recording the total number of ballots in the container and that the ballots were counted and sealed by the county clerk.

(3) Ballots not issued to a precinct or assigned for absentee voting shall be secured and accounted for by the county clerk.

(4) The county clerk shall maintain a record of the number of ballots and serial numbers of the voting systems issued to each precinct.

(5) If using paper ballots for a scan voting system, the county clerk shall create a ballot accountability statement to be provided along with the ballots to each precinct that includes the following:

(a) In a primary, an accounting of the total number of ballots for each party primary and nonpartisan race submitted to the precinct to be completed by the county clerk;

(b) In a general election, an accounting of the total number of each type of ballot submitted to the precinct to be completed by the county clerk;

(c) An oath for the county clerk to sign attesting to the accuracy of the information provided by the county clerk on the statement;

(d) An accounting of the total number of ballots used, unused, and spoiled on election day to be completed by the precinct election clerk and signed by all four (4) precinct election officers;

(e) An accounting of the total number of ballots returned to the county clerk at the end of the election day to be completed by the precinct election clerk;

(f) A section that allows for the precinct election clerk to explain any discrepancies; and

(g) An oath for the precinct election officers to sign attesting to the accuracy of the information provided on the statement.

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 12, 2024

FILED WITH LRC: April 15, 2024 at 10:56 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 31, 2024, at 10:00 a.m. ET, at the Office of the State Board of Elections. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the county clerk and the county board of elections to follow in preparing the ballots and the voting systems prior to each election.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to maintain the maximum degree of correctness, impartiality, and efficiency in the procedures of voting.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in maintaining the maximum degree of correctness, impartiality, and efficiency in the procedures of voting.

(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 defines the computer-based electronic file type listing all electoral contests and questions to be shared by program administrators with the State Board of Elections so that the agency can accurately produce its Election Night Reporting website to provide the public with election results.

(b) The necessity of the amendment to this administrative regulation: Without a defined computer-based electronic file type, shared by program administrators and the State Board of Elections, county boards of election may not be able to efficiently upload election results, and the public's ability to access election-night results may be delayed, restricted, or otherwise blocked.

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

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in meeting the requirement of KRS 117.275(15) that a secure online connection be available for the transmission of unofficial election results from

VOLUME 50, NUMBER 11– May 1, 2024

county boards of election to the State Board of Elections following the tallying of votes.

(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 voters of the Commonwealth, county boards of election, vendors serving as program administrators, and the State Board of Elections.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To comply with this administrative regulation, program administrators and the State Board of Elections will need to work together to successfully transfer the defined computer-based electronic file type; voters and county boards of election will not have to take any steps towards compliance 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): The State Board of Elections estimates that the implementation of this administrative regulation will have minimal costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit all in establishing what exactly is required to produce a secure online connection be available for the transmission of unofficial election results from county boards of election to the State Board of Elections following the tallying of votes, so that voters may see accurate election-night results.

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

(a) Initially: The cost of the implementation of this administrative regulation for the State Board of Elections will be minimal, as the agency already employs the Information Technology staff needed to implement the sharing of the defined computer-based electronic file type.

(b) On a continuing basis: The continuing costs of this administrative regulation for the State Board of Elections will be minimal, as the agency already employs the Information Technology staff needed to implement the sharing of the defined computer-based electronic file type.

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

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

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

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

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 117.015(1)(a) and KRS 117.383 require and authorize the actions taken by this administrative regulation.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: This administrative regulation will affect the promulgating agency, the State Board of Elections.

(a) Estimate the following for the first year:

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

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation will not generate any specific cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This administrative regulation will affect county boards of election.

(a) Estimate the following for the first year:

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

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): This administrative regulation will affect voters of the Commonwealth and vendors serving as program administrators.

(a) Estimate the following for the first year:

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

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The State board of Elections expects that this administrative regulation will have little to no fiscal impact on the regulated entities, outside those expenditures already undertaken.

(b) Methodology and resources used to determine the fiscal impact: This determination of this administrative regulation's fiscal impact is made by the listed contact person and other agency staff based on their collective experience with the subject matter.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) The State Board of Elections does not expect that this administrative regulation will result in a negative or adverse major economic impact to the entities identified in questions (2)-(4).

(b) The methodology and resources used to reach this conclusion: This conclusion is made by the listed contact person and other agency staff based on their collective experience with the subject matter.

**STATEMENT OF EMERGENCY
31 KAR 3:041E.**

This emergency regulation is being promulgated pursuant to both KRS 13A.190(1)(a)(1), to meet an imminent threat to public welfare, as well as, KRS 13A.190(1)(a)(3), to meet an imminent deadline for the promulgation of an administrative regulation established by state statute. Section 150 of the Kentucky Constitution requires free and fair elections in the Commonwealth; KRS 118.025(3) sets May 21, 2024, as the date for the next primary election, while KRS 116.045(4)(e) provides that a person may register to vote or change party affiliation by methods of registration or reregistration approved by the State Board of Elections. This is being filed as an emergency administrative regulation to ensure the administrative regulations and procedures required by statute to promote free and fair elections are in effect for the upcoming election. This emergency administrative regulation is temporary in nature and will be replaced by an ordinary administrative regulation. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
KAREN SELLERS, Director

**STATE BOARD OF ELECTIONS
(New Emergency Administrative Regulation)**

31 KAR 3:041E. Electronic Voter Registration System.

EFFECTIVE: April 15, 2024

RELATES TO: KRS 116.045, 116.0452, 116.065, 116.155

STATUTORY AUTHORITY: KRS 116.045(4)(e), 117.015(1)(a) NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1) requires the State Board of Elections to supervise the registration of voters within the state. KRS 116.045(4)(e) provides that a person may register to vote or change party affiliation by methods of registration or reregistration approved by the State Board of Elections. KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. This administrative regulation approves and establishes procedures for use of an electronic voter registration system to register or reregister to vote or to update voter registration information.

Section 1. Definition. "Applicant" means a person who uses the electronic voter registration system established by the State Board of Elections to register or reregister to vote or to update voter registration information.

Section 2. Use of Electronic Voter Registration System.

(1) The State Board of Elections shall, as funds permit, establish an electronic voter registration system by which persons may register or reregister to vote or update voter registration information.

(2) In addition to the methods set forth in KRS 116.045(4), a person who meets all eligibility requirements may register or reregister to vote or update voter registration information by using the electronic voter registration system established by the State Board of Elections pursuant to this administrative regulation.

Section 3. Contents of Electronic Voter Registration System Application Form. The electronic voter registration system application shall:

(1) Include the electronic equivalent of the registration application form prescribed and furnished by the State Board of Elections under KRS 116.155, including a warning relating to the potential penalties applicable to an applicant knowingly filing an application with untrue information and a voter declaration affirmation as required by KRS 116.065;

(2) Require the applicant who has a Kentucky driver's license or Kentucky personal identification card to:

(a) Agree to the use of his or her Kentucky driver's license signature or Kentucky personal identification card signature for voter registration purposes; and

(b) Provide his or her Kentucky driver's license number or Kentucky personal identification card number.

(3) Require the applicant who does not have a Kentucky driver's license or Kentucky personal identification card, to either:

(a) Provide an electronic signature to be used for voter registration purposes; or

(b) Print the registration application, sign it, and return it to the county clerk for the county in which the applicant resides.

Section 4. Processing Voter Registration Application Submitted Via the Electronic Voter Registration System.

(1) The electronic voter registration system shall not allow an applicant to submit an application unless:

(a) The entire application form, including the voter declaration affirmation as required by KRS 116.065, is completed by the applicant; and

(b) The applicant has either:

1. Agreed to the use of his or her Kentucky driver's license signature or Kentucky personal identification card signature for voter registration purposes and provided his or her Kentucky driver's license number or Kentucky personal identification card number pursuant to Section 3(2) of this administrative regulation; or

2. Provided an electronic signature to be used for voter registration purposes pursuant to Section 3(3)(a) of this administrative regulation.

(2) Immediately upon the applicant's submission of an application that meets the requirements of subsection (1) of this section, the State Board of Elections shall:

(a) If the applicant agreed to the use of his or her Kentucky driver's license signature or Kentucky personal identification card signature for voter registration purposes and provided his or her Kentucky driver's license number or Kentucky personal identification card number pursuant to Section 3(2) of this administrative regulation:

1. Check the information submitted by the applicant to ensure that the Kentucky driver's license number or Kentucky personal identification card number submitted by the applicant matches the information maintained by the Transportation Cabinet; and

2. If a match is made:

a. Electronically forward the information provided in the application, along with a digital copy of the applicant's signature obtained from the Transportation Cabinet, to the county clerk for the county in which the applicant resides; and

b. Notify the applicant that the application has been electronically forwarded to the county clerk for the county in which the applicant resides, but that the applicant will not be officially registered to vote or that changes to the applicant's existing registration will not be made until the application is received and processed by the county clerk.

3. If a match cannot be made, notify the applicant that the application cannot be processed and instruct the applicant to print the application, sign it, and mail or hand deliver it to the county clerk for the county in which the applicant resides.

(b) If the applicant provided an electronic signature to be used for voter registration purposes pursuant to Section 3(3)(a) of this administrative regulation:

1. Electronically forward the information provided in the application, along with the applicant's electronic signature, to the county clerk for the county in which the applicant resides; and

2. Notify the applicant that the application has been electronically forwarded to the county clerk for the county in which the applicant resides, but that the applicant will not be officially registered to vote or that changes to the applicant's existing registration will not be made until the application is received and processed by the county clerk.

(3) An electronic voter registration application shall be deemed to have been made and received by the appropriate county clerk as of the date the applicant is informed pursuant to subsection (2) of this section that the application has been electronically forwarded to the county clerk for the county in which the applicant resides.

VOLUME 50, NUMBER 11– May 1, 2024

(4) Except as otherwise specifically provided, an electronic voter registration application electronically forwarded by the State Board of Elections shall be considered an application for registration by mail.

Section 5. Incorporated by Reference.

(1) Commonwealth of Kentucky Voter Registration Application, Form SBE 01, 04/2024, is incorporated by reference.

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

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 12, 2024

FILED WITH LRC: April 15, 2024 at 10:56 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this new administrative regulation shall be held on May 31, 2024, at 10:00 a.m. ET, at the office of the State Board of Elections. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation approves and establishes procedures for use of an electronic voter registration system to register or reregister to vote or to update voter registration information.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to allow voters in the Commonwealth the ability to register or reregister to vote or to update their voter registration information electronically.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation allows the public to readily see that the Electronic Voter Registration System is a method of registration or reregistration approved by the State Board of Elections under KRS 116.045(4)(e).

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all voters in the Commonwealth who seek the ability to register or

reregister to vote or to update their voter registration information, as well as, the county clerks who may receive those registrations.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To comply with this administrative regulation, voters will need to go on to the internet to access the Electronic Voter Registration System and county clerks will need to go online to receive and process submitted application

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will cost voters and county clerks no more funds than are already being expended.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit voters and county clerks in standardizing the voter registration process while adding the convenience of online access to the process.

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

(a) Initially: The cost of the implementation of this administrative regulation for the State Board of Elections will be minimal as it will require only the creation of the new Form SBE 01.

(b) On a continuing basis: The State Board of Elections anticipates this administrative regulation will cost no more funds than are already being expended.

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

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

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

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

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 117.015(1), 117.015(1)(a), and 116.045(4)(e) require and authorize the actions taken by this administrative regulation.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: This administrative regulation will affect the promulgating agency, the State Board of Elections.

(a) Estimate the following for the first year:

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

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation will not generate any specific cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

VOLUME 50, NUMBER 11– May 1, 2024

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This administrative regulation will affect county clerks.

(a) Estimate the following for the first year:

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

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): This administrative regulation will affect voters of the Commonwealth.

(a) Estimate the following for the first year:

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

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The State board of Elections expects that this administrative regulation will have little to no fiscal impact on the regulated entities, outside those expenditures already undertaken.

(b) Methodology and resources used to determine the fiscal impact: This determination of this administrative regulation's fiscal impact is made by the listed contact person and other agency staff based on their collective experience with the subject matter.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) The State Board of Elections does not expect that this administrative regulation will result in a negative or adverse major economic impact to the entities identified in questions (2) - (4).

(b) The methodology and resources used to reach this conclusion: This conclusion is made by the listed contact person and other agency staff based on their collective experience with the subject matter.

STATEMENT OF EMERGENCY
31 KAR 4:031E.

This emergency regulation is being promulgated pursuant to both KRS 13A.190(1)(a)(1), to meet an imminent threat to public welfare, as well as, KRS 13A.190(1)(a)(3), to meet an imminent deadline for the promulgation of an administrative regulation established by state statute. Section 150 of the Kentucky Constitution requires free and fair elections in the Commonwealth; KRS 118.025(4) sets May 21, 2024, as the date for the next primary election. In recent years, the General Assembly has amended the various Kentucky Revised Statutes related to voting in the Commonwealth. As election administrators adapt to these new changes, the need for administrative changes becomes apparent, so that Kentuckians may continue to cast their ballots with the highest degrees of ease and security. This is being filed as an emergency administrative regulation to ensure the administrative regulations and procedures required by statute to promote free and fair elections are in effect for the upcoming election. This emergency

administrative regulation is temporary in nature and will be replaced by an ordinary administrative regulation. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
KAREN SELLERS, Director

STATE BOARD OF ELECTIONS
(New Emergency Administrative Regulation)

31 KAR 4:031E. Reporting.

EFFECTIVE: April 15, 2024

RELATES TO: KRS 117.085, 117.086, 117.235, 117.255, 117.275,117.355, 118.425, 119.307

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.086(5), 117.275(15), 117.355(4), 118.425(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 117. KRS 117.355(4) requires the State Board of Elections to prescribe the forms for the precinct election sheriff and the county board of elections to report election irregularities and recommendations for improving the election process, to report special ballot and voter assistance usage statistics, and to report other information required by the state board. KRS 117.086(5) requires the State Board of Elections to prescribe a form on which the county board of elections shall report the number of rejected absentee ballots and the reasons for rejection of those ballots. KRS 118.425(4) requires the State Board of Elections to prescribe a form by which the county board of elections shall make out duplicate certificates of the total number of votes received by each of the candidates for office and the total number of votes for an against each of the ballot questions. KRS 117.275(15) requires a secure online connection be available for the transmission of unofficial election results from county boards of election to the State Board of Elections following the tallying of votes. This administrative regulation establishes the procedure and forms for the county clerk, the county board of elections, and the precinct election sheriff to report election and voting data after the election.

Section 1. The following reporting forms shall be filed in accordance with the referenced statutes:

(1) Pursuant to KRS 117.355(1), the precinct election sheriff shall file the Precinct Election Sheriff's Postelection Report, SBE 53, with the chair of the county board of elections and the local grand jury;

(2) Pursuant to KRS 117.355(2), the county board of election shall file the County Board of Elections Postelection Report, SBE 54, with the State Board of Elections and the local grand jury;

(3) Pursuant to KRS 117.275(7) and 117.355(2), the county board of elections shall file the County Board of Elections Postelection Statistical Report, SBE 54A, with the State Board of Elections;

(4) Pursuant to KRS 117.355(2), the county board of elections shall file the County Board of Elections Precinct Election Officials Absence Report, SBE 54B, with the State Board of Elections;

(5) Pursuant to KRS 117.275(12) and 117.086(4)(c), the county clerk shall file the County Board of Elections Provisional Ballots Issued to Voters and Counted, SBE 54C with the State Board of Elections.

(6) Pursuant to KRS 117.086(4)(a)-(b), the county clerk shall file the Absentee Ballot Report, SBE 33A, with the State Board of Elections;

(7) Pursuant to KRS 117.086(5), the county board of elections shall file the Number of Rejected Absentee Ballots and Reasons for Rejected Ballots, SBE 33B; and

(8) Pursuant to KRS 117.275(11)-(12) and 118.425(4), the county board of elections shall file the Certification Official Count and Record of Election Totals, SBE 49, with the Secretary of State.

VOLUME 50, NUMBER 11– May 1, 2024

Section 2. Any form described in Section 1 that is capable of being recorded or filled automatically through the State Board of Elections' Voter Registration System may be deemed by the State Board of Elections as being transmitted following the successful capture of all required information by the Voter Registration System.

Section 3.

(1) Pursuant to KRS 117.275(15), the State Board of Elections shall develop and maintain a platform with a secure online connection for the transmission of unofficial election results from county boards of election to the State Board of Elections following the tallying of votes for all primary, and regular elections, as well as special elections for statewide office, the General Assembly, and the United States Congress.

(2) Beginning at 6:00 p.m., prevailing time, on the day of a primary or regular election, as well as a special election for statewide office, the General Assembly, and the United States Congress, county boards of election shall use the secure online platform maintained by the State Board of Elections to transmit their county's unofficial election tally. The unofficial vote tally transmitted shall include precinct-by-precinct totals from counts of all mail-in absentee ballots, excused in-person absentee ballots, no-excuse in-person absentee ballots, and election day ballots, and shall include totals for those candidates who have filed a declaration of intent to be a write-in candidate pursuant to KRS 117.265(2). Unofficial vote tallies transmitted using the secure online platform shall be transmitted using a computer-file-type and format selected by the State Board of Elections, which shall be selected following the certification of candidates by the Secretary of State pursuant to KRS 118.215(1), or immediately after receiving the Secretary of State's certification pursuant to KRS 118.770.

(3) The State Board of Elections shall display the tally information received from the county boards of election through the secure online transmittal platform on a secure website freely available to the general public. The display shall list precinct-by-precinct tallies for all candidates and questions but shall only list a candidate's precinct absentee vote totals as cumulative.

(4) County boards of election or county clerks shall verify with the State Board of Elections that their county's unofficial vote tally has been successfully transmitted to the State Board of Elections no later than six (6) hours after the close of polls. Should a county's tally not be complete six (6) hours after the close of polls, a representative of the county clerk's office shall update the State Board of Elections by telephone as to the status of the tally transmittal at the end of the sixth hour and then subsequently at the top of each following hour unless the transmittal is completed before such time.

Section 4. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Precinct Election Sheriff's Postelection Report", SBE 53, 04/2024;

(b) "County Board of Elections Post-election Report", SBE 54, 04/2024;

(c) "County Board of Elections Post-election Statistical Report", SBE 54A, 04/2024;

(d) "County Board of Elections Precinct Election Officials Absence Report", SBE 54B, 04/2024 September 2002;

(e) "Absentee Ballot Report", SBE 33A, 04/2024;

(f) "Number of Rejected Absentee Ballots and Reasons for Rejected Ballots", SBE 33B, 04/2024; and

(g) "Certification Official Count and Record of Election Totals", SBE 49, 04/2024.

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

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 12, 2024

FILED WITH LRC: April 15, 2024 at 10:56 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this new administrative regulation shall be held on May 31, 2024, at 10:00 a.m. ET, at the office of the State Board of Elections. Individuals interested in being heard at this hearing shall

notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the secure online connection for the transmission of unofficial election results from county boards of election to the State Board of Elections following the tallying of votes, as well as the procedure and forms for the county clerk, the county board of elections, and the precinct election sheriff to report election and voting data after the election.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure accurate and secure election results, as well as election and voting data.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the secure online connection for the transmission of unofficial election results from county boards of election to the State Board of Elections following the tallying of votes, as required by KRS 117.275(15) and establishes the various post-election reporting forms required throughout KRS Chapter 117.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes the secure online connection for the transmission of unofficial election results from county boards of election to the State Board of Elections following the tallying of votes and the procedures for its use.

(b) The necessity of the amendment to this administrative regulation: KRS 117.275(15) requires a secure online connection be available for the transmission of unofficial election results from county boards of election to the State Board of Elections following the tallying of votes.

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

(d) How the amendment will assist in the effective administration of the statutes: This amendment explains the expected use of the secure online connection related to unofficial election results.

(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 county clerks and the State Board of Elections.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To comply with this administrative regulation, the State Board of Election will need to continue to maintain, and county clerks will need to continue to use, the secure

VOLUME 50, NUMBER 11– May 1, 2024

online connection for election-night results that has been in use the last several years.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will have minimal costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit all in ensuring that election reporting is done in the most secure and efficient way possible.

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

(a) Initially: The cost of the implementation of this administrative regulation for the State Board of Elections will be minimal as it will require only the creation of the new Forms incorporated by reference.

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

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

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

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

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

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 117.015(1)(a) and 117.275(15) require and authorize the actions taken by this administrative regulation.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: This administrative regulation will affect the promulgating agency, the State Board of Elections.

(a) Estimate the following for the first year:

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

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation will not generate any specific cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This administrative regulation will affect county clerks.

(a) Estimate the following for the first year:

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

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): N/A

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

(b) How will expenditures, revenues, or cost savings differ in subsequent years? N/A

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The State board of Elections expects that this administrative regulation will have little to no fiscal impact on the regulated entities, outside those expenditures already undertaken.

(b) Methodology and resources used to determine the fiscal impact: This determination of this administrative regulation's fiscal impact is made by the listed contact person and other agency staff based on their collective experience with the subject matter.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) The State Board of Elections does not expect that this administrative regulation will result in a negative or adverse major economic impact to the entities identified in questions (2)-(4).

(b) The methodology and resources used to reach this conclusion: This conclusion is made by the listed contact person and other agency staff based on their collective experience with the subject matter.

**STATEMENT OF EMERGENCY
31 KAR 4:220E.**

This emergency regulation is being promulgated pursuant to both KRS 13A.190(1)(a)(1), to meet an imminent threat to public welfare, as well as, KRS 13A.190(1)(a)(3), to meet an imminent deadline for the promulgation of an administrative regulation established by state statute. Section 150 of the Kentucky Constitution requires free and fair elections in the Commonwealth; KRS 118.025(4) sets May 21, 2024, as the date for the next primary election. In recent years, the General Assembly has amended the various Kentucky Revised Statutes related to voting in the Commonwealth. As election administrators adapt to these new changes, the need for administrative changes becomes apparent, so that Kentuckians may continue to cast their ballots with the highest degrees of ease and security. This is being filed as an emergency administrative regulation to ensure the administrative regulations and procedures required by statute to promote free and fair elections are in effect for the upcoming election. This emergency administrative regulation is temporary in nature and will be replaced by an ordinary administrative regulation. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
KAREN SELLERS, Executive Director

**STATE BOARD OF ELECTIONS
(New Emergency Administrative Regulation)**

31 KAR 4:220E. Recount procedures.

EFFECTIVE: April 15, 2024
RELATES TO: KRS 120.095, 120.157, 120.185, 120.260, 120.290

STATUTORY AUTHORITY: KRS 117.015(1)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1) establishes the State Board of Elections as the

VOLUME 50, NUMBER 11– May 1, 2024

independent agency of state government which shall administer the election laws of the state. KRS 120.095, 120.157, 120.185, 120.260, and 120.290 all authorize the post-election recounting of ballots cast. These same statutes are all largely without procedures for how such an event should take place. This administrative regulation establishes procedures for the recounting of ballots so that there may be an established standard throughout the Commonwealth.

Section 1. Definition. "Recount" means a post-election retallying of ballots cast in a primary, general, or special election, as authorized under KRS 120.095, 120.157, 120.185, 120.260, or 120.290.

Section 2. Locations. Upon identifying that a recount will be taking place, an affected county board of elections shall identify a suitable location, within the county, where the recount can take place.

(1) A suitable location shall be one where all of the voting equipment and ballot boxes required for the recount can be housed in one location and there is ample space for the personnel required for the task and all authorized observers, who shall have a dedicated area within the location to witness the recount.

(2) If a recount is to occur pursuant to KRS 120.290, the Franklin County Clerk shall assist the Franklin Circuit Court in finding a location for the commencing of the recount should the Court find the courthouse at Frankfort unsuitable for the event.

Section 3. Recount Personnel.

(1) Pursuant to KRS 117.035(5), an affected county board of elections may employ a bipartisan staff sufficient to carry out the duties of the recount. Once a county board identifies that a recount will be taking place, the board shall immediately seek out citizens of the county who may wish to work for the county board on a temporary basis as recount officials.

(2) County boards shall recruit enough citizens of the county to work as recount officials so that the recount may be completed before any statutory deadline.

(a) Citizens hired to work as recount officials shall be registered voters of the county in which they desire to work.

(b) Recount officials shall be paid an hourly wage for their work during the entirety of the recount process. The hourly wage shall be set uniformly for all recount officials by the county board of elections at a rate that is both prevailing in the jurisdiction at the time for the type of work to be done and that is high enough to entice applicants qualified for such a short-term, temporary assignment.

(c) Before any recount official shall be allowed to work, the individual shall take the oath found in Section 228 of the Kentucky Constitution, which shall be administered by any officer authorized under KRS 62.020.

Section 4. Procedures as to Election Vendors.

(1) Upon identifying that a recount will be taking place, county clerks shall work with their voting equipment vendors to begin programming, distributing, and setting the voting equipment necessary for the recount.

(2) Election equipment shall be set to isolate the race or question subject to the recount and the straight-party option, if applicable.

Section 5. Initiating the Recount.

(1) Before recount proceedings may begin, on the day fixed for the recount, the county board of elections shall meet to confirm the integrity of the ballots subject to the recount.

(2) The confirmation of the integrity of the ballots shall be reflected in the recorded minutes of the meeting of the county board of elections.

(3) Absent a showing of clear and convincing evidence that the ballots have been purposefully disturbed and tampered with, the integrity of the ballots shall be proven.

Section 6. Securing the Integrity of the Recount.

(1) Before members of the recount teams shall be allowed to

handle individual ballots, each member shall present their hands and fingernails to the members of the county board of elections for visual inspection. Before proceeding to handle ballots, county board of elections members shall confirm that each recount official's hands and fingernails are clean enough so as to not transfer any ink, lead, or other markings onto the ballots.

(2) Only red ink pens, a blank pad of paper, and manilla envelopes large enough to contain multiple ballots shall be allowed in any area in the direct proximity of voting equipment or ballots during the counting of ballots.

(3) The use of cell phones or other electronic devices shall not be permitted within the direct proximity of voting equipment or ballots. Any capturing of photographic or video images of ballots shall be prohibited.

(4) No food or drink shall be permitted in any area in the direct proximity of voting equipment or ballots without prior authorization from the county board of elections.

Section 7. Before Voting Equipment is Opened.

(1) The county board of elections or the county clerk shall split the recount officials into recount teams of two (2) so that each team contains individuals registered of differing political party affiliations.

(2) Each recount team shall be assigned to only one (1) piece of voting equipment at any one (1) time and no piece of voting equipment shall have more than one (1) recount team operating it at any one time.

(3) Before a piece of voting equipment is opened by a recount team, the information from the voting equipment's Machine Verification Form shall be transposed onto the Form SBE 82, Recount Tabulation Form.

Section 8. Opening the Voting Equipment.

(1) Once a recount team opens a piece of voting equipment, the seal number, beginning counter number, and lifetime counter number shall be checked to match the Machine Verification Form.

(2) Once the ballot box or tub containing the ballots is opened, the seal number shall be recorded on the Form SBE 82, Recount Tabulation Form.

(3) Every ballot from the ballot box or tub shall be removed and placed on a segregated table next to the voting equipment and the broken seal shall be placed inside the ballot box or tub. At no point shall ballots from one (1) ballot box or tub be comingled with any other materials, including ballots from another ballot box or tub. At no time shall ballots be left outside of a ballot box or tub unattended.

Section 9. Procedure to Recount Ballots.

(1) Every ballot removed from a ballot box or tub for a recount shall be scanned back through the piece of voting equipment from which the ballot box or tub was originally associated, one (1) ballot at a time. If a county is in possession of a separate piece of voting equipment designed and regularly used to count larger amounts of ballots, the use of such voting equipment shall be authorized.

(2) Scanned ballots shall be counted by the electronic voting equipment in accordance with 31 KAR 6:030, Section 4(1) and the cumulative totals for each slate of candidates shall be recorded on the Form SBE 82, Recount Tabulation Form as such.

(3) If a ballot does not scan through the piece of voting equipment on the first attempt, each member of the associated recount team shall attempt to scan the ballot one (1) additional time each. If, after three (3) unsuccessful attempts, a ballot does not scan, it shall be set aside for later adjudication.

(4) Once only those ballots set aside remain, they shall be adjudicated as one (1) of three (3) types: 1) an overvote, meaning that upon visual inspection of the ballot, more than one slate of candidates appears to have been selected by the voter; 2) an undervote, meaning that upon visual inspection, no slate of candidates appears to have been selected by the voter on the ballot; or 3) a damaged ballot, no longer capable of being scanned into the voting equipment because of damage sustained to the physical ballot, but clearly having a selection for only one (1) slate of candidates or that slate's straight-party option.

(5) The number of undervotes, overvotes, and damaged ballots

VOLUME 50, NUMBER 11– May 1, 2024

shall be recorded on the Form SBE 82, Recount Tabulation Form as such.

(6) The recount officials shall place the cumulative number of undervotes in a manilla envelope, seal the envelope with tape, label it with the word "undervotes," and then sign it alongside the date and time of their signature. This procedure shall then be followed for envelopes labeled "overvotes" and "damaged ballots." If the cumulative number of undervotes, overvotes, or damaged ballots will not fit inside one (1) manilla envelope, multiple envelopes may be used.

(7) Once the undervotes, overvotes, and damaged ballots are placed in envelopes, the envelopes shall be placed back in the ballot box or tub on top of the ballots already recounted by the electronic voting equipment.

(8) Once a conclusive accounting has been reached for all ballots removed from the ballot box or tub, the voting equipment shall be secured with a seal of a color not previously used in the election and the serial number of the seal shall be recorded on the Form SBE 82, Recount Tabulation Form.

(9) The Form SBE 82, Recount Tabulation Form shall then be signed by the recount team members and all members of the county board of elections.

(10) Once this process is complete for one (1) piece of voting equipment, a recount team may move on to a new piece of voting equipment and begin the process of recounting the ballots found within.

(11) Once all ballots have been counted by the electronic voting equipment and all Form SBE 82, Recount Tabulation Forms have been completed, the county clerk shall scan and email all Form SBE 82, Recount Tabulation Forms to the State Board of Elections. For a recount conducted under KRS 120.157, the State Board of Elections shall examine the statewide Form SBE 82, Recount Tabulation Forms and tally the results submitted. If the tally of results submitted shows that the count of ballots by the electronic voting equipment did not result in a margin of victory of 0.25% or less, the State Board of Elections shall notify each county that their recount is complete. If the tally of results submitted shows that the count of ballots by the electronic voting equipment did result in a margin of victory of 0.25% or less, the State Board of Elections shall tally the total number of overvotes and damaged ballots reported on the submitted Form SBE 82, Recount Tabulation Forms. If the cumulative number of overvotes and damaged ballots is large enough to overcome the machine-established margin of victory, the State Board of Elections shall notify the counties that they are to meet immediately to count the overvotes and damaged ballots. If the cumulative number of overvotes and damaged ballots is not large enough to overcome the machine-established margin of victory, the State Board of Elections shall notify the counties that their recount is complete.

(12) Upon the need for a count of overvotes and damaged ballots, the county board of elections shall meet to remove all manilla folders containing overvotes and damaged ballots. Overvotes and damaged ballots shall be adjudicated by the full county board of elections using the procedures described in 31 KAR 6:030, Section 4(2) and (3). Overvotes shall also be subject to the allowances of 31 KAR 6:030, Section 4(4).

(a) Each adjudicated ballot, shall, by majority vote of the county board of elections, result in a vote for either: 1) one (1) valid candidate, one (1) valid slate of candidates, or valid answer to a question; 2) one (1) valid write-in candidate or slate of candidates, or 3) no candidate, slate of candidates, or answer to a question. The adjudication of each ballot shall be recorded onto the Form SBE 82, Recount Tabulation Form.

(b) After overvotes and undervotes are adjudicated, they shall be placed, along with the original manilla envelope, in a new manilla envelope. The county board of elections shall seal the envelope with tape, label it as "overvotes," or "damaged ballots," accordingly, and then sign it alongside the date and time of their signature.

Section 10. Reporting of Recount Totals.

(1) Once every piece of voting equipment has been opened, all ballots have been recounted, and a conclusive recount total for each piece of equipment has been established, the county board of

elections shall transfer the totals for each candidate or question from each Form SBE 82, Recount Tabulation Form onto a Form SBE 49, Official Count and Record of Election Totals.

(2) The same totals recorded onto the Form SBE 49, Official Count and Record of Election Totals shall also concurrently be input into an online portal belonging to the Secretary of State should such be available.

(3) The members of the county board of elections shall affix their signatures to the completed Form SBE 49, Official Count and Record of Election Totals, which shall mark the completion of the recount.

(4) Once the Form SBE 49, Official Count and Record of Election Totals is signed, the county board of elections shall fax a copy the document to the office of the Secretary of State, no later than 4:00 p.m., local time, on the day following the completion of the county's recount. Each county clerk shall retain a copy of the completed Form SBE 49, Official Count and Record of Election Totals for their records and mail the original signed copy to the office of the Secretary of State.

Section 11. Reimbursement of Recount Costs. All costs associated with the recount proceedings, including but not limited to, personnel expenses and vendor charges, shall be recorded and documented by the county clerk.

Section 12. Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) "Recount Tabulation Form", Form SBE 82, 04/2024; and
(b) "Official Count and Record of Election Totals", Form SBE 49, 04/2024.

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

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 12, 2024

FILED WITH LRC: April 15, 2024 at 10:56 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this new administrative regulation shall be held on May 31, 2024, at 10:00 a.m. ET, at the office of the State Board of Elections. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the recounting of ballots so that there may be an established standard throughout the Commonwealth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary as KRS 120.095, 120.157, 120.185, 120.260, and 120.290 all authorize the post-election recounting of ballots cast but are all largely without procedures for how such an event should take place.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations

VOLUME 50, NUMBER 11– May 1, 2024

necessary to properly carry out its duties.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will allow for uniform recount procedures in each county should a recount be required under KRS 120.095, 120.157, 120.185, 120.260, or 120.290.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect candidates for elected office, qualified electors related to a constitutional convention, constitutional amendment, or statewide public question, vendors of electronic voting equipment, county clerks, county boards of election, the Secretary of State, and the State Board of Elections.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To comply with this administrative regulation, candidates for elected office, qualified electors related to a constitutional convention, constitutional amendment, or statewide public question, vendors of electronic voting equipment, county clerks, and county boards of elections will need to follow instructions setting forth procedures for a recount of ballots; the Secretary of State will need to determine whether or not to provide an online reporting tool for recount results; the State Board of Elections may need to determine if further recounting of ballots is necessary under KRS 120.157.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will cost candidates for elected office, qualified electors related to a constitutional convention, constitutional amendment, or statewide public question, vendors of electronic voting equipment, county clerks and county boards of election an amount that can only be determined once the scope of a recount is established and will cost the Secretary of State and the State Board of Elections no more funds than are already being expended.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will allow those impacted by a recount of ballots to know that a recount in one jurisdiction is being conducted under the same procedures as one in another jurisdiction, ensuring an equitable process.

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

(a) Initially: The State Board of Elections estimates that the implementation of this administrative regulation will cost candidates for elected office, qualified electors related to a constitutional convention, constitutional amendment, or statewide public question, vendors of electronic voting equipment, county clerks and county boards of election an amount that can only be determined once the scope of a recount is established and will cost the Secretary of State and the State Board of Elections no more funds than are already being expended.

(b) On a continuing basis: The State Board of Elections estimates that the implementation of this administrative regulation will cost candidates for elected office, qualified electors related to a constitutional convention, constitutional amendment, or statewide

public question, vendors of electronic voting equipment, county clerks and county boards of election an amount that can only be determined once the scope of a recount is established and will cost the Secretary of State and the State Board of Elections no more funds than are already being expended.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the budgets of county fiscal courts, pursuant to KRS 117.345 and funds from the administrative budgets of the Secretary of State and the State Board of Elections will be used in the respective implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly, though with the recent passing of KRS 120.157, funding for mandatory statutory recounts should be considered in future legislative sessions.

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

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

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 117.015(1)(a), 120.095, 120.157, 120.185, 120.260, and 120.290 require and authorize the actions taken by this administrative regulation.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: This administrative regulation will affect the promulgating agency, the State Board of Elections, as well as the Secretary of State.

(a) Estimate the following for the first year:

Expenditures: The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended under the current statutory recount framework, as the expense of a recount is either borne by the requesting party or is to be paid as a necessary government expense for a mandatory recount pursuant to KRS 120.157.

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation will not generate any specific cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This administrative regulation will affect county clerks and county boards of election.

(a) Estimate the following for the first year:

Expenditures: The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended under the current statutory recount framework, as the expense of a recount is either borne by the requesting party or is to be paid as a necessary government expense for a mandatory recount pursuant to KRS 120.157.

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate

STATE BOARD OF ELECTIONS
(Emergency Amendment)

31 KAR 5:026E. Ballot standards and election security.

EFFECTIVE: April 15, 2024

RELATES TO: KRS 117.001, 117.025, 117.085, 117.086, 117.0861, 117.087, 117.145, 117.225, 117.228, 117.295(1), 117.365

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.085, 117.086, 117.087(3)(d), 117.145, 117.228

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. Several Kentucky Revised Statutes in Chapter 117 require the State Board of Elections to promulgate administrative regulations that provide for measures that establish standards for the ballots used during elections, as well as, measures that ensure that votes cast during an election are done so in a free, fair, and secure manner. This administrative regulation provides for those measures.

Section 1. In addition to the requirements for printed ballots established in KRS 117.145, ballots caused to be printed by the county clerk of each county shall meet quality and size standards specific to the voting systems certified by both the State Board of Elections and the United States Election Assistance Commission.

Section 2. The outer envelope of all mail-in absentee ballots shall bear a barcode or other label that is unique to the individual voter and capable of being read by an electronic optical scanner. The unique barcode or label for each mail-in absentee ballot outer envelope shall be issued by the State Board of Elections. Upon the need to issue a voter a second mail-in absentee ballot pursuant to KRS 117.085(9), the outer envelope of the subsequent second mail-in absentee ballot shall bear a new unique barcode or label.

Section 3.

(1) Upon the time of certification of each candidate and each question to be voted upon, all pre-printed paper ballots shall be secured by the county clerk of each county, under lock and key, in an area under the direct control of the county clerk and approved by the county board of elections.

(2) The possession of all pre-printed ballots shall be accounted for on SBE Form 76, Ballot Reconciliation Statement.

(3) If paper ballots need to be printed at a county clerk's office, an accounting of the printed ballots shall be made on either the SBE Form 76, Ballot Reconciliation Statement, or by the printing equipment.

(4) Upon the transfer of ballots from the area under the direct control of the county clerk to a polling location, the transfer shall be noted on the SBE Form 76, Ballot Reconciliation Statement.

(5) Beginning with the in-person casting of ballots during the period described in KRS 117.076, each voted in-person ballot shall remain in a locked and sealed receptacle, until the conclusion of the period described in KRS 117.295(1).

(6) At the conclusion of each day of voting, an accounting of the number of all voted, unvoted, and spoiled ballots shall be recorded on the SBE Form 76, Ballot Reconciliation Statement.

(7) All ballots and election materials not secured in an area under the direct control of the county clerk after the close of polls shall be secured at the voting location in a secure manner, based upon the advice and recommendations of the county board of elections and the sheriff from the time described in KRS 117.076 until the conclusion of voting on the day of an election.

(8) As mail-in absentee ballots are received by county clerks, they shall have their unique barcode or label scanned.

(9) Upon each mail-in absentee ballot being processed, the unique barcode or label shall be scanned again.

(10) If a mail-in absentee ballot is found to be without the need for a signature cure, or a mail-in absentee ballot has been returned along with a completed SBE Form 77, Discrepant Mail-in Absentee

expenditures, revenues, or cost savings to differ in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): This administrative regulation will affect candidates for elected office, qualified electors related to a constitutional convention, constitutional amendment, or statewide public question, and vendors of electronic voting equipment.

(a) Estimate the following for the first year:

Expenditures: The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended under the current statutory recount framework, as the expense of a recount is either borne by the requesting party or is to be paid as a necessary government expense for a mandatory recount pursuant to KRS 120.157.

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The State board of Elections expects that this administrative regulation will have little to no fiscal impact on the regulated entities, outside those expenditures already undertaken.

(b) Methodology and resources used to determine the fiscal impact: This determination of this administrative regulation's fiscal impact is made by the listed contact person and other agency staff based on their collective experience with the subject matter.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) The State Board of Elections does not expect that this administrative regulation will result in a negative or adverse major economic impact to the entities identified in questions (2)-(4).

(b) The methodology and resources used to reach this conclusion: This conclusion is made by the listed contact person and other agency staff based on their collective experience with the subject matter.

STATEMENT OF EMERGENCY
31 KAR 5:026E.

This emergency regulation is being promulgated pursuant to both KRS 13A.190(1)(a)(1), to meet an imminent threat to public welfare, as well as, KRS 13A.190(1)(a)(3), to meet an imminent deadline for the promulgation of an administrative regulation established by state statute. Section 150 of the Kentucky Constitution requires free and fair elections in the Commonwealth; KRS 118.025(4) sets May 21, 2024, as the date for the next primary election. Since the 2020 elections, conducted during the COVID-19 pandemic, the Commonwealth has expanded the availability of mail-in absentee voting. With lessons learned from each subsequent election, administrators continue to reform the mail-in request and delivery process to ensure the highest degree of security. This is being filed as an emergency administrative regulation to ensure the administrative regulations and procedures required by statute to promote free and fair elections are in effect for the upcoming election. This emergency administrative regulation is temporary in nature and will be replaced by an ordinary administrative regulation. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
KAREN SELLERS, Director

VOLUME 50, NUMBER 11– May 1, 2024

Signature, the ballot shall be recorded into an optical scanner, to be deposited in a locked and sealed receptacle for the period described in KRS 117.295(1).

(11) Any completed SBE Form 76, Ballot Reconciliation Statement shall be turned over to the local Commonwealth's Attorney along with any other materials required under KRS 117.365.

Section 4. A voter who is disabled may request a mail-in absentee ballot via an online accessible ballot portal, which shall conform to web accessible design standards as established by the W3C Web Accessibility Initiative at <https://www.w3.org/WAI/>.

Section 5.

(1) Upon receipt of a valid mail-in ballot request, through the online request portal or other valid request method, the request of the voter shall be noted in the Voter Registration System, and reflected in the electronic pollbooks used by precinct election officers.

(2) If a voter noted to have requested a mail-in absentee ballot appears at a polling location to vote in-person, the precinct election officer shall communicate with the county clerk, who shall make a determination as to whether the requested mail-in absentee ballot has been completed and returned as a cast ballot by the voter.

(3) If the mail-in absentee ballot is found to have been completed and returned as a cast ballot, the voter shall not be permitted to cast an in-person vote.

(4) If the mail-in absentee ballot is found not to have been completed and returned as a cast ballot and the ballot has been returned to the county clerk no later than seven (7) days prior to the date of the election as required by KRS 117.085(8), the county clerk shall immediately cancel the issued ballot in the Voter Registration System and allow the voter to cast an in-person ballot after the voter completes Form SBE 32, Oath of Voter, copies of which shall be forwarded to the Commonwealth's Attorney.

Section 6.

(1) A voter, or an individual identified by KRS 117.0861(1), may deliver a mail-in absentee ballot to the office of the county clerk in the county where the voter is registered, to a secure ballot drop-box in the county where the voter is registered, or to a secure drop-off receptacle if one is maintained by the county clerk in the county where the voter is registered, rather than mailing the ballot via the United States Postal Service.

(2)

(a) A county choosing to use a receptacle for ballot drop-off other than a drop-box provided by the State Board of Elections, shall formally seek the State Board of Elections' approval of the receptacle before any ballot is allowed to be deposited inside.

(b) A county choosing to utilize a drop-off receptacle shall provide information about the receptacle to the State Board of Elections as required by KRS 117.086(2)(b).

(3) A drop-box or receptacle located outside a County Clerk's Office shall be located, secured, and identified as required by KRS 117.086(2)(c).

(4) A drop-box or receptacle located inside shall be under direct supervision as required by KRS 117.086(2)(d) and shall be clearly marked as for use by voters in the election, so as to differentiate the drop-box or receptacle from any other that may be in use in the area.

(5) Any other non-elections related drop-box in use by a county clerk for any other official business shall clearly indicate that the other drop-box is not for the return of election material.

(6)

(a) The county clerk shall empty the drop box and any receptacle used each business day as required by KRS 117.086(2)(e) and secure the absentee ballots therein in a manner consistent with KRS 117.086(3).

(b) Upon each emptying of a drop-box or receptacle, the individuals collecting absentee ballots pursuant to KRS 117.086(2)(e) shall complete Form SBE 78, Daily Absentee Drop-Box Verification Sheet.

Section 7.

(1) After the receipt of a mail-in absentee ballot by the county clerk, the signature shall be examined in accordance with KRS 117.087(3)(c)2 and 5.

(2) If a signature match cannot be made, notice shall be provided to the voter as required by KRS 117.087(3)(c)5, which shall, at minimum, include the mailing of Form SBE 77, Discrepant Mail-in Absentee Signature.

(3) Upon the county board of elections, central counting board, or the county clerk determining the need for a signature cure, the ballot shall be noted in the Voter Registration System and the county clerk shall, on that same day, input the voter's address and any other required data into the SBE 77 and mail the form to the voter.

Section 8.

~~[(1)] [A voter unable to provide proof of identification as required under KRS 117.225, and as defined under KRS 117.001(15), shall:]~~

~~[(a)] [Meet the requirements of KRS 117.228(1)(c) by executing SBE Form 71, Voter Affirmation Form; and]~~

~~[(b)] [Provide alternative proof of identification as required by KRS 117.228(2).]~~

~~[(2)] [A voter personally known to an election officer may cast a ballot in accordance with KRS 117.228(4) upon the election officer executing SBE Form 72, Election Officer Affirmation Form.]~~

~~[(3)] [Both the SBE 71 and SBE 72 shall be forwarded to the local Commonwealth's Attorney following the election.]~~

~~[Section 9.]~~ A voter may make application to cast an excused in-person absentee ballot pursuant to KRS 117.076(2) by completing SBE Form 44E, Excused In-Person Absentee Ballot Application.

~~Section 9.~~~~[Section 10.]~~ The status of the tamper-resistant seal and the number on the public counter shall be recorded as required by KRS 117.076(12) before and after each day of in-person absentee voting, on SBE Form 79, Daily Voting Machine Verification Sheet, which cumulatively shall be collected by the County Clerk.

Section 10.~~[Section 11.]~~ Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) "Oath of Voter", Form SBE 32, 04/2022;

(b) "Ballot Reconciliation Statement", Form SBE 76, 04/2022;

(c) "Discrepant Mail-in Absentee Signature", Form SBE 77, 08/2022;

~~[(d)] ["Voter Affirmation Form", Form SBE 71, 04/2022;]~~

~~[(e)] ["Election Officer Affirmation Form", Form SBE 72, 04/2022;]~~

~~[(d)] [(f)] "Excused In-Person Absentee Ballot Application", Form SBE 44E, 04/2022;~~

~~[(e)] [(g)] "Daily Voting Machine Verification Sheet", Form SBE 79, 04/2022; and~~

~~[(f)] [(h)] "Daily Absentee Drop-Box Verification Sheet", Form SBE 78, 04/2022.~~

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

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

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 12, 2024

FILED WITH LRC: April 15, 2024 at 10:56 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 31, 2024, at 10:00 a.m. ET, at the Office of the State Board of Elections. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written

VOLUME 50, NUMBER 11– May 1, 2024

comments shall be accepted until May 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for the ballots used during elections, as well as, measures that ensure that votes cast during an election are done so in a free, fair, and secure manner.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that the mail-in request and delivery process has the highest degree of security possible.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the free and fair administration of elections in the Commonwealth as applied throughout KRS Chapter 117.

(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 guarantees that two mail-in absentee ballots cannot be issued at the same time with the same barcode or unique label should a voter request a second mail-in absentee ballot under KRS 117.085(9).

(b) The necessity of the amendment to this administrative regulation: Without clear definition, county clerks have been left unclear on how to handle subsequent mail-in absentee requests under KRS 117.085(9).

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

(d) How the amendment will assist in the effective administration of the statutes: This amendment will offer clear guidance to county clerks on how to handle subsequent mail-in absentee requests under KRS 117.085(9).

(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 voters of the Commonwealth, county clerks, and the State Board of Elections.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To comply with this administrative regulation, voters may need to complete a form or follow absentee ballot delivery instructions, while county clerks and the State Board of Elections will need to take steps to ensure the security of their elections.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will have minimal costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit all in ensuring that all elections

conducted in the Commonwealth are done so in a free, fair, and secure manner.

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

(a) Initially: The cost of the implementation of this administrative regulation for the State Board of Elections will be minimal as it will require only the creation of the new Forms incorporated by reference.

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

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

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

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

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

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 117.015(1)(a) and 117.085(9) require and authorize the actions taken by this administrative regulation.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: This administrative regulation will affect the promulgating agency, the State Board of Elections.

(a) Estimate the following for the first year:

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

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation will not generate any specific cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This administrative regulation will affect county clerks.

(a) Estimate the following for the first year:

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

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): This administrative regulation will affect voters desiring to vote by mail-in absentee ballot.

(a) Estimate the following for the first year:

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

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The State board of Elections expects that this administrative regulation will have little to no fiscal impact on the regulated entities, outside those expenditures already undertaken.

(b) Methodology and resources used to determine the fiscal impact: This determination of this administrative regulation's fiscal impact is made by the listed contact person and other agency staff based on their collective experience with the subject matter.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) The State Board of Elections does not expect that this administrative regulation will result in a negative or adverse major economic impact to the entities identified in questions (2)-(4).

(b) The methodology and resources used to reach this conclusion: This conclusion is made by the listed contact person and other agency staff based on their collective experience with the subject matter.

**STATEMENT OF EMERGENCY
31 KAR 5:040E.**

This emergency regulation is being promulgated pursuant to both KRS 13A.190(1)(a)(1), to meet an imminent threat to public welfare, as well as, KRS 13A.190(1)(a)(3), to meet an imminent deadline for the promulgation of an administrative regulation established by state statute. Section 150 of the Kentucky Constitution requires free and fair elections in the Commonwealth; KRS 118.025(4) sets May 21, 2024, as the date for the next primary election. In recent years, the General Assembly has amended the various Kentucky Revised Statutes related to voting in the Commonwealth. As election administrators adapt to these new changes, the need for administrative changes becomes apparent, so that Kentuckians may continue to cast their ballots with the highest degrees of ease and security. This is being filed as an emergency administrative regulation to ensure the administrative regulations and procedures required by statute to promote free and fair elections are in effect for the upcoming election. This emergency administrative regulation is temporary in nature and will be replaced by an ordinary administrative regulation. The companion ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
KAREN SELLERS, Director

**STATE BOARD OF ELECTIONS
(New Emergency Administrative Regulation)**

31 KAR 5:040E. Questions regarding voter eligibility.

EFFECTIVE: April 12, 2024

RELATES TO: KRS 61.826, 117.001, 117.015, 117.025, 117.035, 117.225, 117.245, 117.227, 117.228, 117.245

STATUTORY AUTHORITY: KRS 61.826, 117.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS

117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly administer the election laws of the state. KRS 117.035(4)(c) requires that county boards of election meet and stay in session on primary, regular election, and special election days to correct clerical errors, to rules on questions regarding voter registration, proof of identification, and the curing of signatures relative to mail-in absentee ballots. KRS 117.025(3)(d) requires the State Board of Elections to select the required format for any voter registration list provided to a county clerk. KRS 117.228 details the procedures for casting a ballot if a voter is unable to provide proof of identification or is otherwise known to an election officer and requires the State Board of Elections to prescribe and furnish forms that voters must complete in these circumstances. This administrative regulation establishes procedures for when a voter's eligibility is questioned and the forms that are to be completed when necessary.

Section 1.

(1) A voter unable to provide proof of identification as required under KRS 117.225, and as defined under KRS 117.001(15), shall:

(a) Meet the requirements of KRS 117.228(1)(c) by executing SBE Form 71, Voter Affirmation Form; and

(b) Provide alternative proof of identification as required by KRS 117.228(2).

(2) A voter personally known to an election officer may cast a ballot in accordance with KRS 117.228(4) upon the election officer executing SBE Form 72, Election Officer Affirmation Form.

(3) Both the SBE 71 and SBE 72 shall be forwarded to the local Commonwealth's Attorney following the election.

Section 2.

(1) If an individual presents themselves to an election officer to vote and is not found on the signature roster provided to the county under KRS 117.025(3)(b) or (3)(c) and is not a participant in the Safe at Home Program authorized under KRS 14.302, the individual may vote upon the following taking place:

(a) The individual shall provide to the election officer proof of identification as required by KRS 117.225, or the individual shall follow the procedures of KRS 117.228 if they are unable to provide proof of identification;

(b) The election officer shall contact the county clerk's office and verify that the information provided by the individual establishes that they are registered to vote at the location where the individual has presented themselves;

(c) The individual shall complete the Form SBE 32, Oath of Voter;

(d) The individual shall complete the Form SBE 01, Commonwealth of Kentucky Voter Registration Application;

(e) The individual shall sign the Form SBE 25, Supplemental Precinct Signature Roster;

(f) The election officer shall inform the individual that the Form SBE 32, Oath of Voter shall be forwarded to the local Commonwealth's Attorney following the election.

(2) If the election officer is unable to verify through the county clerk's office that the individual is properly registered to vote in the location where the individual has presented themselves, the election officer shall:

(a) Inform the individual of the location where they are properly registered vote, if known;

(b) Inform the individual of their ability to request a hearing before the county board of elections;

(c) Inform the individual of their ability to cast a provisional ballot for the federal elective office of President, Vice President, United States Senator, and United States House of Representative; and if an individual chooses to cast a provisional ballot for an applicable federal elective office, the election officer shall have the individual sign the Form SBE 35, Provisional Ballot Precinct Signature Roster.

(3) All Form SBE 25, Supplemental Precinct Signature Rosters and Form SBE 35, Provisional Ballot Precinct Signature Rosters, when used for the purposes described in this section, shall be completed digitally through an e-poll book unless there is an emergency condition that renders the e-poll book inoperable, in

VOLUME 50, NUMBER 11– May 1, 2024

which case paper forms shall be used. Should such an emergency condition exist, the election officer shall record the circumstances of the emergency condition on the paper forms.

Section 3. During the days that voting may occur during any primary, regular election, and special election, including voting by mail-in absentee ballot, a county board of elections may elect to meet the requirements of KRS 117.035(4)(c) via a video teleconference subject to the mandates of KRS 61.826.

(1) Should a county board of elections elect to meet via video teleconference during a day in which voting may occur, the county clerk's office and each voting location in use in the county shall have technology available to every voter so that the voter may appear before the county board at no financial expense to the voter.

(2) If a county board of elections elects not to meet via video teleconference during a day in which voting may occur, a voter desiring to appear before the county board shall be provided with an option so that the voter may appear before the county board via teleconference, provided that the voter can make themselves available via the same teleconferencing technology the county board has chosen to utilize for such hearings.

Section 4. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Commonwealth of Kentucky Voter Registration Application", Form SBE 01, 04/2024;

(b) "Supplemental Precinct Signature Roster", Form SBE 25, 04/2024;

(c) "Oath of Voter", Form SBE 32, 04/2024;

(d) "Provisional Ballot Precinct Signature Roster", Form SBE 35, 04/2024;

(e) "Voter Affirmation Form", Form SBE 71, 04/2022;

(f) "Election Officer Affirmation Form", Form SBE 72, 04/2022.

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

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 12, 2024

FILED WITH LRC: April 15, 2024 at 10:56 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this new administrative regulation shall be held on May 31, 2024, at 10:00 a.m. ET, at the office of the State Board of Elections. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for when a voter's eligibility is questioned and the forms that are to be completed when necessary.

(b) The necessity of this administrative regulation: This administrative regulation is necessary so that statewide uniform procedures exist when a voter's eligibility is questioned. KRS 117.035(4)(c) requires that county boards of election meet and stay in session on primary, regular election, and special election days to

correct clerical errors, to rules on questions regarding voter registration, proof of identification, and the curing of signatures relative to mail-in absentee ballots. KRS 117.025(3)(d) requires the State Board of Elections to select the required format for any voter registration list provided to a county clerk. KRS 117.228 requires the State Board of Elections to prescribe and furnish forms that voters must complete if a voter is unable to provide proof of identification or is otherwise known to an election officer.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation allows for clear standards and procedures regarding situations where a voter's eligibility is questioned.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect voters in the Commonwealth who have their eligibility questioned, as well as the county election officials who must determine their eligibility.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To comply with this administrative regulation, voters and county election officials will need to complete a form or attend a hearing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will cost voters and county election officials no more funds than are already being expended.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit voters and county election officials by adding digital convenience to the voting experience through the already used e-poll book and the teleconferencing already authorized under KRS 61.826.

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

(a) Initially: The State Board of Elections anticipates this administrative regulation will cost no more funds than are already being expended.

(b) On a continuing basis: The State Board of Elections anticipates this administrative regulation will cost no more funds than are already being expended.

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

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

(8) State whether or not this administrative regulation

establishes any fees or directly or indirectly increases any fees: No fees are associated with this administrative regulation.

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

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 117.015(1)(a), 117.035(4)(c), KRS 117.025(3)(d), 117.228, 61.826 require and authorize the actions taken by this administrative regulation.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: This administrative regulation will affect the promulgating agency, the State Board of Elections.

(a) Estimate the following for the first year:

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

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation will not generate any specific cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This administrative regulation will affect county election officials.

(a) Estimate the following for the first year:

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

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation may save county election officials transportation costs should a voter desire a hearing under KRS 117.035(4)(c).

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): This administrative regulation will affect voters of the Commonwealth.

(a) Estimate the following for the first year:

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

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation may save voters transportation costs should they desire a hearing under KRS 117.035(4)(c).

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The State board of Elections expects that this administrative regulation will have a minimal fiscal impact on the regulated entities.

(b) Methodology and resources used to determine the fiscal impact: This determination of this administrative regulation's fiscal impact is made by the listed contact person and other agency staff based on their collective experience with the subject matter.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) The State Board of Elections does not expect that this administrative regulation will result in a negative or adverse major economic impact to the entities identified in questions (2)-(4).

(b) The methodology and resources used to reach this conclusion: This conclusion is made by the listed contact person and other agency staff based on their collective experience with the subject matter.

VOLUME 50, NUMBER 11– May 1, 2024

AMENDED IN-PROCESS EMERGENCY ADMINISTRATIVE REGULATIONS

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

NONE

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

BOARDS AND COMMISSIONS
Board of Landscape Architects
(As Amended at ARRS, April 9, 2024)

201 KAR 10:030. Code of ethics.

RELATES TO: KRS 323A.110

STATUTORY AUTHORITY: KRS 323A.210(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323A.110(2)[323A.110(1)(b)] authorizes the board to discipline a licensee for unprofessional conduct. KRS 323A.210(2)(b) authorizes the board to promulgate[adopt] reasonable administrative regulations consistent[not inconsistent] with KRS Chapter 323A that[but which] are necessary to carry out the provisions of KRS Chapter 323A. This administrative regulation establishes the code of ethics [is-intended to provide[establish]] guidelines for the determination of unprofessional conduct by landscape architects practicing in the state and for the protection of the public they will be serving.

Section 1. Code of Ethics.

(1) A violation of this code of ethics shall be considered unprofessional conduct pursuant to KRS 323A.110(2)[KRS 323A.110(1)(b)].

(2) The landscape architect shall conduct the landscape architect's[his] practice in order to protect the life, health, property, and welfare of the public and shall at all times recognize that his or her primary obligation is to protect the life, health, property, and welfare of the public in the performance of his or her professional duties. If his or her landscape architectural judgment is overruled under circumstances involving[where] the safety, health, and welfare of the public being[are] endangered, the landscape architect[he] shall inform his or her employer of the possible consequences and notify another[any other] proper authority of the situation, as may be appropriate.

(3) The landscape architect shall perform his or her services only in areas of the landscape architect's[his] competence.

(a) The landscape architect shall perform landscape architectural assignments only if[when] qualified by education or experience in the specific technical field of professional landscape architecture involved;

(b) The landscape architect may accept an assignment requiring education or experience outside of his or her own field of competence, but only to the extent that his or her services shall be[are] restricted to those phases of the project in which he or she is qualified. All other phases of that project shall be performed by qualified associates, consultants, or employees;

(c) The landscape architect shall not affix his or her signature or seal to any landscape architectural plan or document dealing with subject matter to which he or she lacks competence by virtue of education or experience, or to any [such-]plan or document not prepared under his or her direct supervisory control; and

(d) It shall be the responsibility of the licensee to demonstrate competence in the specific technical field in which the licensee is practicing.

(4) The landscape architect shall be completely objective and truthful in all professional reports, and shall include all relevant and pertinent information in those reports.

(5) The landscape architect shall avoid conflicts of interest:

(a) The landscape architect shall avoid all conflicts of interest with his or her employer or client and shall promptly inform his or her employer or client of any business association, interests, or circumstances which may[could] influence his or her judgment or the quality of his or her services;

(b) The landscape architect shall not accept compensation, financial or otherwise, from more than one (1) party for services

pertaining to the same project, and[unless] the circumstances shall be[are] fully disclosed to, and agreed to, by all interested parties;

(c) The landscape architect shall not solicit or accept financial or other valuable considerations from material or equipment suppliers for specifying their products;

(d) The landscape architect shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with his or her client or employer in connection with work for which he or she is responsible;

(e) if[When] in public service as a member, advisor, or employee of a governmental body or department, the landscape architect shall not participate in considerations or actions with respect to services provided by the landscape architect[him] or his or her organization in private landscape architectural practices;

(f) The landscape architect shall not solicit or accept a landscape architectural contract from a governmental body on which a principal or officer of his or her organization serves as a member; or

(g) The landscape architect shall not attempt to supplant another landscape architect after definite steps have been taken by a client toward the latter's employment, and he or she shall not accept a commission for which another landscape architect has been employed without first conclusively determining that the latter's employment has been terminated.

(6) The landscape architect shall solicit or accept work only on the basis of his or her qualifications.

(a) The landscape architect shall not offer to pay, either directly or indirectly, any commission, political contribution, or a gift, or other consideration in order to secure work, exclusive of securing salaried positions through employment agencies.

(b) The landscape architect shall seek professional employment on the basis of qualification and competence for proper accomplishment of the work.

(c) The landscape architect shall not falsify or permit misrepresentation of the landscape architect's[his], or his or her associates', academic or professional qualifications. He or she shall not misrepresent or exaggerate his or her degree of responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or the landscape architect's[his] or their past accomplishments with the intent and purpose of enhancing his or her qualifications and his or her work.

(7) In the practice of landscape architecture, a landscape architect shall associate only with reputable persons or organizations.

(a) The landscape architect shall not knowingly associate with or permit the use of his or her name or firm in a business venture by any person or firm which he or she knows, or has reason to believe, is engaging in business or professional practices of a fraudulent or dishonest nature, or in violation of 201 KAR Chapter 10[these administrative regulations]; or

(b) If the landscape architect has knowledge or reason to believe that another person or firm may be in violation of 201 KAR Chapter 10[any of these provisions] or KRS Chapter 323A, he or she shall present that information to the board in writing and shall cooperate with the board in furnishing any further information or assistance as may be required by the board.

FILED WITH LRC: April 9, 2024

CONTACT PERSON: Jane Alexander, Executive Director, Kentucky Board of Landscape Architects, 2365 Harrodsburg Road, Suite B350, Lexington, Kentucky, phone (859) 246-2753, email ky.labd@ky.gov.

VOLUME 50, NUMBER 11– May 1, 2024

BOARDS AND COMMISSIONS
Board of Landscape Architects
(As Amended at ARRS, April 9, 2024)

201 KAR 10:040. Applications.

RELATES TO: KRS 323A.010, 323A.040, 323A.050, 323A.060, ~~323A.070~~

STATUTORY AUTHORITY: KRS 323A.210(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323A.210 authorizes the board to promulgate administrative regulations necessary to implement KRS Chapter 323A. This administrative regulation establishes the procedures for the filing and processing of an application for licensure~~[registration]~~ as a landscape architect.

Section 1. Application for Initial License.~~[Filing of Applications.]~~

(1) An applicant for a license~~[registration]~~ as a landscape architect shall file a completed Application for License~~[Registration]~~ to Practice Professional Landscape Architecture. The application shall be signed by the applicant certifying that the applicant is familiar with and agrees to abide by the provisions of KRS Chapter 323A and the administrative regulations in 201 KAR Chapter 10 ~~and agrees to abide by them~~~~[:]~~.

~~[(a)] [Be filed during regular business hours at the office of the board;]~~

~~[(b)] [Include an attached photograph, taken within thirty (30) days of the application, of the applicant showing the face of the applicant at least three-fourths (3/4) of an inch wide;]~~

~~[(c)] [List at least five (5) references in accordance with Section 3 of this administrative regulation;]~~

~~[(d)] [Be received by the board by February 1 to be considered for the June examination or by August 1 to be considered for the December examination;]~~

~~[(e)] [Be signed by the applicant, certifying that the applicant:]~~

~~[1.] [Is familiar with the provisions of KRS Chapter 323A; and]~~

~~[2.] [Subscribes to and agrees to abide by the applicable statutes and administrative regulations promulgated by the board; and]~~

~~[(f)] [Be notarized].~~

(2)(a) An applicant shall take and pass the Landscape Architect Registration Examination (LARE).

(b) The applicant shall cause the results of the LARE to be sent to the board by the exam administrator.~~[An application for a written examination shall be filed at the office of the board at least four (4) months prior to the beginning date of an examination.]~~

(3) The application fee prescribed in 201 KAR 10:050, Section 1~~(3)~~~~(6)~~, shall accompany the application.

Section 2. Verification of Work Experience.~~[Personal References.]~~

(1) An applicant shall cause a Verification of Work Experience form to be submitted by a former or present employer. The former or present employer shall submit the form directly to the board.~~[The application shall list at least five (5) citizens of the United States as a personal reference for the applicant. Three (3) of the five (5) persons listed as a reference shall be a registered professional landscape architect. A personal reference for an applicant:]~~

~~[(a)] [Shall not be a relative of the applicant; and]~~

~~[(b)] [May be contacted by the board for information relating to the applicant's character and professional ability.]~~

~~[(2)] [A member of the board may be listed as a person who has supervised the work of an applicant.]~~

(2) Military experience shall be acceptable if it has been gained in landscape architecture as defined by ~~[the provisions of]~~ KRS 323A.010(3).

(3) The sale or installation of a product such as landscape materials (plants and construction) shall not be considered professional experience.

(4) A plan or sketch drawn by a person solely for the promotion or sale of that person's products shall not be considered professional experience.

Section 3. Reciprocity. An applicant who seeks a license~~[registration]~~ under KRS 323A.050(1) shall submit:

(1) Satisfactory proof of a license~~[registration]~~ in good standing in a state or country in which the applicant is licensed;~~and]~~

(2)

(a) An applicant who is licensed in another state of the United States shall have passed the LARE to be considered for licensure by reciprocity.

(b) An applicant who is licensed in another country shall take and pass the LARE to be considered for licensure by reciprocity.~~[A statement that licensure in the state was obtained:]~~

~~[(a)] [Under a grandfather clause;]~~

~~[(b)] [By examination; or]~~

~~[(c)] [Other means, including an explanation of the other means;]~~

(3)(a) An applicant for licensure by reciprocity who was educated in the United States shall have graduated from a school that is accredited by the Landscape Architectural Accreditation Board (LAAB).

(b) An applicant for licensure by reciprocity who was educated outside the United States shall provide documentation from an educational assessment organization approved by the board that the applicant's education is equal to an accredited landscape architecture curriculum approved by the board. The applicant shall be responsible for any fee charged by ~~the~~ such an organization.

Section 4. Board Consideration of Applications for Licensure.

(1) Each applicant shall be considered and voted on by the board.

(2) Approval of an applicant shall require a majority vote of the board.

(3) The action taken by the board shall be recorded in the board minutes.

(4) A copy of the letter from the board notifying an applicant of the board's decision regarding application shall be placed in the applicant's file.

~~[Section 5.] [Professional Landscape Architectural Experience.]~~

~~[(1)] [Military experience shall be acceptable if it has been gained in landscape architecture as defined by the provisions of KRS 323A.010(3).]~~

~~[(2)] [The sale or installation of a product such as landscape materials (plants and construction) shall not be considered a professional experience.]~~

~~[(3)] [A plan or sketch drawn by a person solely for the promotion or sale of that person's products shall not be considered a professional experience.]~~

Section 5. Renewal.

(1) A licensee shall renew a license annually by July 1 by completing the online renewal form and paying the **renewal** fee required by 201 KAR 10:050. A license may be renewed as active or inactive status.

(2) A licensee who does not renew online shall renew a license annually by July 1 by completing the Annual Active Renewal Notice form or the Inactive Annual Renewal Form and paying the **renewal** fee required by 201 KAR 10:050. In addition, the Annual Active Renewal Notice form shall be accompanied by the Continuing Education Approval Request and Affidavit Form (Form #CE-1), **as incorporated by reference in 201 KAR 10:080.**

Section 6. Change of Status.

(1) A licensee may choose to inactivate the license. To do so, the licensee shall notify the board in writing.

(2) During the period a license is inactive, a licensee shall:

(a) Be exempt from the provisions of 201 KAR 10:080; and

(b) Not practice landscape architecture.

Section 7. Reinstatement and Reactivation.

(1) Prior to reinstatement of a suspended or expired license or reactivation of an inactive or retired license, a licensee shall complete the number of continuing education hours required for the annual renewal of the license times the number of years the license was suspended, expired, retired, or inactive.

VOLUME 50, NUMBER 11– May 1, 2024

(2) The number of continuing education hours required by subsection (1) of this section shall not exceed twenty-four (24) hours.

(3) The request for reinstatement or reactivation shall be accompanied by the **reinstatement or reactivation** fee required by 201 KAR 10:050.

Section 8. Retired License.

(1) A licensee who has retired from the practice of landscape architecture may request a retired license by notifying the board in writing.

(2) The request shall be accompanied by the **renewal** fee required by 201 KAR 10:050.

(3) The licensee shall provide evidence of retirement, such as social security benefits or a public or private pension.

Section 9. [Section 6.] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for License[Registration] to Practice Professional Landscape Architecture", 7/2023; [May 2002 Edition, Kentucky State Board of Examiners and Registration of Landscape Architects, is incorporated by reference.]

(b) "Verification of Work Experience", 7/2023;

(c) "Annual Active Renewal Notice", 7/2023; and

(d) "Inactive Annual Renewal Form", 7/2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Landscape Architects, 2365 Harrodsburg Road, Suite B350, Lexington, Kentucky 40504. [It may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky State Board of Examiners and Registration of Landscape Architects, 301 East Main Street, Lexington, Kentucky 40507.] Monday through Friday, 8 a.m. to 4:30 p.m. **This material is also available on the agency's Web site at kbla.ky.gov.**

FILED WITH LRC: April 9, 2024

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BOARDS AND COMMISSIONS Board of Landscape Architects (As Amended at ARRS, April 9, 2024)

201 KAR 10:050. Fees.

RELATES TO: KRS 323A.040, 323A.050, 323A.060, ~~323A.070~~, 323A.100(1), (4), **323A.105**

STATUTORY AUTHORITY: KRS 323A.060, 323A.100(1), 323A.210(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323A.060 requires the board to promulgate administrative regulations to establish fees for services. This administrative regulation establishes fees for landscape architect licensees.

Section 1. Fees. The following nonrefundable fees shall apply:

(1) Renewal fees:

(a) Active license: \$250;[-]

(b) Inactive license: \$150; ~~and~~[-]

(c) Retired license: twenty-five (25) percent of the active license renewal fee established in paragraph (a) of this subsection;

(2) Duplicate license: twenty-five (25) dollars;[-]

(3) Application fee: \$250;[-]

(4) Reinstatement fee:

(a) Within thirty (30) days of expiration: 120 percent of the license renewal fee established in subsection (1)(a) or (1)(b) of this section;

(b) Between thirty-one (31) and sixty (60) days of expiration: 140 percent of the license renewal fee established in subsection (1)(a) or (1)(b) of this section;

(c) Between sixty-one (61) days and one (1) year of expiration: 200 percent of the license renewal fee established in subsection

(1)(a) or (1)(b) of this section; or

(d) Beyond one (1) year of expiration: 300 percent of the license renewal fee established in subsection (1)(a) or (1)(b) of this section; and

(5) Reactivation fee: equal to the active license renewal fee established in subsection (1)(a) of this section.

Section 2. The fees listed in Section 1(1) of this administrative regulation shall be paid annually.

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CONTACT PERSON: Jane Alexander, Executive Director, Kentucky Board of Landscape Architects, 2365 Harrodsburg Road, Suite B350, Lexington, Kentucky, phone (859) 246-2753, email ky.labd@ky.gov.

BOARDS AND COMMISSIONS Board of Landscape Architects (As Amended at ARRS, April 9, 2024)

201 KAR 10:070. Seals.

RELATES TO: KRS 323A.080

STATUTORY AUTHORITY: KRS 323A.080, 323A.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323A.080

requires that a licensed landscape architect secure an embossed circular seal of the design prescribed by the administrative regulation of the board and that a working drawing, specification or report prepared by, or under the supervision of, the individual, partnership, or firm bear the imprint of the seal. This administrative regulation prescribes the design and size of the required seal.

Section 1. Licensees' Seal. The seal required by KRS 323A.080 shall:

(1) Be two (2) inches in diameter; and

(2) Contain [~~the following information~~]in the impression of the seal:

(a) The words "State of Kentucky" at the top between the two (2) knurled circles;

(b) The words "~~Licensed~~[Registered] Landscape Architect" in a like position at the bottom;

(c) The individual's name placed horizontally in the circular field; and

(d) The individual's ~~license~~[certificate] number placed horizontally beneath the name.

Section 2.

(1) The seal shall be ~~either~~:

(a) An individual embossing seal;

(b) A rubber stamp seal; or

(c) An electronically generated seal.

(2) An electronically generated seal shall be used only **if, when the following requirements are met**:

(a) It is a unique identification of the landscape architect;

(b) It is verifiable;

(c) It is under the landscape architect's direct and sole control;

(d) It is linked to a document in [~~such~~]a manner **so that changes are readily determined and visually displayed if any data contained in the document file was changed subsequent to the electronically generated seal having been affixed to the document**;

(e) Changes to the document after affixing the electronically generated seal cause the seal to be removed or altered in [~~such~~]a way as to invalidate the seal; and

(f) Once the seal is applied to the document, the document shall be available in a view-only format.

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CONTACT PERSON: Jane Alexander, Executive Director, Kentucky Board of Landscape Architects, 2365 Harrodsburg Road, Suite B350, Lexington, Kentucky, phone (859) 246-2753, email ky.labd@ky.gov.

VOLUME 50, NUMBER 11– May 1, 2024

BOARDS AND COMMISSIONS
Board of Landscape Architects
(As Amended at ARRS, April 9, 2024)

201 KAR 10:080. Continuing education.

RELATES TO: KRS 323A.100(1), 323A.210(2)(a)
STATUTORY AUTHORITY: KRS 323A.100(1), 323A.210(2)(a),

(b) NECESSITY, FUNCTION, AND CONFORMITY: KRS 323A.100(1) requires a landscape architect to complete the approved continuing education hours established by an administrative regulation promulgated by the board. KRS 323A.210(2)(a) authorizes the board to promulgate administrative regulations to establish a program of continuing education for licensees. This administrative regulation establishes the continuing education requirements for a landscape architect.

Section 1. Definitions.

(1) "Annually" or "continuing education year" means a twelve (12) month period from July 1 of a calendar year through June 30 of the following calendar year.

(2) "Board" is defined by KRS 323A.010(1).

(3) "Continuing education hour" means a minimum of fifty (50) minutes of actual instruction.

(4) "Self-directed course[study]" means a course of study that a licensee independently creates[a course of study in which a licensee takes and passes any examination offered by the sponsor].

(5) "Sponsor" means an individual, organization, association, institution, or other entity that provides educational activity for the purpose of fulfilling the continuing education requirements of this administrative regulation.

(6) "Tour" means a review or inspection of a landscape architectural element specified in the definition of "practice of landscape architecture" established by KRS 323A.010(3).

Section 2. General Statement. Continuing education obtained by a licensee shall maintain, improve, or expand skills and knowledge obtained prior to initial licensure or develop new and relevant skills and knowledge that contribute to the health, safety, and welfare of the public.

Section 3. Continuing Education Requirements.

(1) A licensee shall acquire twelve (12) hours of continuing education annually.

(2) A licensee may be credited for a maximum of six (6) hours of continuing education for a tour annually.

(3) A licensee may carry forward a maximum of twelve (12) hours of continuing education to meet the subsequent year's requirements.~~[Tour hours may be carried forward into subsequent years.]~~

Section 4. Approval of Continuing Education Programs.

(1) The board shall:

(a) Approve a continuing education program that it determines:

1. Is relevant to the practice of landscape architecture;~~[and]~~
2. Furthers the competence of a licensee; and
3. Contributes to the health, safety, and welfare of the public;

and.]

(b) Determine the number of continuing education hours allowed.

(2)

(a) Before the continuing education program is offered, a sponsor may[shall] submit a Continuing Education Preapproval Request and Affidavit (Form #CE-2) with a copy of the hand-out materials and agenda and a description of the topic as well as the presenter, teacher, or speaker.

(b) A sponsor shall not offer, present, or advertise a program as a continuing education program that meets the continuing education requirements for a licensee unless it has obtained the approval of the board.

(3) A licensee who completes an educational program that has not been submitted to the board for prior approval shall receive

continuing education credit if:

(a) The licensee submits to the board a Continuing Education Preapproval Request and Affidavit (Form #CE-2) with a copy of the course materials, agenda, a description of the course, qualifications of the presenter, examination if one (1) was given; and

(b) The board determines that the program meets the requirements of a continuing education program.

(4) Self-directed courses, including those completed online, audibly, or by video, that meet the requirements of this administrative regulation shall be accepted.

(5) Continuing education credits shall be given for one-half (1/2) the number of hours, not to exceed six (6) hours, of a tour if the licensee has submitted to the board a description of the tour and the board determines that the tour meets the requirements of a continuing education program.

Section 5.

(1) Continuing education activities may include a college or university course that is beyond the basic curriculum for a landscape architect and pertains to the practice of landscape architecture. The conversion of university credits to continuing education hours shall be:

(a) One (1) university quarter hour of credit shall equal twelve (12)[thirty (30)] continuing education hours.

(b) One (1) university semester hour of credit shall equal fifteen (15)[forty-five (45)] continuing education hours.

(2)

(a) A landscape architect who presents[prepares and teaches] a continuing education course shall be credited with twice the number of hours equal to the time spent teaching the course.

(b) Credit shall not be given for repeated instruction of the same course.

Section 6. Reporting of Continuing Education Activities.

(1) Upon license renewal, a licensee shall report continuing education activities for the continuing education period ending June 30.

(2) The report of continuing education activities shall include:

- (a) Name of activity;
- (b) Date of activity;
- (c) Location of activity; and
- (d) Continuing education hours earned.

(3) The report of continuing education activities shall be made on a ~~[]~~ Continuing Education Approval Request and Affidavit Form (Form #CE-1).~~[]~~

(4) ~~[The report of continuing education activities shall be:]~~

~~[(a)] [Signed by the licensee; and]~~

~~[(b)] [Affixed with the licensee's seal.]~~

~~[(5)]~~ A licensee shall maintain for two (2) continuing education years documentation verifying successful completion of the annual requirement.

Section 7. Verification of Continuing Education Activities.

(1) Following each renewal period, the board shall require between five (5) and fifteen (15) percent of the licensees, chosen randomly, to furnish documentation of the completion of the appropriate number of continuing education hours for the previous renewal period, including hours carried forward from the previous year.

(2) Documentation of attendance and participation in a continuing education activity shall be made by submission of an official document, including a:

- (a) Transcript;
- (b) Certificate of attendance;
- (c) Affidavit signed by the instructor; or
- (d) ~~[Receipt for a fee paid to a sponsor; or]~~
- ~~[(e)]~~ A written summary of attendance and participation.

(3) If not previously approved, the board shall determine whether the continuing education program submitted is relevant to the practice of landscape architecture and furthers the competence of the licensee.

(a) If the activity qualifies as continuing education, the board shall include the number of hours earned for that activity in determining if

VOLUME 50, NUMBER 11– May 1, 2024

the applicant obtained the required twelve (12) hours of continuing education.

(b) If the activity does not qualify as continuing education, the board shall deduct the number of hours claimed for that activity from the total number of hours earned by the licensee. After this calculation, if a licensee does not have the required twelve (12) hours of continuing education, the board shall send written notification to the licensee that:

1. The licensee did not meet the continuing education requirements because an activity listed on the applicant's form as a continuing education activity did not qualify for continuing education credit; and

2. The board shall suspend his or her license if the requirements of subsection (4) of this section are not met.

(4) The license of the licensee shall be suspended if the licensee fails to:

(a) Complete the required number of continuing education hours within sixty (60) days of the notification from the board; and

(b) Submit to the board a completed and updated ~~["Continuing Education Approval Request and Affidavit Form"]~~ (Form #CE-1) within sixty-five (65) days of the notification from the board.

Section 8. Reciprocity. Credit for continuing education earned by a licensee who does not reside in Kentucky shall be granted if the licensee meets all the requirements of this administrative regulation.

Section 9. Exempt Licensee.

(1) A licensee shall be exempt from the continuing education requirements:

(a) For the partial year period of initial licensure;

(b) During the period of time in which the licensee has an inactive license [~~in accordance with the provisions of Section 40 of this administrative regulation~~]; or

(c) If the board approves a written request for an exemption submitted by the licensee in accordance with the provisions of subsection (2) of this section.

(2) A licensee may request an exemption from the continuing education requirements by submitting written document that the licensee was:

(a) Employed or assigned to duty outside the United States for a period exceeding 120 consecutive days during the calendar year; or

(b) Unable to complete the requirements because of:

- 1. Physical disability;
2. Personal illness; or
3. Illness of a family member or dependent.

[Section 10.] [Inactive License.]

[(1)] [A licensee may choose to inactivate his license.]

[(2)] [During the period a license is inactive, a licensee shall:]

[(a)] [Be exempt from the provisions of this administrative regulation; and]

[(b)] [Not practice landscape architecture.]

[Section 11.] [Reinstatement of Suspended or Inactive License.]

[(1)] [Prior to reinstatement of a suspended or inactive license, a licensee shall complete the number of continuing education hours required for the annual renewal of the license times the number of years the license was suspended or inactive.]

[(2)] [The number of continuing education hours required by subsection (1) of this section shall not exceed twenty-four (24) hours.]

Section 10.[Section 12.] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Continuing Education Approval Request and Affidavit Form" (Form #CE-1), May 2002 edition; and

(b) "Continuing Education Preapproval Request and Affidavit Form" (Form #CE-2), May 2002 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of Landscape Architects, 2365 Harrodsburg Road, B350, Lexington, Kentucky 40504, Monday through Friday, 8 a.m. to 4:30 p.m. This material is

also available on the agency's Web site at kbla.ky.gov.

FILED WITH LRC: April 9, 2024

CONTACT PERSON: Jane Alexander, Executive Director, Kentucky Board of Landscape Architects, 2365 Harrodsburg Road, Suite B350, Lexington, Kentucky, phone (859) 246-2753, email ky.labd@ky.gov.

BOARDS AND COMMISSIONS
Board of Nursing
(As Amended at ARRS, April 9, 2024)

201 KAR 20:370. Applications for licensure.

RELATES TO: KRS 314.041, 314.042, 314.051, 314.071, 314.091, 314.103, 314.475

STATUTORY AUTHORITY: KRS 314.041, 314.042, 314.051, 314.071, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.041, 314.042, 314.051, and 314.071 require the board to review an application for licensure and a licensee for conformity with KRS Chapter 314. This administrative regulation establishes requirements and procedures for licensure.

Section 1. To be eligible for licensure by examination, endorsement, renewal, reinstatement, retired licensure status, or for advanced practice registered nurse licensure, renewal, or reinstatement, an applicant shall:

(1) Submit the completed application to the board office, for:

(a) RN or LPN licensure by examination, endorsement, or reinstatement, Application for Licensure;

(b) RN or LPN Renewal, Annual Licensure Renewal Application: RN or LPN;

(c) Licensure or reinstatement as an Advanced Practice Registered Nurse, Application for Licensure as an Advanced Practice Registered Nurse;

(d) Renewal as an RN and an APRN, Annual Licensure Renewal Application: RN and APRN;

(e) Retired licensure status, Application to Retire a License [~~for Retired Status~~];

(f) APRN renewal with an RN Compact license, Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky); or

(g) APRN renewal with a Kentucky RN License, Annual Licensure Renewal Application, APRN with Kentucky RN License; [~~or~~]

[(h)] [~~In addition to any other renewal form, for APRN renewal, APRN Practice Data;~~]

(2) Submit the current application fee, as required by 201 KAR 20:240;

(3) Submit a certified or attested copy of the court record of each misdemeanor or felony conviction in this or any other jurisdiction and a letter of explanation that addresses each conviction, except for traffic-related misdemeanors (other than DUI) or misdemeanors other than five (5) years;

(4) Submit a certified copy of a disciplinary action taken in another jurisdiction with a letter of explanation or report a disciplinary action pending on a nurse licensure application or license in another jurisdiction;

(5) Have paid all monies due to the board;

(6) Submit a copy of an official name change document (court order, marriage certificate, divorce decree, Social Security card), if applicable;

(7) Submit additional information as required by the board in 201 KAR Chapter 20;

(8) Meet the additional requirements for:

(a) Licensure by examination established by 201 KAR 20:070;

(b) Licensure by endorsement established by 201 KAR 20:110;

(c) Licensure by reinstatement established by 201 KAR 20:225;

VOLUME 50, NUMBER 11– May 1, 2024

- (d) Licensure by renewal established by 201 KAR 20:230;
- (e) Retired nurse or inactive licensure status established by 201 KAR 20:095; or
- (f) Advanced practice registered nurse licensure, renewal, or reinstatement established by 201 KAR 20:056;
- (9) If not a citizen of the United States, maintain proof of legal permanent or temporary residency under the laws and regulations of the United States; and
- (10) Notify the board upon establishment of a new mailing address.

Section 2. An application shall lapse and the fee shall be forfeited if the application is not completed:

- (1) For an application for licensure by endorsement, within one (1) year from the date the application form is ~~filed~~ submitted with the board office;
- (2) For an application for licensure by examination, within one (1) year from the date the application form is ~~filed~~ submitted with the board office or the date the applicant fails the examination, whichever comes first; or
- (3) For all other applications except renewal of license applications, within one (1) year from the date the application form is ~~filed~~ submitted with the board office.

Section 3. A multistate licensee who changes primary state of residence to Kentucky shall apply for a multistate license in Kentucky within sixty (60) days.

Section 4. ~~Section 3.~~ Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Application for Licensure", 10/2022, Kentucky Board of Nursing;
 - (b) "Annual Licensure Renewal Application: RN or LPN", 02/2022, Kentucky Board of Nursing;
 - (c) "Application for Licensure as an Advanced Practice Registered Nurse", 10/2022, Kentucky Board of Nursing;
 - (d) "Annual Licensure Renewal Application: RN and APRN", 02/2022, Kentucky Board of Nursing;
 - (e) "Application ~~for Retired Status~~ to Retire a License", ~~8/2004~~ 11/2023, Kentucky Board of Nursing;
 - (f) "Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky)", 02/2022, Kentucky Board of Nursing; and
 - (g) "Annual Licensure Renewal Application, APRN with Kentucky RN License", 02/2022, Kentucky Board of Nursing. ~~and~~
 - ~~[(h)] ["APRN Practice Data", 6/2012, Kentucky Board of Nursing.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://kbn.ky.gov/document-library/Pages/default.aspx> ~~https://kbn.ky.gov/General/Pages/Document-Library.aspx~~.

FILED WITH LRC: April 9, 2024

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, Jeffrey.Prather@ky.gov.

BOARDS AND COMMISSIONS
Board of Licensed Professional Counselors
(As Amended at ARRS, April 9, 2024)

201 KAR 36:100. Counseling compact.

RELATES TO: KRS 335.560
STATUTORY AUTHORITY: KRS 335.515, 335.560
NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.560, Section 16.B.1. requires the Board of Licensed Professional Counselors to review any rule adopted by the Counseling Compact pursuant to Section 11 of KRS 335.560 within sixty (60) days of

adoption for the purpose of filing the rule as an emergency administrative regulation pursuant to KRS 13A.190 and for filing the rule as an accompanying ordinary administrative regulation pursuant to KRS Chapter 13A. This administrative regulation incorporates by reference the rules adopted by the Counseling Compact.

Section 1. The Board of Licensed Professional Counselors shall comply with all rules of the Counseling Compact, which includes the Counseling Compact Rules as of ~~January 10, 2024~~ **October 25, 2023**.

Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference: "The Counseling Compact Rules", ~~January 10, 2024~~ **October 25, 2023**, and as revised.

- (a) Chapter 2 – Definitions, adopted October 25, 2023;
- (b) Chapter 3 – Examination Requirements, adopted October 25, 2023; and
- (c) Chapter 4 – Data System Reporting Requirements, adopted January 10, 2024.

(2)(a) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Licensed Professional Counselors, 500 Mero Street, 2 SC 32, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) This material may also be obtained on the Board of Licensed Professional Counselors' Web site at <https://lpc.ky.gov/>.

(3) This material may also be obtained at:

- (a) The Counseling Compact Commission, 108 Wind Haven Drive, Suite A, Nicholasville, Kentucky 40356; ~~or~~]
- (b) <https://counselingcompact.org/compact-commission/rulemaking> [<https://counselingcompact.org/contact-us/>].

FILED WITH LRC: April 9, 2024

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 (office), fax (502) 564-4818, email Sara.Janes@ky.gov.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, April 9, 2024)

301 KAR 1:140. Special commercial fishing permit for Kentucky and Barkley lakes.

RELATES TO: KRS 150.010(32), 150.450(2)

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the Kentucky Department ~~department~~ of Fish and Wildlife Resources to regulate the size or type of devices and methods used to take fish and wildlife, including places where taking is allowed ~~permitted~~ ~~[the places where they may be taken]~~. KRS 150.175(3) and, (4) authorize ~~authorizes~~ the department to promulgate administrative regulations regarding the issuance of commercial fishing licenses, commercial fishing gear, and commercial fishing gear tags. This administrative regulation establishes restrictions on the use of gill and trammel nets at Kentucky and Barkley lakes ~~Lakes~~.

Section 1. ~~Definitions.~~

- ~~[(1)] ["Bar mesh size" means the distance between two (2) knots on a line of a net.]~~
- ~~[(2)] ["Immediate family" means the person's spouse, mother, father, grandparent, son, or daughter.]~~
- ~~[(3)] ["Permit" means a special commercial fishing permit.]~~
- ~~[(4)] ["Ree-bearing fish" means paddlefish, shovelnose sturgeon, and bowfin.]~~
- ~~[(5)] ["Rough fish" is defined by KRS 150.010(37).]~~
- ~~[(6)] ["Whip set" means a gill net or a trammel net rigged so it is free-floating.]~~

VOLUME 50, NUMBER 11– May 1, 2024

Section 2. Permit Requirements.

(1) A person shall possess a valid Kentucky commercial fishing license to obtain or retain a permit throughout the special commercial fishing season.

(2) The department shall not issue more than twenty-five (25) permits.

(3) A permit holder shall submit a completed [permit] Application for a Special Commercial Fishing Permit to the department, along with the appropriate permit fee established in 301 KAR ~~5:022~~ 3:022, postmarked on or before November 1 to retain the permit privilege.

(4) The ability to purchase a permit shall only be transferred to immediate family members.

(5) New permits shall not be issued until the total number of permits is less than twenty-five (25).

(6) A ~~[lottery-]~~ drawing shall be used to select new permittees if the total number of permits is less than twenty-five (25).

(a) A person applying for a vacant permit shall submit to the department a completed Application for a Special Commercial Fishing Permit postmarked on or before November 1, along with the appropriate fee established in 301 KAR ~~5:022~~ 3:022.

(b) The maximum number of permits issued to nonresidents shall be seven (7).

Section 2. ~~[Section 3.]~~ Permit Requirements.

(1) A person shall possess and carry a valid permit and a valid commercial fishing license:

(a) If using a gill net or trammel net to take rough fish:

1. From November 1 through March 31 at both Kentucky and Barkley ~~lakes~~ [Lakes]; and

2. In the portions of Kentucky and Barkley ~~lakes~~ [Lakes] open to commercial fishing as established in 301 KAR 1:150 ~~;~~ [-].

(b) If transporting a gill net or trammel net; and

(c) If selling fish taken with a gill net or trammel net.

(2) A person shall:

(a) Tag a gill net or trammel net as established in KRS 150.175(4);

(b) Not use a gill net or trammel net with a bar mesh size smaller than three and five-tenths (3.5) inches or larger than four and five-tenths (4.5) inches, except:

1. A whip set may have a minimum bar mesh size of three (3) inches; and

2. Beginning on November 15 and running through March 31 at both Kentucky and Barkley ~~lakes~~ [Lakes], gill and trammel nets with a bar mesh size larger than four and five-tenths (4.5) may be used in stationary sets only;

(c) Not fish a stationary set net with the top of the net or float line shallower than three (3) feet below the surface;

(d) Tend each net, except whip sets, at least once every twenty-four (24) hours;

(e) Not leave whip sets unattended;

(f) Affix a decal supplied by the department to each side of the boat or motor used for fishing under this permit so that the decal is clearly visible while fishing with a gill net or a trammel net;

(g) Not dispose of any commercially caught rough fish at public boat launch areas; and

(h) Not harvest paddlefish at both Kentucky and Barkley ~~lakes~~ [Lakes] during the special commercial fishing season if the paddlefish are less than thirty-eight (38) inches, as measured from the beginning of the eye to the fork of the tail fin.

(3) A permit holder may be accompanied by two (2) unlicensed helpers, who shall be:

(a) In the same boat with the permit holder if fishing with a gill net or a trammel net; or

(b) Accompanied by the permit holder if transporting or selling fish taken under the permit.

(4) A permit holder shall:

(a) Maintain an accurate record of daily fishing activity; and

(b) Submit a completed Monthly Report of Commercial Fish Harvest in Kentucky to the department by the tenth day of the following month ~~[on the Monthly Report of Commercial Fish Harvest in Kentucky form provided by the department].~~

Section 3. ~~[Section 4.]~~ Paddlefish Harvest Requirements.

(1) A person who possesses a valid permit shall be allowed to harvest paddlefish flesh or roe during the special commercial fishing season without the need to purchase a Commercial Roe-bearing Fish Harvester's Permit.

(2) A person who harvests paddlefish roe during the special commercial fishing season shall follow all Commercial Roe-bearing Fish Harvester Permit reporting requirements established in 301 KAR 1:155, Section ~~13(2)~~ 4(4).

Section 4. ~~[Section 5.]~~ Permit Suspension, Revocation, and Renewal.

(1) The department shall suspend the permit of a person who fails to complete and submit to the department a Monthly Report of Commercial Fish Harvest or a Daily Commercial Roe Harvest Report for each transaction involving a buyer permittee as established in paragraphs (a) through (c) of this subsection. ~~[by the following methods:]~~

(a) The first time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the licensee or permittee shall receive by mail a courtesy reminder letter.

(b) The second time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the licensee or permittee shall receive a warning letter.

(c) If a third or subsequent time during the season a report is not received or, if mailed, not postmarked by the tenth of the following month, the license or permit shall be suspended until all reports have been received.

(2) The department shall not renew the commercial fishing license or harvester's permit of a person who fails to complete and submit to the department all reports required by this administrative regulation.

(3) The department shall revoke or not renew a person's permit for a period of two (2) years, for the following state violations involving commercial fishing:

(a) Use of illegal commercial fishing gear;

(b) Knowingly placing commercial fishing gear in a restricted area;

(c) Harvesting prohibited species of fish;

(d) Commercially fishing, as established by 301 KAR 1:150, in waters not open to commercial fishing; or

(e) Knowingly falsifying commercial harvest data.

(4) A person whose permit has been revoked or denied shall be eligible to enter the ~~[lottery-]~~ drawing following the revocation period only if a permit is available based on the twenty-five (25) permit restriction established in Section ~~1(2)~~ 1(2) of this administrative regulation.

(5) A person whose permit has been revoked or denied may request an administrative hearing pursuant to KRS Chapter 13B.

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

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

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

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

(1) The following material is incorporated by reference:

(a) "Application for a Special Commercial Fishing Permit", 2007 Edition;

(b) "Monthly Report of Commercial Fish Harvest in Kentucky", 2023 Edition ~~[2008]~~; and

(c) "Daily Commercial Roe-Bearing Fish Harvester's Transaction Report", 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 a.m. to 4:30 p.m.

FILED WITH LRC: April 9, 2024

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.

VOLUME 50, NUMBER 11– May 1, 2024

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, April 9, 2024)

301 KAR 1:146. Commercial fishing gear.

RELATES TO: KRS 150.010, 150.025, 150.120, 150.170, 150.175, 150.445, 150.450, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.450

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the ~~Department~~[department]of Fish and Wildlife Resources 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 allowed permitted, [to regulate bag limits, creel limits, and methods of take,] and the application of[to make]administrative regulations[those requirements apply] to a limited area or the entire state. This administrative regulation establishes the legal methods that may be used by commercial ~~fishers~~[fishermen] to harvest rough fish.

Section 1. [Definitions.]

[~~(1)~~] ["Bar mesh size" means the distance between two ~~(2)~~ knots on a line of a net.]

[~~(2)~~] ["Commercial gear tag" means a metal tag provided by the department that is attached to legal commercial fishing gear as established in this administrative regulation.]

[~~(3)~~] ["Flag net" means a gill or trammel net that is anchored on one ~~(1)~~ end, with the other end of the net unanchored, allowing this end of the gill or trammel net to float freely.]

[~~Section 2.~~] Gear Requirements. (1) The gear listed in subsections (2) through (16) of this section shall be the only legal commercial fishing gear allowed in commercial fishing waters established in 301 KAR 1:150 and under the conditions established in 301 KAR 1:155 by a licensed commercial ~~fisher~~[fisherman].

(2) A hoop net, wing net, straight net, or heart lead net shall have a minimum bar mesh size of three (3) inches, except that the minimum mesh size shall be one (1) inch in the following waters:

- (a) The Ohio River;
- (b) The Mississippi River; and

(c) Those portions of the following waters open to commercial fishing pursuant to 301 KAR 1:150:

1. The Cumberland River below Barkley Dam; and
2. The Tennessee River below Kentucky Dam.

(3) A hoop net may be made of any:

- (a) Size;
- (b) Shape; or
- (c) Material.

(4) Wings and leads shall be constructed of ~~the following material~~]:

- (a) Natural multifilament; or
- (b) Synthetic multifilament.

(5) Netting used for wings and leads shall:

(a) Be constructed of twine no smaller than number six (6) nylon or the equivalent;

- (b) Have a breaking strength of fifty-five (55) pounds or greater; and
- (c) Have a bar mesh size no larger than one (1) inch.

(6) Wings and leads may consist of either:

- (a) Knotted construction; or
- (b) Knotless construction.

(7) The maximum length of each hoop net wing or lead shall be sixty (60) feet.

(8) The following nets shall be fished as individual nets:

- (a) Hoop nets;
- (b) Wing nets;
- (c) Straight lead nets; or
- (d) Heart lead nets.

(9) Wings or leads shall:

(a) Not be tied together to become a continuous multiple net unit;

and

(b) Be used only to lead fish into a hoop net.

(10) One (1) commercial gear tag shall be attached to the first hoop of each net.

(11) A gill or trammel net:

(a) May be fished:

1. Weighted; or
2. As a flag net; and

(b) Shall have one (1) commercial gear tag attached to each 100 feet or part thereof.

(12) A gill or trammel net shall only be used in:

- (a) The Ohio River;
- (b) The Mississippi River; or

(c) An overflow lake adjacent to the Ohio or Mississippi ~~river~~[River] if the lake can be accessed from the river by a boat during high flow conditions, except as prohibited:

1. On department Wildlife Management Areas pursuant to 301 KAR 4:020 ~~or~~[and] 4:050; or

2. Pursuant to the requirements of 301 KAR 1:140.

(13) The bar mesh size on gill or trammel nets shall be:

(a) At least three (3) inches in:

1. The Mississippi River; and
 2. Overflow lakes adjacent to the Mississippi River;
- (b) At least four (4) inches from November 1 through April 30 in:
1. The Ohio River; and
 2. Overflow lakes adjacent to the Ohio River; and

(c) Between four (4) and four and one-half (4 1/2) inches from

May 1 through October 31 in:

1. The Ohio River; and
2. Overflow lakes adjacent to the Ohio River.

(14) A commercial trotline shall:

(a) Have more than fifty (50) hooks placed no closer than eighteen (18) inches apart;

(b) Have one (1) commercial gear tag attached to each end of the trotline]; and, at a minimum, one (1) commercial gear tag attached to every 100 feet of trotline]; ~~and~~

(c) Not be longer than 1,000[6,000] feet; and

Be set at least three (3) feet under the surface of the water.

(15) A seine:

- (a) Shall have a maximum bar mesh size of one (1) inch;
- (b) May have knotted netting if constructed of twine that is:

1. No smaller than number six (6) nylon; or
2. An equivalent having a breaking strength of at least fifty-five (55) pounds;

(c) May have knotless netting if constructed of twine that is:

1. No smaller than number 147 nylon; or
2. An equivalent having a breaking strength of fifty (50) pounds or greater;

(d) Shall be constructed of:

1. Natural multifilament; or
 2. Synthetic material;
- (e) Shall have both float and lead lines;

(f) Shall have the following attached at each end:

1. Wood poles;
2. Fiberglass poles; or
3. Brailes;

(g) Shall be attended by a person who pulls the seine by hand through the water to entrap fish; and

(h) Shall have one (1) commercial gear tag attached to each 100 feet or part thereof.

(16) A slat trap basket shall:

- (a) Not have wire or other mesh added to any part of the trap;
- (b) Have at least two (2) openings left between slats:

1. No smaller than one and one-fourth (1 1/4) inches wide in the catch portion of the trap; and

2. That shall not be restricted by cross-bracings to a length shorter than eight (8) inches;

(c) Not be larger than two (2) feet in diameter or square-end measure; and

(d) Have one (1) commercial gear tag attached to the opening ring or square.

FILED WITH LRC: April 9, 2024

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.

VOLUME 50, NUMBER 11– May 1, 2024

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Conservation
(As Amended at ARRS, April 9, 2024)

416 KAR 1:001. Definitions for 416 KAR Chapter 1.

RELATES TO: KRS 146.080 - 146.115, 224.71-100 - 224.71-140, 262.610 - 262.660

STATUTORY AUTHORITY: KRS 146.110, ~~146.115~~, 262.090, 262.610, 262.660

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.110 ~~and through~~ 146.115 authorizes the Soil and Water Conservation Commission to promulgate administrative regulations governing administration of the Kentucky Soil Erosion and Water Quality Cost-share Fund. KRS 262.660 authorizes the Soil and Water Conservation Commission to promulgate administrative regulations governing the administration of the Equipment Revolving Loan Fund as expressed in KRS 262.610 through 262.650. This administrative regulation establishes definitions for terms used in 416 KAR Chapter 1.

Section 1. Definitions.

(1) "Agricultural or silvicultural production" means any farm operation on a tract of land, including all income-producing improvements and farm dwellings, together with other farm buildings and structures incident to the operation and maintenance of the farm, used for the production of livestock, livestock products, poultry, poultry products, milk, milk products, or silviculture products, or for the growing of crops such as tobacco, corn, soybeans, small grains, fruit, and vegetables; or devoted to and meeting the requirements and qualifications for payments to agriculture programs under an agreement with the state or federal government.

(2) "Agriculture water quality plan" is defined by KRS 224.71-100(10).

(3) "Animal waste" means feces, urine, or other excrement, digestive emission, urea, or similar substance emitted by animals, including from any form of livestock, poultry, or fish. This includes animal waste that is mixed or commingled with bedding, compost, feed, soil, or any other material typically found with this waste.

(4) "Applicant" for purposes of 416 KAR 1:010, means a person who applies for cost-share assistance from the Kentucky Soil Erosion and Water Quality Cost-share Fund.

(5) "Available funds" means moneys budgeted, unobligated, and distributed to the commission for the purposes of KRS 146.115.

(6) "Best management practices" means, for agricultural or silvicultural production, the most effective, practical, and economical means of reducing and preventing water pollution provided by the United States Department of Agriculture Natural Resources Conservation Service or the Soil and Water Conservation Commission.

(7) "Case file" means the collection of materials that are assembled and maintained for each application for cost-share assistance.

(8) "Conservation district" or "district" is defined by KRS 262.010(3).

(9) "Cost-share assistance" means cost-share funds awarded by the commission from the Kentucky Soil Erosion and Water Quality Cost-share Fund.

(10) "Direct aid" means appropriated funds awarded to conservation districts by the commission.

(11) "District supervisor" means a member of the governing board of a conservation district.

(12) "Division" means the Kentucky Division of Conservation.

(13) "Eligible land" means land on which agricultural or silvicultural production is being conducted.

(14) "Equipment" means heavy or specialized equipment purchased through the Equipment Revolving Loan Program for the purpose of conserving soil resources, the prevention and control of soil erosion, or and the conservation and protection of water resources related to those purposes.

(15) "Groundwater" means subsurface water occurring in the

zone of saturation beneath the water table and any perched water zones below the B soil horizon.

(16) "Infrastructure" is defined by KRS 262.010(5).

(17) "Performance and maintenance agreement" means a written agreement between an eligible person and the district in which the eligible person agrees to implement and to maintain the best management practices for which cost-share assistance is being awarded.

(18) "Primary applicant":

(a) For purposes of 416 KAR 1:020, means:

1. A conservation district applying on its own for equipment;

2. The person applying jointly with a conservation district for equipment; or

3. A conservation district applying for infrastructure; and[-]

(b) ~~Means the entity~~ The primary applicant is responsible for monthly payments, insurance, liability, and operational and reporting requirements.

(19) "Program year" means the period from July 1 to June 30.

(20) "Soil and Water Conservation Commission" or "commission" means the commission established by KRS 146.090.

(21) "Surface water":

(a) Means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters, marshes, and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface; and

(b) Does not mean effluent ditches and lagoons used for waste treatment that are situated on property owned, leased, or under valid easement by a permitted discharger.

(22) "Surplus equipment" means heavy or specialized equipment that is no longer needed or has become unsuitable for use by the district.

(23) "Water priority protection region" means an area specifically delineated where water pollution from agricultural or silvicultural production has been scientifically documented.

(24) "Watershed" means all the area from which all drainage passes a given point downstream.

FILED WITH LRC: April 9, 2024

CONTACT PERSON: Dawn Baase, Environmental Scientist Consultant, Department for Natural Resources, Office of the Commissioner, 300 Sower Blvd, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 782-6311, fax (502) 564-4245, email Dawn.Baase@ky.gov.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Conservation
(As Amended at ARRS, April 9, 2024)

416 KAR 1:010. Administration of Kentucky Soil Erosion and Water Quality Cost-share Fund.

RELATES TO: KRS ~~61.805 – 61.850~~, 146.080 - 146.115, 224.71-100 - 224.71-140, 262.010 – 262.660

STATUTORY AUTHORITY: KRS 146.110, ~~146.115~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.110 ~~and through~~ 146.115 authorize the Soil and Water Conservation Commission to promulgate administrative regulations governing administration of the Kentucky Soil Erosion and Water Quality Cost-share Fund, which provides cost-share assistance to persons engaged in agricultural and silvicultural production for implementation of best management practices for purposes, such as providing cleaner water through the reduction in the loading of sediment, nutrients, and pesticides in Kentucky streams, rivers, and lakes, ~~reducing~~ the loss of topsoil vital to the sustained production of food and fiber, ~~and~~ preventing surface water and groundwater pollution. This administrative regulation establishes criteria for participation in that cost-share program.

Section 1. [Definitions.]

~~[(1)] ["Agricultural or silvicultural production" means any farm~~

operation on a tract of land, including all income-producing improvements and farm dwellings, together with other farm buildings and structures incident to the operation and maintenance of the farm, used for the production of livestock, livestock products, poultry, poultry products, milk, milk products, or silviculture products, or for the growing of crops such as tobacco, corn, soybeans, small grains, fruit, and vegetables; or devoted to and meeting the requirements and qualifications for payments to agriculture programs under an agreement with the state or federal government.]

[(2)] ["Agriculture water quality plan" is defined by KRS 224.71-100(40).]

[(3)] ["Animal waste" means feces, urine, or other excrement, digestive emission, urea, or similar substance emitted by animals (including any form of livestock, poultry, or fish). This includes animal waste that is mixed or commingled with bedding, compost, feed, soil, or any other material typically found with this waste.]

[(4)] ["Applicant" means a person who applies for cost share assistance from the Kentucky Soil Erosion and Water Quality Cost-share Fund.]

[(5)] ["Available funds" means moneys budgeted, unobligated, and distributed to the commission for the purposes of KRS 146.115.]

[(6)] ["Best management practices" means, for agricultural or silvicultural production, the most effective, practical, and economical means of reducing and preventing water pollution provided by the United States Department of Agriculture Natural Resources Conservation Service and the Soil and Water Conservation Commission.]

[(7)] ["Case file" means the collection of materials that are assembled and maintained for each application for cost-share assistance.]

[(8)] ["Conservation district" or "district" is defined by KRS 262.010(3).]

[(9)] ["Cost-share assistance" means cost-share funds awarded by the commission from the Kentucky Soil Erosion and Water Quality Cost-share Fund.]

[(10)] ["District supervisor" means a member of the governing board of a conservation district.]

[(11)] ["Eligible land" means land on which agricultural or silvicultural production is being conducted.]

[(12)] ["Groundwater" means subsurface water occurring in the zone of saturation beneath the water table and any perched water zones below the B soil horizon.]

[(13)] ["Performance and maintenance agreement" means a written agreement between an eligible person and the district in which the eligible person agrees to implement and to maintain the best management practices for which cost-share assistance is being awarded.]

[(14)] ["Program year" means the period from July 1 to June 30.]

[(15)] ["Soil and Water Conservation Commission" or "commission" means the commission established by KRS 146.090.]

[(16)] ["Surface water":]

[(a)] [Means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters, marshes, and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface; and]

[(b)] [Does not mean effluent ditches and lagoons used for waste treatment that are situated on property owned, leased, or under valid easement by a permitted discharger.]

[(17)] ["Water priority protection region" means an area specifically delineated where water pollution from agricultural or silvicultural production has been scientifically documented.]

[(18)] ["Watershed" means all the area from which all drainage passes a given point downstream.]

[Section 2.] Eligibility of Persons.

(1) Eligible persons. **A person** ~~Persons~~ conducting agricultural or silvicultural production shall be eligible to receive cost-share assistance for best management practices if **the person**:

(a) ~~The person~~ Has prepared an agriculture water quality plan; and

(b) ~~The person~~ Agrees to perform and to maintain best management practices for the period of time established **for each**

practice in accordance with the Kentucky Soil Erosion and Water Quality Cost-share Handbook ~~by the commission~~.

(2) Ineligible persons. A person engaged in agricultural or silvicultural production shall not be eligible for further cost-share assistance if the applicant has **failed**:

(a) ~~Failed~~ Or refused to comply with agriculture water quality planning requirements and has been deemed a "bad actor" pursuant to KRS 224.71-130(2); or

(b) ~~Failed~~ To comply with practice lifespans or complete previous cost-share projects within five (5) years prior to the application date.

Section 2. ~~Section 3.~~ Eligible Best Management Practices.

(1) Purposes of best management practices. The Kentucky Soil Erosion and Water Quality Cost-share Funds shall be used to provide cost-share assistance for development and implementation of best management practices for:

(a) Providing cleaner water through the reduction in sediment loading of Kentucky streams, rivers, and lakes;

(b) Reducing the loss of topsoil vital to sustain production of food and fiber; and

(c) Preventing surface water and groundwater pollution.

(2) Approved best management practices. Complete listings of eligible best management practices are contained in the [2019] Kentucky Soil Erosion and Water Quality Cost-Share Practice Handbook.

Section 3. ~~Section 4.~~ Solicitation of Applications.

(1) The commission shall establish for each program year, a deadline for submittal of applications for cost-share assistance.

(2) Each conservation district shall provide an opportunity for persons within the district to submit applications in time for the next program year by advertising the availability of cost-share assistance in appropriate news media, such as electronic media, local newspapers, local radio stations, and any newsletters published by the district.

Section 4. ~~Section 5.~~ Contents and Completion of Applications.

(1) Contents of application. An applicant shall submit to the [conservation] district in which the eligible land is located the Kentucky Soil and Water Cost Share Program Application, found at <https://dep.gateway.ky.gov/eForms/Main/Forms.aspx>, in order to apply for cost-share assistance. The applicant shall include with the application:

(a) An agriculture water quality plan in effect for the eligible land that is compliant with KRS 224.71-120 and updated to be current with the Statewide Agriculture Water Quality Plan authorized by KRS 224.71-110; and

(b) If known to the applicant or as made in consultation with the appropriate technical agency, the anticipated total cost of the best management practice to be implemented and the percentage, if any, of the cost that the applicant proposes to bear, which percentage shall not be less than minimums established by the commission for the particular best management practice.

(2) An applicant applying for cost-share funds for best management practices involving nutrient storage shall include a nutrient management plan as established in the Statewide Agriculture Water Quality Plan.

(3)

(a) Completion of applications. An applicant who does not have an agriculture water quality plan that is compliant with KRS 224.71-120 and updated to be current with the Statewide Agriculture Water Quality Plan authorized by KRS 224.71-110, in effect for the eligible land, or who has not determined the anticipated total cost of the requested best management practice, may request technical assistance from the [conservation] district in developing a best management practices plan and determining costs.

(b) If the best management practices plan has been developed and the anticipated total cost determined, the application shall be reviewed in accordance with the eligibility and prioritization criteria established by this administrative regulation.

VOLUME 50, NUMBER 11– May 1, 2024

Section 5.~~[Section 6.]~~ Review of Applications.

(1) Each ~~[conservation]~~ district shall review and **verify an applicant's eligibility in accordance with Section 1 of this administrative regulation~~[determine the eligibility of all applications submitted to the district]~~ by the established deadline.**

(2) The board of supervisors for the district shall vote upon eligibility at a meeting conducted in accordance with the Open Meetings Law, KRS 61.805 ~~through to~~ 61.850, and record the outcome in the minutes of the board of supervisors for that meeting.

(3) A district supervisor who is also an applicant for cost-share assistance shall not vote on eligibility.

(4) The district shall forward the applications to the commission within fifteen (15) days after determining eligibility.

Section 6.~~[Section 7.]~~ Prioritization of Applications. The commission shall prioritize the applications of persons determined by the ~~[conservation]~~ districts to be eligible for cost-share assistance and shall make the final award of cost-share assistance.

(1) Classification of priorities. Applications shall be prioritized based on:

(a) Applicants conducting agricultural or silvicultural production needing animal waste management systems **in which**~~[where]~~ animal waste has been identified by the Energy and Environment Cabinet as a water pollution problem; and

(b) Applicants who are members of agricultural districts.

(2) Applications within each classification established in subsection (1) of this section shall be prioritized based on:

(a)

1. Presence of water pollution, based on:

a. Notification by a local, state, or federal agency that the applicant's agricultural or silvicultural production has caused or contributed to water pollution;

b. Determination of the Energy and Environment Cabinet that a surface water affected by the applicant's agricultural or silvicultural production is not meeting its designated use;

c. Identification by the Energy and Environment Cabinet of a water priority protection region encompassing the location of the applicant's agricultural or silvicultural production; or

d. Other documentation of water pollution, such as through a biological assessment; or

2. Potential for development of water pollution from agricultural or silvicultural production in the watershed in which the applicant's agricultural or silvicultural production is being conducted;

(b) Types of water pollutants:

1. Animal waste;

2. Sediment run-off;

3. Nutrient loading; or

4. Pesticide application, storage or disposal;

(c) Proximity of pollutant to groundwater or surface water;

(d) Magnitude of water pollution; and

(e) Location in a priority watershed as established by the Agriculture Water Quality Authority or Division of Water including a source water protection area.

Section 7.~~[Section 8.]~~ Allocation of Cost-share Assistance.

(1) The available funds received by the commission for the cost-share program shall be held by the ~~[Kentucky]~~ Division of Conservation and disbursed to the ~~[conservation]~~ districts based on requests from the districts approved by the commission after a practice has been completed and all paperwork has been signed as complete and submitted for payment. The district shall be granted a share of the Kentucky Soil Erosion and Water Quality Cost-share Fund that shall be held by the ~~division~~~~[Kentucky Division of Conservation]~~ based on the commission's approval of an initial district request in accordance with the prioritization system established in Section ~~6~~~~[7]~~ of this administrative regulation.

(2) Any funds granted by the commission and distributed by the ~~division~~~~[Kentucky Division of Conservation]~~ to a district for a practice that results in overpayment shall revert to the commission if the district has not received prior permission to obligate the funds to another applicant within one (1) year from receipt.

(3) The commission shall retain ten (10) percent of the annual

appropriation in a contingency fund to be allocated to assist persons engaged in agricultural or silvicultural productions and implementing the agriculture water quality program mandated by **KRS Subchapter 224.71**~~[71 of KRS Chapter 224]~~.

Section 8.~~[Section 9.]~~ Design of Best Management Practices. Once cost-share assistance has been awarded by the commission, the local district shall designate a technician to develop final design and layout for the approved best management practices.

Section 9.~~[Section 10.]~~ Execution of Performance and Maintenance Agreements. After an application has been awarded cost-share assistance and before the applicant has received payment of the cost-share funds, the applicant and the ~~[conservation]~~ district shall execute a performance and maintenance agreement.

(1) Requirements of performance and maintenance agreements. The performance and maintenance agreement shall require the applicant to comply with paragraphs (a) through (d) of this subsection.

(a) The applicant shall agree to perform those best management practices approved in accordance with this administrative regulation.

(b) The applicant shall agree to maintain approved best management practices for the expected life of each practice agreed upon in the performance and maintenance agreement.

(c) Upon completion of the approved best management practice, the applicant shall notify the district that the practice has been installed and shall provide to the district for its inspection all vouchers, bills, and receipts associated with the practice.

(d) The applicant shall agree that, at the time of transfer of ownership of land where a best management practice has been applied using cost-share assistance and the expected life assigned the practice has not expired, the applicant shall execute a contract with the transferee requiring continuation of those practices until completed.

(e) Approved applicants shall complete the practice within one (1) year from the date of approval. Upon request, the ~~division~~~~[Division of Conservation]~~ shall grant a six (6) month extension per approved application. After two (2) extensions have been granted and expired, the landowner shall forfeit the right to the funds.

(2) Effect of performance and maintenance agreement. Requirements for performance and maintenance of best management practices applied using cost-share assistance shall be established in the performance and maintenance agreement and reviewed with the applicant at the time of application submittal and before completion of a certification of practices.

(3) Refund of funds disbursed.

(a) The district shall require a refund of cost-share assistance funds if the district determines:

1. An approved best management practice has not been maintained in compliance with approved design standards and specifications for the practice during its expected life as agreed in the performance and maintenance agreement; or

2.

a. The applicant voluntarily relinquishes control or title to the land on which the best management practice that was installed using cost-share funds and the new owner, heir, or operator does not agree in writing to properly maintain the practice for the remainder of the lifespan.

b. If the applicant voluntarily relinquishes control or title to the land on which the best management practice that was installed using cost-share funds pursuant to clause a. of this subparagraph, then the applicant shall only be responsible for refunding to the district the amount of funds prorated on the number of years remaining in the best management practice maintenance agreement.

(b)

1. If the district determines that the applicant shall refund the amount of the cost-share, the applicant shall have thirty (30) days to make payment to the district. The district may grant the applicant an extension of time to make the refund upon the submission of a written request by the applicant.

2. If the applicant fails to timely refund the amount of the cost-share, the district shall refer the matter to the commission.

3. If the district declines to seek a refund, the district shall state its reason for not doing so and notify the commission and the applicant. The commission shall review the matter, applying the criteria established in paragraphs (a)1. and 2. of this subsection, to verify the district's decision to ~~to determine whether or~~ not ~~to~~ seek a refund.

4. If the commission becomes aware of a situation as established in paragraphs (a)1. or (a)2. of this subsection, and the district fails to review the matter, the commission shall conduct the commission's own review of the matter and determine whether or not to seek a refund.

5. The commission shall be authorized to recover the amount of the cost-share by initiating a legal action in the Franklin Circuit Court.

(4) Application for future cost-share assistance. Best management practices that have been successfully completed and that later fail as the result of floods, drought, or other natural disasters, and not the fault of the applicant, shall not prohibit the applicant from applying for additional cost-share assistance to restore the practices to their original design standards and specifications.

(5) Certification. Upon notification by the applicant that the approved best management practice has been completed and before disbursement of funds from the district, the appropriate technical agency shall certify to the district that the practice has been installed in accordance with the ~~[2019-]Kentucky Soil Erosion and Water Quality Cost-Share Practice Handbook.~~

(6) Limitations on awards.

(a) Cost-share assistance awarded to an applicant shall be limited to a maximum of seventy-five (75) percent of the actual cost, not to exceed an amount approved by the commission, for each best management practice, with the assisted applicant providing twenty-five (25) percent of the cost, which may include in-kind support, with a maximum of \$20,000 per year.

(b) An applicant shall only submit one (1) application per program year.

(c) Cost-share assistance may be used with federal or local cost-share funds on the same practices if the total cost share payment does not exceed seventy-five (75) percent of the practice cost.

(d) Cost-share assistance shall not be awarded to best management practices in progress prior to cost-share approval or previously-installed practices by the applicant.

Section 10.~~[Section 14.]~~ Reporting and Accounting. District reporting and accounting. A district shall:

(1) Maintain a control ledger showing the current approved applications to the commission and cost share approved amounts for approved applications, based on estimated cost;

(2) Submit a monthly~~[quarterly]~~ report to the commission indicating any unobligated balance of allocated and disbursed cost-share funds as shown on each ledger;

(3) Submit an annual progress report to the commission showing accomplishments "to date" for the current program year; and

(4) Assemble case files for each approved application, filed by program year and accessible for public inspection, containing:

- (a) The approved application for allocated funds;
- (b) A copy of the estimated cost sheet;
- (c) Certification of practice completion;
- (d) Applicant's vouchers, bills, or receipts;
- (e) Final designs for best management practices;
- (f) The performance and maintenance agreement;
- (g) Any amendments to the performance and maintenance agreement; and
- (h) A map locating the practices.

Section 11.~~[Section 12.]~~ Appeals.

(1) Procedure for filing appeal. An applicant aggrieved by a decision of the commission denying an application or limiting the amount of financial assistance may file a written appeal with the commission. The appeal shall be filed within thirty (30) days of the decision and shall state the basis for the appeal.

(2) Procedure for hearing appeal.

(a) The commission shall notify the applicant and the local

district that they may appear before the commission and present testimony or written documentation on the issues presented by the appeal.

(b) The commission shall have sixty (60) days in which to make a decision and to notify the local district and the applicant.

(3) Review of final decision. The decisions of the commission may be appealed to the Franklin Circuit Court.

Section 12.~~[Section 13.]~~ Incorporation by Reference.

(1) ~~[The 2019-]Kentucky Soil Erosion and Water Quality Cost-Share Practice Handbook~~, December 2023~~[October 2019]~~ is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Conservation, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., Eastern Standard Time.

(3) This material may also be obtained at the Division of Conservation's Web site at <https://eec.ky.gov/Natural-Resources/Conservation/Pages/State-Cost-Share.aspx>.

FILED WITH LRC: April 9, 2024

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ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Conservation
(As Amended at ARRS, April 9, 2024)

416 KAR 1:020. Equipment Revolving Loan Program.

RELATES TO: KRS Chapter 45A, 56, 61.805 – 61.850, 262.610 - 262.650, 262.660, 355.9-525, Chapter 424

STATUTORY AUTHORITY: KRS 262.090~~(4)~~, 262.610, 262.660~~(1)~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 262.660~~(1)~~ authorizes the Soil and Water Conservation Commission to promulgate administrative regulations governing the administration of the Equipment Revolving Loan Fund as expressed in KRS 262.610 through 262.650. This administrative regulation establishes the requirements and procedures for participation in the Equipment Revolving Loan Program.

Section 1. Applicability.

(1) The provisions of this administrative regulation shall apply to persons and conservation districts applying for Equipment Revolving Loan Program funding for heavy or specialized equipment and infrastructure.

(2) The Equipment Revolving Loan Program shall be limited to the:

(a) Purchase cost of heavy or specialized equipment used for conserving soil resources, prevention and control of soil erosion, and conservation and protection of water resources related to those purposes; and

(b) Purchase or lease costs for infrastructure, including costs of improvements to infrastructure, if sought by a conservation district.

(3) The Equipment Revolving Loan Program shall not be used to reimburse for previous purchases of equipment or infrastructure.

(4) Equipment purchased using funds from the Equipment Revolving Loan Program shall not be used for:

(a) Activities that do not comply with subsection (2)(a) of this section; or

(b) ~~[, including]~~ Clear cutting operations or strip mining activities.

Section 2. General Requirements.

(1) Conservation districts, or a district jointly with a person residing within the district, that purchase heavy or specialized

VOLUME 50, NUMBER 11– May 1, 2024

equipment using funds from the Equipment Revolving Loan Program shall comply with the requirements in paragraphs (a) through (e) of this subsection.

(a) A person residing within the district shall be the primary applicant ~~if when~~ applying jointly with a conservation district. ~~If When~~ a person residing within the district is the primary applicant, the district shall procure the equipment and execute a lease agreement with the person.

(b) Any two (2) or more conservation districts may combine efforts to purchase an eligible piece of equipment, with one (1) district designated as the primary applicant.

(c) The primary applicant shall provide one-third (1/3) the amount of the total cost of the equipment.

(d) The district shall adhere to the provisions in KRS Chapter 45A.

(e) All equipment shall be new, or warranted as new, from a licensed equipment dealer.

(2) Conservation districts that use funds from the Equipment Revolving Loan Program for infrastructure shall ~~comply with the requirements in paragraphs (a) through (d) of this subsection.~~

(a) Adhere to the provisions in KRS Chapters 45A and 56~~;~~

(b) Provide, at a minimum, ten (10) percent of the total purchase cost or lease payments~~;~~

(c) Pay for all necessary property taxes and maintain infrastructure; ~~and~~

(d) Not convey or encumber any interest in infrastructure ~~if without prior division approval, as long as~~ the division holds title to the infrastructure.

(3) Conservation districts ~~that who~~ are also the primary applicant for infrastructure may:

(a) Add costs incurred for completing Finance and Administration Cabinet requirements pursuant to KRS Chapter 56 to the total loan amount advanced by the division. Those funds shall be included in the total funds the primary applicant agrees to repay; and

(b) Sublease portions of purchased infrastructure that are not essential to the operation of the district to a capable party or vendor, with the district maintaining primary occupancy of the infrastructure. The primary applicant shall ensure ~~that~~ taxes and insurance requirements ~~shall be are~~ maintained.

(4) Districts shall grant access to the division, Finance and Administration Cabinet, and Auditor of Public Accounts to any books, documents, papers, records, or other evidence directly related to the loan for the purpose of financial audit or program review.

(5) Any legal action brought to enforce the terms of a promissory note or loan shall be filed in a court in Franklin County, Kentucky.

Section 3. Equipment Revolving Loan Program Application Procedures.

(1) Conservation districts, or a district applying jointly with a person residing within the district, seeking funding for the purchase of heavy or specialized equipment, or districts seeking funding for infrastructure shall apply to the Soil and Water Conservation Commission by submitting a completed Conservation District Equipment Loan Application, DOC-01, ~~an application~~ to the Division of Conservation.

(2) Prior to applying to the commission, funding requests for equipment and infrastructure shall be voted upon by the board of supervisors for a district at a meeting conducted in accordance with the Open Meetings Law, KRS 61.805 through 61.850.

(3) Upon district approval pursuant to subsection (2) of this section, applications shall be submitted in accordance with subsections (4) through (6) of this section.

(4) A district requesting funding for heavy or specialized equipment shall:

(a) Complete a Conservation District Equipment Loan Application, DOC-01, which ~~shall include~~ includes a copy of the district's most recent Annual Financial Report, a minimum of three (3) bids for each piece of equipment, and documentation demonstrating how the model procurement code shall be followed; and

(b) Submit completed applications to the division. If two (2) or

more districts are applying jointly, each district shall complete an application. The district designated as the primary applicant shall submit applications from all parties in one (1) application package, including all required documentation, to the division.

(5) A district requesting funding jointly with a person residing within the district for heavy or specialized equipment shall:

(a) Complete a Conservation District Equipment Loan Application, DOC-01, which ~~shall include~~ includes a copy of the district's most recent Annual Financial Report and documentation demonstrating how the model procurement code shall be followed;

(b) Require the person residing within the district to complete and submit a Joint Equipment Loan Application, DOC-02, which ~~shall include~~ includes a copy of the person's credit report, and a minimum of three (3) bids for each piece of equipment; and

(c) Submit applications, including the required documentation, from all parties in one (1) application package to the division.

(6) A district requesting funding for infrastructure shall:

(a) Complete an Infrastructure Equipment Loan Application, DOC-03, which ~~shall include~~ includes a copy of the district's most recent Annual Financial Report, current Annual Budget, and documentation demonstrating how the model procurement code shall be followed; and

(b) Submit completed applications to the division. If two (2) or more districts are applying jointly, each district shall complete an application. The district designated as the primary applicant shall submit applications from all parties in one (1) application package, including all required documentation, to the division.

(7) The division shall review submitted applications for administrative completeness.

(a) A district shall be notified of application deficiencies and have the opportunity to make corrections.

(b) Complete applications shall be referred to the commission for consideration.

(8) The commission shall consider the proposed use of the equipment or infrastructure, the district's financial ability to repay the loan, and the district's reporting and payment history in considering application approval.

(9) A district shall be notified of the commission's final decision on the request for funds from the Equipment Revolving Loan Program.

~~(10)~~ (9) For loans on heavy or specialized equipment, the district shall submit to the division:

(a) The signed loan contract;

(b) A filing fee in an amount established in KRS 355.9-525. The filing fee shall be made by check payable to the Kentucky State Treasurer; and

(c) In cases ~~in which~~ when the district applies jointly with a person residing within the district, the legally executed lease agreement in accordance with Section 2(1)(a) of this administrative regulation.

~~(11)~~ (10) Infrastructure loans ~~shall be are~~ contingent upon the district complying with the Finance and Administration Cabinet requirements pursuant to KRS Chapters 45A and 56.

~~(12)~~ (11) Upon completion of the requirements established in subsections (9) and (10) of this section, the division shall file:

(a) A lien on purchased equipment with the Kentucky Secretary of State office; and

(b) Titles to infrastructure at the courthouse in the county where the infrastructure project is located.

Section 4. Interest Rates.

(1) Loan interest rates shall be determined by the Soil and Water Conservation Commission.

(2)

(a) The commission may adjust interest rates for new loans at each commission meeting.

(b) Interest rates shall not be adjusted by the commission for open loans.

(3) The factors in paragraphs (a) and (b) of this subsection shall be considered by the commission ~~for when~~ recommending an interest rate adjustment, and by the Commissioner of the Department for Natural Resources ~~for when~~ making the final determination on the interest rate adjustment. Factors shall

VOLUME 50, NUMBER 11– May 1, 2024

include:

- (a) The available balance in the fund; ~~and~~;
- (b) The current interest rate as established by the Federal Open Market Committee.

Section 5. Loan Repayment Terms.

- (1) Repayment terms for equipment purchases shall be:
 - (a) Three (3) to five (5) years for loans of less than \$100,000; or
 - (b) Five (5) to seven (7) years for loans over \$100,000.
- (2) Repayment terms for infrastructure shall be determined by the commission **based on the district's financial ability to repay the loan.**
- (3) Monthly loan payments shall be submitted to the division by the tenth day of each month accompanied by the Equipment Loan Monthly Report, DOC-04, in accordance with Section 7(6) of this administrative regulation. Loan payments shall be submitted by check made payable to the Kentucky State Treasurer.
- (4) Repayment penalties shall be applied if a loan is paid off in fewer than eighteen (18) months. The calculated penalty shall be the amount of interest lost by the early payoff.
- (5) If a person fails to submit monthly payments under a joint application, the district shall be responsible for delinquent payments.

Section 6. Insurance Requirements.

- (1) The primary applicant purchasing equipment using funds from the Equipment Revolving Loan Program shall carry property insurance coverage in accordance with paragraphs (a) and (b) of this subsection.
 - (a) Insurance coverage for property or assets against all risk of physical loss or damage, including flood and rising water, to the equipment. The insurance shall be for the full replacement value of the equipment, parts, attachments, and accessories purchased with the Equipment Revolving Loan Program funds, regardless of where the equipment is stored. The primary applicant **shall be** responsible for the total value of the loan even in the event of loss.
 - (b) Liability coverage, to include bodily injury and property damage, with a combined single limit of a minimum of \$500,000 per occurrence.
- (2) Districts purchasing infrastructure using funds from the Equipment Revolving Loan Program shall carry property insurance coverage in accordance with paragraphs (a) and (b) of this subsection.
 - (a) Insurance coverage for real property against all risk of physical loss or damage, including flood and rising water, to the infrastructure. The insurance shall be for the full replacement value of the infrastructure purchased with the Equipment Revolving Loan Program funds. The division and primary applicant shall receive remuneration in proportion to the amount of equity each party holds in the infrastructure at time of loss. The primary applicant **shall be** responsible for the total value of the loan even in the event of loss; ~~and~~;
 - (b) Liability coverage, to include bodily injury and property damage, with a combined single limit of a minimum of \$1 million per occurrence.
- (3) All insurance policies shall include the Commonwealth of Kentucky as an additional insured and loss payee.
- (4) Insurance coverage shall be maintained until the loan is fully amortized~~]~~ or until the district or primary applicant has been formally released of further responsibility by the division.
- (5) Copies of all insurance policies, endorsements, and certificates of renewal shall be submitted to the division within sixty (60) days of issuance or amendment.

Section 7. Operational, Reporting, and Record Keeping Requirements.

- (1) Equipment purchased using funds from the Equipment Revolving Loan Program shall meet the operational requirements in paragraphs (a) through (d) of this subsection. **Equipment shall be:**
 - (a) Operated within the district, or districts, identified in the loan contract unless **the district or districts** approve for the operation outside county boundaries~~]~~;
 - (b) Advertised by publication in accordance with the provisions

of KRS Chapter 424, at a minimum, annually to inform the public of availability for use.

- 1.** The publication area shall be the district, or districts, identified in the loan contract.
 - 2.** The primary applicant shall be the responsible person for publishing advertisements.
 - 3.** If the primary applicant is a district or districts, alternative internet and publication procedures may be utilized if the requirements of KRS 424.145 are met~~]~~.
 - (c) Made readily available for rental or hire by the public; ~~and~~;
 - (d) Rented or operated for a minimum of twenty (20) days within a six (6) month period.
 - (2) Equipment shall not be used more than sixty-five (65) percent of the time on:
 - (a) Land owned by district supervisors or employees of the district **if** the district is the primary applicant; and
 - (b) Lands owned by the primary applicant **if** a district applies jointly with a person residing within the district.
 - (3) Lease or rental fees on equipment shall be established sufficient to assist in amortization payments, operation and maintenance, operator costs, and transportation of equipment to jobs. Districts shall notify the commission within thirty (30) days of any changes to approved lease or rental fees.
 - (4) Administrative fees may be charged to the person by the district, **if** a district applies jointly with a person residing within the district for equipment, not to exceed five (5) percent of the monthly amortization amount.
 - (5) Equipment shall be maintained, kept in working order, and reasonably protected from the weather.
 - (6) Reporting requirements for equipment and infrastructure loans **shall be as** established in paragraphs (a) and (b) of this subsection.
 - (a) A person residing within the district, who is the primary applicant of an equipment loan, shall document and report monthly to the district, at a minimum, the information in Section 5 of the Equipment Loan Monthly Report, DOC-04.
 - (b) A district shall complete and submit, to the division by the tenth day of each month, the Equipment Loan Monthly Report, DOC-04. If two (2) or more districts applied jointly, the district designated as the primary applicant shall complete and submit the Equipment Loan Monthly Report, DOC-04, to the division.
 - (7) Districts using funding from the Equipment Revolving Loan Program shall maintain records on the:
 - (a) Description of the equipment or infrastructure;
 - (b) Terms of the purchase or lease;
 - (c) Terms of the loan;
 - (d) Description of insurance coverage and premiums paid;
 - (e) Major repairs and circumstances impairing the use of purchased equipment or infrastructure; and
 - (f) Dollar amount paid to the division for the purpose of amortizing the loan.
- Section 8. Default on a Contract.
- (1) Failure to make payments over a three (3) month period or to comply with the requirements in accordance with Sections 5 through 7 of this administrative regulation shall constitute a default on a contract.
 - (2) The division shall notify the primary applicant in writing of a default and describe the cause of the default with **reasonable** specificity.
 - (a)** The notice shall provide the primary applicant with thirty (30) days from mailing to cure the default.
 - (b)** The notice shall be complete upon mailing by certified mail, return receipt requested, to the mailing address listed on the application.
 - (3) For equipment purchases:
 - (a) Resolutions and remedies for an uncured default **shall be as** established in subparagraphs **1** and **2** of this paragraph.
 - 1.** **if** a person residing within the district is the primary applicant, the district shall repossess equipment that was purchased using funds from the Equipment Revolving Loan Program. The district shall be responsible for delinquent payments in accordance

VOLUME 50, NUMBER 11– May 1, 2024

with Section 5(5) of this administrative regulation and any remaining payments. Following repossession, the district shall:

a. Lease the equipment to another person residing within the district with the approval of the commission based on the proposed use of the equipment and the financial ability to repay the loan;

- b. Enroll as the primary applicant; or
c. Sell the equipment pursuant to KRS Chapter 45A.

2. ~~If/When~~ a district is the primary applicant, the district shall sell the equipment pursuant to KRS Chapter 45A.

(b) If a district fails to comply with paragraph (a) of this subsection, direct aid ~~shall/will~~ be withheld until the outstanding loan balance is paid.

(c) 1. A person ~~that is~~ aggrieved by the decision of the district to repossess equipment pursuant to paragraph (a) 1. of this subsection may file a written appeal with the commission. An appeal shall be filed within thirty (30) days of the repossession and shall state the basis for the appeal.

2. Procedure for hearing appeal.
a. The commission shall notify the district and person that they may appear before the commission to present testimony or written documentation on the issues presented by the appeal. Any hearing for an appeal shall comply with ~~conform to the requirements of~~ KRS Chapter 13B.

b. The commission shall have 100 days to make a final decision and to notify the district and person.

3. Final decisions of the commission may be appealed by the district or person to a court in Franklin County, Kentucky.

(4) For infrastructure:
(a) Resolutions and remedies for an uncured default shall be as/are established in subparagraphs 1. and 2. of this paragraph.

- 1. Purchased infrastructure shall be disposed as surplus property pursuant to the provisions of KRS Chapters 45A and 56; or
2. Terminate the lease agreement.

(b) If the primary applicant fails to remedy any default on a contract:

- 1. The division shall notify the Finance and Administration Cabinet; and
2. Direct aid shall be withheld until the outstanding loan balance is paid.

(c) A district that is aggrieved by the Finance and Administration Cabinet's decision may seek a review of the decision. The review shall be conducted pursuant to KRS 45A.230.

Section 9. Loan Completion.

(1) Once the loan contract has been satisfied, the division shall issue a letter of completion formally releasing the loan.

(2) Upon receipt of a letter of completion:

(a) Purchased equipment and infrastructure shall be the property of the primary applicant;

(b) For infrastructure loans, the primary applicant shall file a transfer of title at the courthouse in the county where the infrastructure is located and shall take full possession of the infrastructure; or

(c) The primary applicant shall be responsible for meeting the requirements of lease agreement or terminate the lease agreement.

(3) The district shall:

(a) Maintain all records for equipment and infrastructure for at least five (5) years past the release of the title or termination of loan agreement; and

(b) Submit to the division, within ninety (90) days from the receipt of the letter of completion, all loan records related to the equipment or infrastructure, and for equipment purchases a lien termination fee in an amount established in KRS 355.9-525. The filing fee shall be made by check payable to the Kentucky State Treasurer.

(4) For equipment purchases, the division shall file a lien release with the Kentucky Secretary of State's office.

Section 10. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Conservation District Equipment Loan Application", DOC-01, December 2023;

(b) "Equipment Loan Monthly Report", DOC-04, December

2023;

(c) "Infrastructure Equipment Loan Application", DOC-03, December 2023; and

(d) "Joint Equipment Loan Application", DOC-02, December 2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Conservation, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., Eastern Standard Time.

(3) This material may also be obtained at the Division of Conservation's Web site at https://eec.ky.gov/Natural-Resources/Conservation/Pages/Equipment-Revolving-Loan-Program.aspx.

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CONTACT PERSON: Dawn Baase, Environmental Scientist Consultant, Department for Natural Resources, Office of the Commissioner, 300 Sower Blvd, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 782-6311, fax (502) 564-4245, email Dawn.Baase@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Internal Investigations Branch
(As Amended at ARRS, April 9, 2024)

500 KAR 13:020. Internal Investigations Branch.

RELATES TO: KRS 15A.020, 620.030, 620.040

STATUTORY AUTHORITY: KRS 15A.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160

authorizes the Secretary to promulgate administrative regulations for the proper administration of the Cabinet and its programs. This administrative regulation establishes the procedures for investigations by the Internal Investigations Branch, Office of Legal Services.

Section 1. Definitions.

(1) "Disability" is defined by ~~in~~ 42 U.S.C. ~~[A-§]~~ 12102(1).

(2) "Excessive physical contact" means physical contact used or applied by an alleged offender against a juvenile that results in or creates a substantial risk of serious physical injury as defined by KRS 500.080(18)(17), or death. "Exonerated" means the incident occurred, but the accused's actions were justified or proper.

(3) ~~(2)~~ "Exonerated" means the incident occurred, but the offender's actions were not improper, not excessive, or were otherwise reasonable under the circumstances.

(4) "Facility" means a group home, day treatment, residential treatment, youth development center, a detention center, any other entity or location for juvenile care operated by or contracted with the Department of Juvenile Justice for the placement of juveniles[youth], or any entity housing a juvenile[youth] placed by or committed to the Department of Juvenile Justice.

(5) ~~(4)~~ ~~(3)~~ "Finding/Findings" means that once an investigation is completed, an incident, whether a serious incident or special incident, will be classified as being resolved under one (1) of the following categories:

(a) ~~Exonerated, as defined in subsection (3) of this section~~; ~~means the incident occurred, but the offender's actions were not improper, not excessive, or were otherwise reasonable under the circumstances.~~

(b) ~~Not Substantiated, as defined in subsection (10) of this section~~; ~~means, based on a preponderance of the evidence, there is insufficient evidence to determine if an incident occurred.~~

(c) ~~Pending further investigation, as defined in subsection (12) of this section~~; ~~means a critical witness or offender cannot be located or refuses to cooperate with the initial investigation, or there is other interference with the investigation, beyond the control of IIB, that prevents IIB from making a final determination for its finding.~~

(d) ~~Substantiated, as defined in subsection (15) of this section~~; ~~or means an incident occurred, the actions of the~~

offender were not justified, and the incident is proven by either the admission of the offender or by a preponderance of the evidence.

(e) [“(1)“] **“Unfounded, as defined in subsection (16) of this section” means the allegations against the offender are false because the incident did not occur; or the offender was not involved in the incident.**

(6)(5) [(4)] **“Inappropriate physical contact” means physical contact used or applied by an offender against a juvenile that has resulted or could result in physical injury as defined by KRS 500.080(16)(15).**

(7)(6) [(5)] **“Initiated” means any action by the Internal Investigations Branch intended to ensure the immediate safety of the victim or to obtain evidence or information relevant to the investigation.**

(8) **“Internal Investigations Branch” or “IIB” means the investigation unit that is part of the Office of Legal Services within the IIB— means Internal Investigations Branch, Office of Legal Services, Justice and Public Safety Cabinet.**

(7) [(6)] [(4)] **“Initiation” means any action by the Internal Investigations Branch intended to ensure the immediate safety of the victim or to obtain evidence or information relevant to the investigation.**

(9)(8) [(7)] **“Juvenile” means a person who is under the custody, control, or supervision of the Department of Juvenile Justice as a result of a court order or interstate supervision.**

(10) **“Not substantiated” means, based on a preponderance of the evidence, there is insufficient evidence to determine if an incident occurred.**

(11)(9) [(8)] [(5)] **“Not substantiated” means there is insufficient evidence to determine if an incident occurred or if the accused was involved in the incident.**

[(6)] **“Offender” means a person:**

(a) Who is employed at, volunteers in, visits, or contracts with a facility; and

(b) Against whom an allegation of a special incident has been made.

(12) **“Pending further investigation” means a critical witness or offender cannot be located or refuses to cooperate with the initial investigation, or there is other interference with the investigation, beyond the control of IIB, that prevents IIB from making a final determination for its finding.**

(13)(10) [(9)] [(7)] **“Serious incident” means an act or omission committed by an offender that creates an imminent and substantial risk to, or actually causes harm to the health, safety, or welfare of a juvenile, including:**

(a) The use of excessive physical contact that results in injury or could have resulted in injury to a juvenile;

(b) Inappropriate physical contact that results in an injury or could have resulted in an injury to a juvenile;

(c) Sexual activity by an offender on, against, involving, or in the presence of a juvenile, including any contact or interaction, that uses, permits, disregards, or encourages the use or exploitation of a juvenile for the sexual gratification of the offender or another person; or

(d) Permitting, inducing, assisting, or causing a juvenile to engage in:

1. An offense enumerated in KRS 530.064, 530.065, or 530.070;

or

2. Other illegal activity.

(14)(11) [(10)] **“Special incident” means an act or omission committed by an offender that creates a risk to, or actually causes harm to the health, safety, or welfare of a juvenile, including:**

(a) Failure to provide appropriate supervision, medical care, food, clothing, shelter, or education;

(b) Use of inappropriate consequences, such as exercise, harsh physical labor, or other physical consequences as punishment in violation of accepted practices in accordance with 505 KAR Chapter 1 and DJJ Policies and Procedures;

(c) Harassing a juvenile;

(d) Actual or attempted use by an offender of a juvenile for the offender's or any other person's personal gain or self-interest;

(e) Accepting or soliciting a bribe or other quid pro quo from a

juvenile or the juvenile's[their] family or indicating to a juvenile or the juvenile's[their] family that the offender will accept a bribe or other quid pro quo;

(f) Use of humiliating, demeaning, profane, racially charged, or sexually explicit language directed at a juvenile or use of any language that discriminates against a juvenile based on a juvenile's status regarding race, color, religion or creed, national origin or ancestry, sex, gender, pregnancy, sexual orientation, [or] gender identity, or disability;

(g) Use by an offender of threats or otherwise communicating or indicating to a juvenile that by, either act or omission, an offender will cause or permit another person to physically harm that juvenile; or

(h) Extending, offering, or agreeing to extend or offer any unearned special privileges to a juvenile in exchange for any money, tangible property, intangible property, services, or any other value paid, delivered, or agreed to be delivered to the offender or any other person by a juvenile.

(15) **“Substantiated” means an incident occurred, the actions of the offender were not justified, and the incident is proven by either the admission of the offender or by a preponderance of the evidence.**

(16) **“Unfounded” means the allegations against the offender are false because the incident did not occur; or the offender was not involved in the incident.** [“Pending further investigation” means a critical witness or offender cannot be located or refuses to cooperate with the initial investigation, or there is other interference with the investigation, beyond the control of IIB, that prevents IIB from making a final determination for its finding.]

[(8)] **“Special incident” means an act in which the health or welfare of a youth is harmed or threatened with harm by an offender, including if an offender:**

[(a)] [Uses inappropriate or excessive force that results in injury;]

[(b)] [Uses inappropriate or excessive force that could result in an injury;]

[(c)] [Engages in any sexual activity to include any contact or interaction, which uses or allows, permits or encourages the use of a youth for the sexual gratification of the offender or another person;]

[(d)] [Uses inappropriate consequences as punishment such as exercise, harsh physical labor, or other physical consequences outside accepted practices in accordance with 505 KAR Chapters 1 and 2 of the Department for Juvenile Justice Policies and Procedures;]

[(e)] [Allows or encourages a youth to:]

[1.] [Use drugs or alcohol;]

[2.] [Gamble; or]

[3.] [Engage in other illegal activity;]

[(f)] [Does not provide appropriate supervision, medical care, food, clothing, shelter, or education;]

[(g)] [Uses humiliating, demeaning, profane, or racially charged language directed at a youth;]

[(h)] [Uses verbal threats of harm directed at a youth;]

[(i)] [Exhibits a pattern of harassing conduct directed at a youth;]

[(j)] [Uses or attempts to use a youth for personal gain;]

[(k)] [Accepts a bribe from a youth or indicates a bribe would be accepted;]

[(l)] [Enters into any unlawful transaction with a youth as set forth in KRS 530.064, 530.065, or 530.070;]

[(m)] [Enters into a business relationship with a youth; or]

[(n)] [Extends unearned special privileges to a youth in return for something;]

[(9)] **“Substantiated” means that an incident occurred;**

[(a)] [By an admission of the person responsible; or]

[(b)] [By a preponderance of the evidence;]

[(10)] **“Unfounded” means the charges are false or the offender was not involved in the incident.**

[(11)] **“Youth” means a person who is under the custody, control, or supervision of the Department of Juvenile Justice as a result of a court order or interstate supervision.**

Section 2. Receiving a Report.

(1) The Internal Investigations Branch shall accept reports alleging facts that may be serious or [of] special incidents.

[(1)]

(a) A toll-free number shall be made available to report an incident, which shall be answered by IIB during normal business hours, 8:00 a.m. to 4:30 p.m. Eastern Time, Monday to Friday[all staff and youth to report special incidents. A voice mailbox system shall be available for reporting special incidents after normal work hours].

(b) A voice mailbox system on the toll-free number shall be available for reporting an incident after normal business hours. IIB shall assign an individual on a rotating basis to check the messages after normal business hours. IIB shall take action immediately if the safety of a juvenile is involved. Otherwise, IIB shall take action on the call the next business day.[The investigator shall attempt to elicit from the person reporting the special incident as much information about the incident as possible, including:]

[1.] [The nature and extent of the special incident;]

[2.] [The causes of the special incident;]

[3.] [The location of the victim;]

[4.] [Any witnesses to the special incident;]

[5.] [The present danger to the victim;]

[6.] [The offender; and]

[7.] [The reporting person's identity and relationship to the victim.];

(2) Anonymous reports that[which] give sufficient information, **including the name of the alleged offender and victim, date and time of the alleged conduct, name of the facility, and nature of the alleged conduct.**[and allege a special incident] shall be accepted.

(3) Referrals from any other source that[which] give sufficient information, **including the name of the alleged offender and victim, date and time of the alleged conduct, name of the facility, and nature of the alleged conduct.**[and allege a special incident] shall be accepted.

(4) If IIB needs additional information to determine whether further investigation is warranted, it shall conduct a preliminary inquiry.

Section 3. Investigation of Reports of Serious Incidents and Special Incidents.

(1) If IIB receives a report of a serious incident, IIB shall conduct a preliminary inquiry or open an investigation.[special incident as defined by Section 1(8)(a) through (e) of this administrative regulation, IIB shall:]

[(a)] [Conduct an investigation in accordance with Sections 5 and 6 of this administrative regulation; or]

[(b)] [Conduct a preliminary inquiry to determine if further investigation is warranted.];

(2) If IIB receives a report of a special incident, IIB may conduct a preliminary inquiry, an[a full] investigation, or forward the complaint to the Department of Juvenile Justice or another appropriate authority for an investigation.[as defined by Section 1(8)(f) through (n) of this administrative regulation, IIB may conduct an investigation.];

[(a)] [Any allegation of an alleged special incident not investigated by IIB shall be referred by IIB management to another appropriate individual or agency for investigation.];

[(b)] [If an allegation of a special incident is referred to the Department of Juvenile Justice pursuant to paragraph (a) of this subsection, IIB shall review the investigative report and any supporting documentation.];

(3) IIB may investigate a report or allegation[involving a person who is employed at, volunteers in, visits, or contracts with a facility that does not meet the definition of a special incident] at the request of the commissioner of the Department of Juvenile Justice, the commissioner's designee,[Commissioner or] the secretary of the Justice and Public Safety Cabinet, or the secretary's designee.

(4) A report or allegation not investigated by IIB may be referred[by IIB management] to another appropriate individual or agency.

Section 4. Time Frames for Investigating Reports of Suspected Serious or Special Incidents. Following the receipt of the report, IIB shall complete an intake, and either open a preliminary inquiry or investigation or refer the report[the IIB-2 Special Incident Reporting

Form shall be completed and the report investigate][d] [or referred] in accordance with Section 3 of this administrative regulation. IIB preliminary inquiries and investigations shall be conducted according to the time frames established in this section.

(1) If the report indicates a [the] juvenile[youth] is in imminent danger of physical harm or injury, the preliminary inquiry or investigation shall be initiated immediately including ensuring the safety of the alleged victim and any other juvenile with whom the offender may have contact and the retention of evidence. Personal contact shall be made with the victim within twenty-four (24) hours, if possible. If the report indicates that the victim is no longer in a facility, the investigation shall be initiated within forty-eight (48) hours and every effort shall be made to have personal contact with the victim within three (3) workdays.

(2) If evidence is obtained that[which] warrants further investigation, **an**[a full] investigation shall be initiated[within one (1) hour and personal contact made with the victim within twenty-four (24) hours].

(3)[(2)] If the report does not indicate imminent danger of physical harm or injury, the preliminary inquiry or investigation shall be initiated within twenty-four (24) hours and personal contact made with the victim within seventy-two (72) hours.

(4) Unsuccessful efforts to make personal contact shall be documented in the investigative file.

[(a)] [Issues to be considered in determining how soon personal contact is made shall include:]

[1.] [The nature of the allegation;]

[2.] [How recently the alleged incident occurred; and]

[3.] [The measures taken by the facility to ensure the safety of the youth.];

(5)[(b)] Any deviation from the time frames shall require supervisory approval and be documented in the investigative file.

(6)[(3)] [If the report indicates that the victim is no longer in a facility, the investigation shall be initiated within forty-eight (48) hours and every effort made to have personal contact with the victim within three (3) workdays. Unsuccessful efforts to make personal contact shall be documented in the investigative file.];

[(4)] The time[frames] shall begin when the report is received by IIB staff.

Section 5. [Initial] Investigation. The investigation of an allegation or report shall include the following:[If investigating an allegation or report, an IIB investigator shall:]

(1) A completed intake[Complete the IIB-2 form];

(2) Report of any special incidents as required by KRS 620.030 and 620.040;

(3) [Notify]The Commissioner of the Department of Juvenile Justice or designee shall be notified of the report;

(4) Interviews with the following:

(a) [Interview]The victim, who shall be interviewed privately, outside the presence of the offender, with no more than two (2) persons present in addition to the victim and IIB investigator;

(b)[(5)] [Interview][The alleged offender; and

(c)[(6)] [Interview][Appropriate witnesses;

(5)[(7)] A review of documentation relevant to the incident; and

(6)[(8)] Obtaining and preserving appropriate evidence.[Take possession of and preserve appropriate evidence.];

Section 6. Determining the Validity of the Report. [After the initial investigation]The investigator shall:

(1) Complete a written report within thirty (30) days of receipt of the allegation, unless there are extenuating circumstances that [which] are documented, such as law enforcement action, court proceedings, or investigator workload issues. The report shall contain:

(a) The information gathered during the investigation; and

(b) A finding regarding the allegation as exonerated, pending further investigation, substantiated, not substantiated, or unfounded[recommendation regarding the validity of the allegation as substantiated, unfounded, exonerated, not substantiated, or pending further investigation];

(2) Submit the report through supervisory channels within IIB and the Office of Legal Services[legal counsel] for the Justice and Public Safety Cabinet for review and approval;

VOLUME 50, NUMBER 11– May 1, 2024

(3) Forward all completed investigations to the Commissioner of the Department of Juvenile Justice or the commissioner's designee; and

(4) Forward all completed investigations of substantiated special incidents that may involve abuse or neglect of a child, in accordance with KRS 620.030 to the:

- (a) Cabinet for Health and Family Services; and
- (b) Local ~~commonwealth or county~~ attorney, law enforcement, or the Kentucky State Police with the exception of all documents and evidence that are protected under Garrity v. New Jersey, 385 U.S. 493 (1967).

[Section 7.] [Incorporation by Reference.]

[(1)] [~~"HB-2, Special Incident Reporting Form", 5/15, is incorporated by reference.~~]

[(2)] [~~This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

FILED WITH LRC: April 9, 2024

CONTACT PERSON: Nathan Goens, Attorney, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8216, fax (502) 564-6686, email Justice.RegContact@ky.gov.

EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, April 9, 2024)

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), **158.305,** 158.645, [~~158.791,~~ 158.6451, 158.6453(17)(b), 158.6459, **158.791**

STATUTORY AUTHORITY: KRS 156.070, 156.160, **156.488,** 158.305(2), **158.6459, 158.791**

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 offer support and technical assistance to 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 *in English, reading, and mathematics to be offered to*~~for~~ students in grade 6, grade 9, grade 10, grade 11, and grade 12 ~~who that~~ are academically behind. KRS 158.791 requires the Kentucky Department of Education to provide technical assistance to local~~support~~ school districts in the identification of professional development activities, including ~~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) "Differentiated" "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" is defined by KRS 158.305(1)(f), 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

VOLUME 50, NUMBER 11– May 1, 2024

~~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 district-wide~~[districtwide]~~ implementation of a comprehensive MTSS.~~[the data required by KRS 158.305(4) 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).

FILED WITH LRC: April 9, 2024

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.

**CABINET FOR HEALTH AND FAMILY SERVICES
Office of Data Analytics
(As Amended at ARRS, April 9, 2024)**

900 KAR 7:030. Data reporting by health care providers.

RELATES TO: KRS [~~Chapter 13B,~~]216.2920, 216.2925,

216.2927, 304.14-135

STATUTORY AUTHORITY: KRS 216.2923(3), 216.2925

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.2925 requires that the Cabinet for Health and Family Services promulgate administrative regulations requiring specified health care providers to provide the cabinet with data on cost, quality, and outcomes of health care services provided in the commonwealth. KRS 216.2923(3) authorizes the cabinet to promulgate administrative regulations to impose fines for failure to report required data. This administrative regulation establishes the required data elements, forms, and timetables for submission of data to the cabinet and fines for noncompliance.

Section 1. Definitions.

(1) "Ambulatory facility" is defined by KRS 216.2920(1).

(2) "Cabinet" is defined by KRS 216.2920(2).

(3) "Coding and transmission specifications", "Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals", ~~and/or~~ "Kentucky Data Coordinator's Manual for Ambulatory Facilities" means the document created and updated by a contracted vendor selected by the Cabinet that contains~~[shall contain]~~contain~~[containing]~~ the technical directives the cabinet issues concerning technical matters subject to frequent change, including codes and data for uniform provider entry into particular character positions and fields of the standard billing form and uniform provider formatting of fields and character positions for purposes of electronic data transmissions.

(4) "Hospital" is defined by KRS 216.2920(6).

(5) "Hospitalization" means the inpatient medical episode identified by a patient's admission date, length of stay, and discharge date, that is identified by a provider-assigned patient control number unique to that inpatient episode, except for hospice care.

(6) "National Provider Identifier" or "NPI" means the unique identifier assigned by the Centers for Medicare and Medicaid Services to an individual or entity that provides health care services and supplies.

(7) "Outpatient services" means services performed on an outpatient basis in a hospital with records requirements in accordance with Section 3(2) of this administrative regulation or services performed on an outpatient basis by an ambulatory facility with data requirements in accordance with Section 4 of this administrative regulation.

(8) "Provider" means a hospital, ambulatory facility, clinic, or other entity of any nature providing hospitalizations, mammograms, or outpatient services and is~~as~~ defined accordingly in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals or the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(9) "Record" means the documentation of a hospitalization or outpatient service in the ~~[format prescribed by the]~~ Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals or the Kentucky Data Coordinator's Manual for Ambulatory Facilities as approved by the Statewide Data Advisory Committee on a computer readable electronic medium.

(10) "Standard Billing Form" means the uniform health insurance claim form pursuant to KRS 304.14-135, the Professional 837 (ASC X12N 837) format, the Institutional 837 (ASC X12N 837) format, or its successor as adopted by the Centers for Medicare and Medicaid Services, or the HCFA 1500 for use by hospitals and other providers in billing for hospitalizations and outpatient services.

Section 2. Medicare Provider-Based Entity. A licensed outpatient facility that is a Medicare provider-based entity of a hospital and reports under the hospital's provider number shall be separately identifiable through a facility-specific NPI.

Section 3. Data Collection for Hospitals.

(1) Inpatient hospitalization records. A hospital shall document every hospitalization it provides on a Standard Billing Form and shall, for every record, copy and provide to the cabinet the data established~~[specified]~~ in Section 12 of this administrative

VOLUME 50, NUMBER 11– May 1, 2024

regulation.

(2) Outpatient services records.

(a) A hospital shall document on a Standard Billing Form, the outpatient services the hospital provides and shall, for every record, copy and provide to the cabinet the data established/specified in Section 12 of this administrative regulation.

(b) A hospital shall submit records that contain the required outpatient services procedure codes included/specified in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(3) Data collection on patients. A hospital shall submit required data on every patient as established/provided in Section 12 of this administrative regulation, regardless of the patient's billing or payment status.

Section 4. Data Collection for Ambulatory Facilities.

(1) Outpatient services records.

(a) An ambulatory facility shall submit outpatient services records if the ambulatory facility provides one (1) or more of the following outpatient services:

1. Surgery;
2. Childbirth;
3. Urgent treatment of minor illness or injury;
4. Emergency;
5. Mammography;
6. X-ray;
7. Ultrasound;
8. Computed tomography;
9. Magnetic resonance imaging;
10. Cardiac catheterization;
11. Positron emission tomography; and
12. Megavoltage radiation therapy.

(b) An ambulatory facility shall document on a Standard Billing Form, the outpatient services the ambulatory facility provides and shall, for every record, copy and provide to the cabinet the data established/specified in Section 13 of this administrative regulation.

(c) An ambulatory facility shall submit records that contain the required outpatient services procedure codes included/specified in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(2) Data collection on patients. An ambulatory facility shall submit required data on every patient as established/provided in Section 13 of this administrative regulation, regardless of the patient's billing or payment status.

Section 5. Data Finalization and Submission by Providers.

(1) Submission of final data.

(a) Data shall be final for purposes of submission to the cabinet as soon as a record is sufficiently final that the provider could submit it to a payer for billing purposes, regardless of if/whether the record has actually been submitted to a payer.

(b) Finalized data shall not be withheld from submission to the cabinet on grounds that the data could be adjudicated/it remains subject to adjudication by a payer.

(c) Data on a hospitalization shall not be submitted to the cabinet before a patient is discharged and before the record is sufficiently final that it could be used for billing.

(2) Data submission responsibility.

(a) If a patient is served by a mobile health service, specialized medical technology service, or another situation by which one (1) provider provides services under contract or other arrangement with another provider, responsibility for providing the required/specified data to the cabinet shall reside with the provider that bills for the service or would do so if a service is unbilled.

(b) Charges for physician services provided within a hospital shall be reported to the cabinet.

1. Responsibility for reporting the physician charge data shall rest with the hospital if the physician is an employee of the hospital.

2. A physician charge contained within a record generated by a hospital shall be clearly identified in a separate field within the record so that the cabinet may ensure comparability if/when aggregating data with other hospital records that do not contain physician

charges.

(3) Transmission of records.

(a) Records submitted to the cabinet by a hospital shall be uniformly completed and formatted according to coding and transmission specifications included in/set forth by the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(b) Records submitted to the cabinet by an ambulatory facility shall be uniformly completed and formatted according to coding and transmission specifications included in/set forth by the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(c) Each provider shall submit data by electronic transmission as included in/specified by the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals and the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(d) Each provider shall provide back-up security against accidental erasure or loss of the data until all incomplete or inaccurate records identified by the cabinet have been corrected and resubmitted.

(4) Verification and audit trail for electronic data submissions.

(a) Each provider shall maintain a date log of data submissions and the number of records contained in each submission, and shall make the log available for inspection upon request by the cabinet.

(b) The cabinet shall, within twenty-four (24) hours of submission, verify by electronic message to each provider, the receipt of the provider's data transmissions and the number of records in each transmission.

(c) A provider shall immediately notify the cabinet of a discrepancy between the provider's data log and a verification notice.

Section 6. Data Submission Timetable for Providers.

(1) Quarterly submissions. Each provider shall submit data at least once for each calendar quarter. A quarterly submission shall:

(a) Contain data that during that quarter became final as established/specified in Section 5(1) of this administrative regulation; and

(b) Be submitted to the cabinet not later than forty-five (45) days after the last day of the quarter.

1. If the 45th day falls on a weekend or holiday, the submission due date shall be the next working day.

2. Calendar quarters shall be January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

(2) Submissions more frequent than quarterly. A provider may submit data after records become final as established/specified in Section 5(1) of this administrative regulation and at a reasonable frequency convenient to a provider for accumulating and submitting batch data.

Section 7. Data Corrections for Providers.

(1) Editing. Data received by the cabinet shall, upon receipt, be edited to ensure completeness and validity of the data. Computer editing routines shall identify for correction every record in which the submitted contents of required fields are not consistent with the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals and the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(2) Submission of corrections. The cabinet shall allow a provider thirty (30) days in which to submit corrected copies of initially submitted data the cabinet identifies as incomplete or invalid as a result of edits.

(a) The thirty (30) days shall begin on the date of the cabinet's notice informing the provider that corrections are required.

(b) A provider shall submit to the cabinet corrected data by electronic transmission within thirty (30) days.

(c) Corrected data submitted to the cabinet shall be uniformly completed and formatted according to the cabinet's coding and transmission specifications included/contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals and the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(3) Percentage error rate.

VOLUME 50, NUMBER 11– May 1, 2024

(a) If editing data upon its initial submission, the cabinet shall identify and return to the provider for correction every record in which one (1) or more of the required data elements fails to pass the edit.

(b) If editing data that a provider has submitted, the cabinet shall check for an error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.

(c) The cabinet may return for further correction, any submission of allegedly corrected data in which the provider fails to achieve a corrected error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.

Section 8. Fines for Noncompliance for Providers.

(1) A provider failing to meet quarterly submission guidelines as established in Sections 6 and 7 of this administrative regulation shall be assessed a fine of \$500 per violation.

(2) The cabinet shall notify a noncompliant provider by certified mail, return receipt requested, of the documentation of the reporting deficiency and the assessment of the fine.

(3) A provider shall have thirty (30) days from the date of receipt of the notification letter to pay the fine, which shall be made payable to the Kentucky State Treasurer and sent by certified mail to the Kentucky Cabinet for Health and Family Services, Office of [Health]Data[and] Analytics, 275 East Main Street 4 W-E, Frankfort, Kentucky 40621.

(4) Fines during a calendar year shall not exceed \$1,500 per provider.

Section 9. Extension or Waiver of Data Submission Timelines.

(1) A provider experiencing extenuating circumstances or a hardship may request from the cabinet, in writing, a data submission extension or waiver.

(a) A provider shall request an extension or waiver from the Office of [Health]Data[and] Analytics on or before the last day of the data reporting period to receive an extension or waiver for that period.

(b) An extension or waiver shall not exceed a continuous period of greater than six (6) months.

(2) The cabinet shall consider the following criteria in determining whether or not to grant an extension or waiver:

(a) Whether or not the request was made due to an event beyond the provider's control, such as a natural disaster, catastrophic event, or theft of necessary equipment or information;

(b) The severity of the event prompting the request; and

(c) Whether or not the provider continues to gather and submit the information necessary for billing.

(3) A provider shall not apply for more than three (3) extensions or waivers during a calendar year.

Section 10. Appeals for Providers.

(1) A provider notified of its noncompliance and assessed a fine pursuant to Section 8(1) of this administrative regulation shall have the right to appeal within thirty (30) days of the date of the notification letter.

(a) If the provider believes the action by the cabinet is unfair, without reason, or unwarranted, and the provider wishes to appeal, the provider shall appeal in writing to the Secretary of the Cabinet for Health and Family Services, 5th Floor, 275 East Main Street, Frankfort, Kentucky 40621.

(b) An appeal shall be filed in accordance with KRS Chapter 13B.

(2) Upon receipt of the appeal, the secretary cabinet or designee shall issue a notice of hearing no later than twenty (20) days before the date of the hearing. The notice of the hearing shall comply with KRS 13B.050. The secretary shall appoint a hearing officer to conduct the hearing in accordance with KRS Chapter 13B.

(3) The hearing officer shall issue a recommendation in accordance with KRS 13B.110. Upon receipt of the recommended order, following consideration of any exceptions filed pursuant to KRS 13B.110(4), the secretary shall enter a final decision pursuant to KRS 13B.120.

Section 11. Working Contacts for Providers.

(1) On or before the last day of the data reporting period, a provider shall report by electronic transmission to the cabinet the names and telephone numbers of a designated contact person and one (1) back-up person to facilitate technical follow-up in data reporting and submission.

(a) A provider's designated contact and back-up shall not be the chief executive officer unless no other person employed by the provider has the requisite technical expertise.

(b) The designated contact shall be the person responsible for review of the provider's data for accuracy prior to the publication by the cabinet.

(2) If the chief executive officer, designated contact person, or back-up person changes during the year, the name and telephone number of the replacing person shall be reported immediately to the cabinet.

Section 12. Required Data Elements for Hospitals. A hospital shall ensure that each record submitted to the cabinet contains the data elements included identified in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

Section 13. Required Data Elements for Ambulatory Facilities. An ambulatory facility shall ensure that each record submitted to the cabinet contains the data elements included identified in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

Section 14. Required Elements for Manuals. "Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals" or "Kentucky Data Coordinator's Manual for Ambulatory Facilities" shall be created and updated by a contracted vendor selected by the cabinet. [Any changes or revisions by the vendor shall require written cabinet approval prior to implementation.] The manual shall be found on the office's Web site[website] at: <https://www.chfs.ky.gov/agencies/ohda/Pages/hfsd.aspx>. [Incorporation by Reference.]

[(1)] [The following material is incorporated by reference:]

[(a)] ["Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals", revised January 1, 2019; and]

[(b)] ["Kentucky Data Coordinator's Manual for Ambulatory Facilities," revised January 1, 2019.]

[(2)] [This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street 4WE, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]

FILED WITH LRC: April 9, 2024

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 Office of Data Analytics (As Amended at ARRS, April 9, 2024)

900 KAR 7:040. Release of public data sets for health facility and services[care/discharge] data.

RELATES TO: KRS 61.870-61.884, 216.2920, 216.2927, 216.2929

STATUTORY AUTHORITY: KRS 194A.050(1), 216.2923(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.2923(2)(b) requires the Cabinet for Health and Family Services to promulgate administrative regulations for its transactions related to KRS 216.2920 to 216.2929. KRS 216.2927 mandates that personally identifying data collected by the Cabinet for Health and Family Services from health care providers not be released to the general public nor be allowed public inspection under KRS 61.870 to 61.884. This administrative regulation establishes the guidelines for distribution and publication of data collected by the cabinet pursuant to 900 KAR 7:030, while maintaining patient confidentiality

VOLUME 50, NUMBER 11– May 1, 2024

and further protecting personally identifying information.

Section 1. Definitions.

- (1) "Cabinet" is defined by KRS 216.2920(2).
- (2) "Data" means the information collected pursuant to 900 KAR 7:030.
- (3) "Encounter-level" means the data record of a single instance of hospitalization, outpatient service, ambulatory surgery, emergency department, or observation stay billing record contained in a data file.
- (4) "Health care provider" is defined by KRS 216.2920(5).
- (5) "Public" means a person or group not directly responsible for the collection, maintenance, custody, or dissemination of data for purposes of this administrative regulation.
- (6) "Report" means a summary or compilation of data disseminated to the public.

Section 2. Encounter-Level Data. Encounter-level data shall be released in an electronic text file and shall include the following data elements:

Encounter-Level Data
Provider ID
Quarter and Year of Discharge
Patient Gender
Patient Age Group
Patient Race or Ethnicity
Patient Resident County
Type of Admission
Source of Admission
All Diagnoses Available for Each Individual Record
All Procedures Available for Each Individual Record
Patient Zip Code
Length of Stay
Total Charges
Discharge Status
Payer 1 (Primary)
Payer 2
Payer 3
Do not resuscitate indicator
Diagnosis present on admission indicator

Section 3. Summary Data.

- (1) The cabinet shall not release data if KRS 216.2927 prohibits its release.
- (2) The cabinet may include the following data elements, in any combination thereof, for encounter-level, aggregate, and summary report formats:
 - (a) Diagnoses and procedures, primary, and any other level;
 - (b) Diagnosis and procedure groupings, including diagnostic related groups, major diagnostic categories, and agency for health care policy and research clinical classification system;
 - (c) Patient gender;
 - (d) Age or age grouping;
 - (e) Discharge status;
 - (f) Payor category, all levels;
 - (g) Charge information, total and ancillary;
 - (h) County of patient residence;
 - (i) County of provider;
 - (j) Ancillary department information;
 - (k) Length of stay, total, and average;
 - (l) External cause of injury;
 - (m) Race or ethnicity; or
 - (n) Mortality rate. Reports including mortality rates shall be adjusted by severity of illness by reputable grouping software, either on a contract basis or by the cabinet.
- (3) Data shall not be withheld from the public or another interested party based solely on an unfavorable profile of a provider or group of providers, if the data is deemed reliable, accurate, and sufficiently free of error, as determined by the cabinet and pursuant to 900 KAR 7:030.

Section 4. Release of Data.

(1) A person or agency shall, as a condition for receiving data from the cabinet, sign an Agreement for Use of Kentucky Health Facility and Services[Claims] Data. A person or agency receiving data shall agree to adhere to the confidentiality requirements established in subsection (2) of this section and KRS 216.2927.

- (2) To protect patient confidentiality:
 - (a) A report or summary of data that contains **cells with a record value of one (1) through ten (10)[consists of five (5) or fewer records]** shall not be released or made public **if the cell's original size can be determined by subtraction from the total.[.]**
 - (b) **If the circumstances described in paragraph subsection (a) of this subsection occur[occurs] then:**
 - 1. **Totals shall also be removed from the table.[.] or**
 - 2. **The exact number of the next smallest cell shall be withheld;**
 - (c)[(b)] A person or agency receiving data shall not redistribute or sell data in the original format;
 - (d)[(e)] A person or agency receiving data shall not redistribute or sell a subset of the data or an aggregate product of the data;
 - (e)[(f)] Distribution of data received by the cabinet shall be approved by the custodial agency prior to receipt of the data;
 - (f)[(e)] The data collected pursuant to 900 KAR 7:030 shall be used only for the purpose of health statistical reporting and analysis or as specified in the user's written request for the data; and
 - (g)[(f)] A user shall not attempt to link the public use data set with an individually identifiable record from another data set.

Section 5. Fees.

- (1) The cabinet shall charge a fee not to exceed \$1,500 for the purchase of a single copy of an annual, public-use data set.
- (2) A public-use data set shall be available for purchase no later than sixty (60) days after the end of the facility reporting period as established in 900 KAR 7:030. Special requests for data shall be prioritized and completed at the discretion of the custodial agency.

Section 6. Incorporation by Reference.

- (1) "Agreement for Use of Kentucky Health Facility and Services[Claims] Data", May 2023[2017], is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Office of Data Analytics[Health Policy], 275 East Main Street 4WE, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. **This material is also available on the office's Web site at <https://www.chfs.ky.gov/agencies/ohda/Pages/hfsd.aspx>**

FILED WITH LRC: April 9, 2024

CONTACT PERSON: Krista Quarles, Policy Advisor, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

**CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(As Amended at ARRS, April 9, 2024)**

902 KAR 20:048. Operation and services; nursing homes.

RELATES TO: KRS 194A.700(1), 194A.705(2)(c), 209.030, 209.032, 216.510-216.525, 216.532, 216.537, 216.540, 216.789, 216.793, 216A.080, 310.021, 310.031, 315.035, 333.030, 21 C.F.R. Part 1317, 29 C.F.R. 1910.1030(d)(2)(vii), 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2 – 1320d-8[216B.010-216B.130, 216B.990]

STATUTORY AUTHORITY: KRS 216B.042[, 216B.105, 311.560(3), (4), 314.011(8), 314.042(8), 320.210(2), EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient

VOLUME 50, NUMBER 11– May 1, 2024

health facilities and health services[and 216B.105 mandate that the Cabinet for Health Services regulate health facilities and health services]. This administrative regulation establishes minimum licensure requirements for the operation of and services provided by[existing] nursing homes.[This administrative regulation does not address the establishment of new nursing homes. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.]

Section 1. Definitions.

(1) "Activities of daily living" is defined by KRS 194A.700(1)[means activities of self-help (e.g., being able to feed, bathe and dress oneself), communication (e.g., being able to place phone calls, write letters and understanding instructions) and socialization (e.g., being able to shop, being considerate of others, working with others and participating in activities)].

(2) "Administrator" means a person who has a license to practice long-term care administration[is licensed as a nursing home administrator] pursuant to KRS 216A.080.

(3) "Certified nutritionist" means a health care professional who is certified pursuant to KRS 310.031.

(4) "Licensed dietitian[dietician]" means a health care professional who is licensed pursuant to KRS 310.021.

(4)(5) "Nursing home" means an establishment located in a permanent building that has resident beds and provides:

(a) Medical services; and

(b) Continuous nursing services["Facility" means a nursing home facility.]

(4) ["License" means an authorization issued by the cabinet for the purpose of operating a nursing home and offering nursing home services].

(5)(6) [(6)] "PRN medications" means medications administered as needed.

(6) ["Qualified dietitian" or "nutritionist" means:]

(a) [A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietitian by ADA; or]

(b) [A person who has a masters degree in nutrition and is a member of ADA or is eligible for registration by ADA; or]

(c) [A person who has a bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.]

(6)(7) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a [patient or the movement of a]portion of a resident's[patient's] body.

Section 2. [Scope of Operations and Services. Nursing homes are establishments with permanent facilities that include inpatient beds. Services provided include medical services, and continuous nursing services. Patients in a nursing home facility require inpatient care but do not currently require inpatient hospital services, and have a variety of medical conditions.]

[Section 3.] Administration and Operation.

(1) Licensee. The licensee shall:

(a) Be legally responsible for:

1. The operation of the facility; and [for]

2. Compliance with federal, state and local laws, and administrative regulations pertaining to the operation of the facility; and

(b) Contract for professional and supportive services not available in the facility as dictated by the needs of each resident.

(2) [Administrator.]

(a) All facilities shall have an administrator who shall:

(a) Be[who is] responsible for the day-to-day operation of the facility; and

(b) Designate one (1) or more staff to act on behalf of the administrator or to perform the administrator's responsibilities in the

administrator's[who shall delegate such responsibility in his] absence.

(b) [The licensee shall contract for professional and supportive services not available in the facility as dictated by the needs of the patient. The contract shall be in writing.]

(3) Administrative records.

(a) The facility shall maintain a resident registry that documents the:

1. Name of each resident;

2. [bound, permanent, chronological patient registry showing]Date of admission; and

3. [; name of patient, and]Date of discharge.

(b) The facility shall [require and]maintain a record of written recommendations or comments from consultants regarding the program and its development on a per visit basis.

(c) The facility shall maintain menu and food purchase records[shall be maintained].

(d)

1. The administrator or administrator's designee shall make a written report of any incident or accident involving a:

a. Resident,[patient (]including a medication error[errors] or drug reaction;

b. [reactions,]Visitor; or

c. Staff member.

2. The report shall:

a. Identify[be made and signed by the administrator or nursing service supervisor, and] any staff member who witnessed the incident; and[-]

b. [The report shall.]Be filed in an incident file.

(4) Policies. The facility shall have[establish] written policies and procedures that govern all services provided by the facility. The [written]policies shall[-]include:

(a) Address resident[patient] care and services, including[-to include] physician, nursing, pharmaceutical[-(including medication stop orders policy)], and residential services;[-]

(b) Require[Adult and child protection. The facility shall have written policies which assure] the reporting of cases of abuse, neglect, or exploitation of adults [and children]pursuant to KRS 209.030, including evidence that all allegations of abuse, neglect, or exploitation shall be thoroughly investigated internally to prevent further potential abuse while the investigation is in progress.[Chapters 209 and 620.]

(c) Prohibit the use of chemical and physical restraints, except as authorized by KRS 216.515(6); and[Use of restraints. The facility shall have a written policy that addresses the use of restraints and a mechanism for monitoring and controlling their use.]

(d) [Missing patient procedures. The facility shall a written procedure to-]Specify in a step-by-step manner the actions that[which] shall be taken by staff [if/when] a resident[patient] is [determined to be-]lost, unaccounted for, or on other unauthorized absence.

(5) [Resident][Patient] [- rights.]Resident[Patient] rights shall be provided for pursuant to KRS 216.510 to 216.525.

(6) Admission.

(a) A resident in a nursing home shall:

1. [Patients shall-]Be admitted only upon the referral of a physician;[-]

2. [Additionally, the facility shall admit only persons who-]Have a [variety of-]medical condition that requires:[conditions and require]

a. Medical services;[-]

b. Continuous nursing[medical] services;[-] and

c. Residential[Inpatient] care, but [do-]not [currently require] inpatient hospital services; and[-]

3. Not have[The facility shall not admit persons whose] care needs that exceed the capability of the facility.

(b)

1. Upon admission, the facility shall obtain the:

a. Resident's[patient's] medical diagnosis;

b. [-] Physician's orders for the care of the resident;[patient] and[the]

c. Transfer form.

2. Within forty-eight (48) hours after admission, the facility shall obtain a medical evaluation from the resident's[patient's] physician

including:

- a. Current medical findings;[;]
- b. Medical history; and
- c. Physical examination.

3. The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital or nursing facility, if done within five (5) days prior to admission.

(c) Upon[Before] admission, the facility shall provide the resident[patient] and a responsible member of the resident's[his] family or other designated representative with written information regarding the facility's policies.[committee shall be informed in writing of the established policies of the facility] including:

- 1. Services offered and charges;[fees, reimbursement,]
- 2. Visitation rights during serious illness;[;]
- 3. Visiting hours; and[;]
- 4. Type of diets offered[and services rendered].

(d) The facility shall [provide and]maintain a system for:

- 1. Identifying each resident's[patient's] personal property; and
- 2. [facilities for]Safekeeping [of his declared]valuables, including assurance that each resident's[Each patient's] clothing and other property is[shall be] reserved for the resident's[his] own use.

(7) Discharge planning. The facility shall have a discharge planning program to **ensure[assure]** the continuity of care for residents who are:

- (a) [patients being]Transferred to another health care facility; or
- (b) [being]Discharged to the home.

(8) Transfer and discharge.

(a) The facility shall:

1. Comply with the requirements of 900 KAR 2:050 upon[when] transferring or discharging a resident; and[residents.]

2. [(a)] [The facility shall]Have written transfer procedures and agreements for the transfer of a resident[patients] to a higher intensity level of care, if indicated[other health care facilities which can provide a level of inpatient care not provided by the facility].

(b) A[Any] facility that[which] does not have a transfer agreement in effect, but has attempted in[which documents a] good faith [attempt]to enter into [such]an agreement shall be considered to be in compliance with the requirements of paragraph (a)2. of this subsection[licensure requirement].

(c) The transfer procedures and agreements shall:

- 1. Specify the responsibilities each party[institution] assumes in the transfer of residents.[patients and]
- 2. Establish responsibility for notifying the other party[institution promptly] of an[the] impending transfer; and[of a patient and]
- 3. Arrange for appropriate and safe transportation of the resident and resident's files.

(d) Except in cases of emergency, the administrator shall:

1. [(b)] Initiate a transfer through the resident's physician if the resident's[When the patient's] condition exceeds the scope of services of the facility;[the patient, upon physician's orders (except in cases of emergency), shall be transferred promptly to a hospital or a skilled nursing facility,] or

2. Contract for services [shall be contracted for]from another community resource to meet a resident's needs.

(e) [(e)] If a resident's condition improves and the resident may be served[When changes and progress occur which would enable the patient to function] in a less [structured and]restrictive environment, [and the less restrictive environment cannot be offered at the facility,]the facility shall offer assistance in making arrangements for the resident[patients] to be transferred to a lower intensity level of care[facilities providing appropriate services].

(f) [(d)] Except in an emergency, the resident, resident's responsible family member, [patient, his next of kin,]or guardian, if any, and the attending physician shall be consulted in advance of the transfer or discharge[of any patient].

(g) [(e)] If a resident transfers[When a transfer is] to another level of care[within the same facility], the complete medical record or a current summary of the resident's medical record shall accompany the resident[thereof shall be transferred with the patient].

(h) [(f)] If the resident[patient] is transferred to another health care facility or home to receive[be cared for by a] home health services[agency], a transfer form shall:

1. Accompany the resident; and[patient. The transfer form shall]

2. Include the following[at least]:

- a. Physician's orders (if available);[;]
- b. Current information regarding the resident's[relative to] diagnosis with a history of any health conditions that require[problems requiring] special care;[;]
- c. A summary of [the course of]prior treatment, special supplies, or equipment needed for the resident's[patient] care;[;] and
- d. Pertinent social information on the resident[patient] and resident's[his] family.

(9) Tuberculosis testing.

(a) All employees of a nursing home[and patients] shall be screened and tested for tuberculosis in accordance with the provisions of 902 KAR 20:205.

(b) Residents of a nursing home shall be screened and tested in accordance with 902 KAR 20:200[, Tuberculosis testing in long term care facilities].

(10) Personnel.

(a) In accordance with KRS 216.532, a nursing home shall not employ or be operated by an individual who is listed on the nurse aide and home health aide abuse registry established by 906 KAR 1:100.

(b) In accordance with KRS 209.032, a nursing home shall not employ or be operated by an individual who is listed on the **vulnerable adult maltreatment[caregiver misconduct]** registry established by 922 KAR 5:120.

(c) A nursing home shall obtain a criminal record check on each applicant for initial employment in accordance with KRS 216.789 and 216.793.

(d) A nursing home may participate in the Kentucky National Background Check Program established by 906 KAR 1:190 to satisfy the background check requirements of paragraphs (a) through (c) of this subsection.

(e) A[Job descriptions.] written job description[descriptions] shall be developed for each category of personnel, including:[to include]

- 1. Qualifications;[;]
- 2. Lines of authority; and
- 3. Specific duty assignments.

(f) [(b)] [Employee records.] Current employee records shall be maintained on each staff member and contain:

- 1. Name and address;
- 2. Verification of[shall include a resume of each employee's] training and experience, including evidence of current licensure,[or] registration, or certification, if applicable;
- 3. Employee[where required by law,] health records;
- 4. Annual performance evaluations; and
- 5. Documentation of compliance with the background check requirements of paragraphs (a) through (c) of this subsection[; records of in-service training and ongoing education, and the employee's name, address and Social Security number].

(g) [(e)] Staffing requirements.

1. Staffing in the facility shall be sufficient in number and qualifications[have adequate personnel] to meet the personal care, nursing care, supervision, and other needs of each resident[the patients] on a twenty-four (24) hour basis.[The number and classification of personnel required shall be based on the number of patients and the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by this administrative regulation.]

2. [When the staff to patient ratio does not meet the needs of the patients, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination.]

[3.] A responsible staff member shall be on-site[on duty] and awake at all times to **ensure[assure]** prompt, appropriate action in cases of injury, illness, fire, or other emergencies.

3.[4.] The use of volunteers shall not be included in the[counted to make up] minimum staffing requirements of this paragraph.

(h) [(f)] The facility shall have a director of nursing [service]who;

- 1. Is a registered nurse and [who]works full time during the day;[;] and[who]

VOLUME 50, NUMBER 11– May 1, 2024

2. Devotes full time to the nursing ~~services~~[service] of the facility.
(i) If the director of nursing has administrative responsibility for the facility, there shall be an assistant director of nursing to ~~ensure~~[ensure] that there ~~is~~[shall be] the equivalent of a full-time director of nursing[service].

(j) The director of nursing shall:

1. Be trained or experienced in areas of nursing service, administration, rehabilitation nursing, psychiatric, or geriatric nursing[.];

2. ~~Be~~[The director of the nursing service shall be] responsible for[.]:

[a.] developing and maintaining:

a. Nursing service objectives[.];

b. Standards of nursing practice[.];

c. Nursing procedure manuals[.]; and

d. Written job descriptions for each level of nursing personnel[.];

3. ~~Recommend~~[recommending] to the administrator the number and levels of nursing personnel to be employed;

4. ~~Participate in staff~~[participating in their] recruitment and selection ~~or recommend~~[and recommending] termination, ~~if~~[of employment when] necessary[.];

5. ~~Assign and supervise~~[Assigning and supervising] all levels of nursing personnel[.];

6. ~~Participate~~[Participating] in planning and budgeting for nursing care[.];

7. ~~Participate~~[Participating] in the development and implementation of ~~resident~~[patient] care policies[.];

8. ~~Coordinate~~[Coordinating] nursing services with other ~~resident~~[patient] care services[.];

9. ~~Plan and conduct~~[Planning and conducting] orientation programs for new nursing personnel and ~~annual~~[continuing] in-service education for all nursing personnel[.];

10. ~~Participate~~[Participating] in the screening of prospective ~~residents~~[patients] in terms of required nursing services;

11. ~~Ensure~~[Assure][and nursing skills available].

[i.] [Assuring] that a written monthly assessment of the ~~resident's~~[patient's] general condition is completed[.];

12. ~~Ensure~~[Assure][assuring] that a nursing care plan ~~is~~[shall be]

a. Established for each ~~resident~~[patient] and[shall be that his plan shall be]

b. Reviewed and modified as necessary[.];

13. ~~Ensure~~[Assure] that all nurses and unlicensed staff[Assuring that registered nurses, licensed practical nurses, nurses-aides and orderlies] are assigned duties consistent with their training and experience; and[.];

14. ~~Ensure~~[Assure][Assuring] that a monthly review of each ~~resident's~~[patient's] medications is completed and ~~notify~~[notifying] the ~~resident's~~ physician ~~if~~[when] changes are appropriate.

(k)[6.] Supervising nurse.

1. The facility shall have a full-time registered nurse who ~~provides or supervises~~ nursing care[shall be provided by or under the direction of a full-time registered nurse].

2. The supervising nurse:

a. May be the director of nursing or the assistant director of nursing;

b. [and] Shall be trained or experienced in the areas of:

(i) Nursing administration and supervision[.];

(ii) Rehabilitative nursing[.];

(iii) Psychiatric nursing; or

(iv) Geriatric nursing[.];

c. [The supervising nurse] Shall make daily rounds to all nursing units that ~~perform~~[performing such] functions that include[as]

(i) Visiting each ~~resident~~[patient]; and

(ii) Reviewing medical records, medication cards, ~~resident~~[patient] care plans, and staff assignments[.]; and

d. ~~If~~[whenever] possible, shall accompany the physician during visits with ~~residents~~[accompanying physicians when visiting patients].

(l)[7.] Charge nurse.

1. There shall be at least one (1) registered nurse or licensed practical nurse on duty at all times who shall ~~be~~[is] responsible for the nursing care of ~~residents~~[patients during her tour of duty].

2. ~~If~~[When] a licensed practical nurse is on duty, a registered nurse shall be on call.

(m)[8.] Pharmacist. The facility shall retain a licensed pharmacist on a full-time, part-time, or consultant basis to direct pharmaceutical services.

(n)[9.] Therapists.

1. ~~a.] If the facility provides~~ rehabilitative services beyond rehabilitative nursing care[are offered, whether] directly or through ~~contract, the~~[cooperative arrangements with agencies that offer therapeutic services, these] services shall be provided or supervised by qualified therapists that[te] include, ~~depending on the service,~~ licensed:

a. Physical therapists;

b. ~~Speech-language~~[speech] pathologists; or[and]

c. Occupational therapists.

2. ~~b.] If~~[When] supervision is less than full time, it shall be:

a. Provided on a planned basis; and[shall be]

b. Frequent enough, in relation to the [staff-]therapist's training and experience, to ~~ensure~~[assure] sufficient review of individual treatment plans and progress.

3. ~~e.] In a facility with an organized rehabilitation service using a multidisciplinary team approach to meet all of a resident's~~[the] needs[~~of the patient,~~] and ~~if~~[where] all ~~rehabilitative~~[therapists'] services are administered under the direct supervision of a physician qualified in physical medicine who ~~determines~~[will determine] the goals and limits of the therapists' work[.]; and prescribes modalities and frequency of therapy, persons with qualifications other than ~~licensed therapists~~[those described in subsection (9)(c)9a of this section] may be assigned duties appropriate to their training and experience.

(o)[40.] Dietary. Each facility shall have a full-time staff person designated by the administrator ~~who shall be~~[.];

1. Responsible for the total food service operation of the facility; and

2. On duty a minimum of thirty-five (35) hours each week.

(p)[41.] Each facility shall designate ~~one (1) or more staff~~[a person for the following areas] who shall[will] be responsible for:

1. ~~a.] Maintaining~~ medical records;

2. ~~b.] Arranging for~~ social services; and

3. ~~e.] Developing and implementing the activities program and therapeutic recreation.~~

(q)[42.] The facility shall ensure that supportive personnel, consultants, assistants, and volunteers ~~are~~[shall be] supervised and [shall] function within the policies and procedures of the facility.

(r)[43.] An employee who contracts a communicable or[Health requirements. No employee contracting an] infectious disease shall:

1. Be immediately excluded from[appear at] work; and

2. Remain off work until cleared as noninfectious by a health care practitioner acting within the practitioner's scope of practice[until the infectious disease can no longer be transmitted].

(s) In-service training.

1. Each facility employee shall receive orientation and annual in-service training that corresponds with the staff member's job duties.

2. Documentation of orientation and in-service training shall be maintained in the employee's record and shall include:

a. Policies regarding the responsibilities of specific job duties;

b. Services provided by the facility;

c. ~~(e)] [Orientation program. The facility shall conduct an orientation program for all new employees to include review of all facility policies (that relate to the duties of their respective jobs), services and] Emergency and disaster procedures;~~

d. Procedures for the reporting of cases of adult abuse, neglect, or exploitation pursuant to KRS 209.030;

e. Residents rights established by KRS 216.510 to 216.525; and[.];

f. ~~(f)] Other~~[In-service training].

1. ~~All employees shall receive in-service] training and ongoing education that[te] correspond with the duties of the staff person's~~[their] respective job[jobs].

2. ~~All nursing personnel shall receive in-service or continuing education programs at least quarterly].~~

(11) Medical records.

(a) The facility ~~administrator or staff member in charge of~~

VOLUME 50, NUMBER 11– May 1, 2024

medical records shall ensure/assure that a complete medical record is kept for each resident with all entries current, dated, and signed.

~~(b) [shall develop and maintain a system of records retention and filing to insure completeness and prompt location of each patient's record. The records shall be held confidential. The records shall be in ink or typed and shall be legible. Each entry shall be dated and signed.]~~ Each record shall include:

1. Identification information, ~~[data]~~ including:
 - a. Resident's ~~[The patient's]~~ name; ~~[-]~~
 - b. Address; ~~[-and]~~
 - c. Social Security, Medicare, and Medical Assistance identification number, if appropriate; ~~[(if available);]~~
 - d. Name, address, and telephone number of the referral agency;
 - e. Name and telephone number of the resident's ~~[personal]~~ physician or health care practitioner;
 - f. Name, address, and telephone number of the resident's responsible family member, guardian, ~~[next of kin]~~ or other responsible person; and
 - g. Date of admission; ~~[-]~~
 2. Admitting medical evaluation ~~as required by subsection (6)(b) of this section; [by a physician including current medical findings, medical history, physical examination and diagnosis. (The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital, skilled nursing facility if done within five (5) days prior to admission.)]~~
 3. Dated and signed orders for medication, diet, ~~or [and]~~ therapeutic services; ~~[-]~~
 4. Physician's progress notes indicating any ~~[describing significant]~~ changes in the resident's ~~[patient's]~~ condition, documented ~~[written]~~ at the time of each visit; ~~[-]~~
 5. Findings and recommendations of consultants; ~~[-]~~
 6. A medication sheet that includes ~~[which contains]~~ the date, time given, name of each medication dosage, name of the prescribing physician or practitioner as authorized by the scope of practice, ~~[advanced practice registered nurse, therapeutically-certified optometrist, or physician assistant,]~~ and name of nurse or certified medication aide ~~[person]~~ who administered the medication; ~~[-]~~
 7. Nurse's notes indicating any changes in the resident's ~~[patient's]~~ condition, including:
 - a. A, ~~[-]~~ actions, responses, attitudes, appetite, etc. Nursing personnel shall make notation of response to medications or, ~~[-]~~ response to treatments; ~~[-]~~
 - b. Mode and frequency of PRN medications administered; ~~[-]~~
 - c. Condition necessitating administration of PRN medication; ~~[-]~~
 - d. Reaction following PRN medication; ~~[-]~~
 - e. Visits from the ~~[by]~~ physician and phone calls to the physician; ~~[-]~~
 - f. Medically prescribed diets; and
 - g. Preventive maintenance or rehabilitative nursing measures; ~~[-]~~
 8. Written assessment of the resident's ~~[patient's]~~ monthly general condition; ~~[-]~~
 9. Documentation ~~[Reports]~~ of dental, laboratory, and x-ray services (if applicable); ~~[-]~~
 10. Changes in the resident's ~~[patient's]~~ response to the activity and therapeutic recreation program; and ~~[-]~~
 11. A discharge summary, signed and dated by the attending physician within one (1) month of discharge from the facility.
- ~~(12)(b) Retention of records. After death or discharge, the completed medical record shall be placed in an inactive file and retained for at least six (6) years. [patient's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.]~~

(13) Confidentiality and Security: Use and Disclosure.

(a) The facility shall maintain the confidentiality and security of resident records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 through 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, and as provided by applicable federal or state law.

~~(b) The facility may use and disclose resident records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 through 1320d-8, and 45 C.F.R. Parts 160 and 164, or as established in this administrative regulation.~~

~~(c) The facility may establish higher levels of confidentiality and security than those required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.~~

Section 3. [Section 4.] Provision of Services.

(1) Physician services.

(a) The health care of each resident ~~[every patient]~~ shall be under the supervision of a physician who, based on an evaluation of the resident's ~~[patient's]~~ immediate and long-term needs, prescribes a planned regimen of medical care that ~~[which]~~ covers:

1. Indicated medications; ~~[-]~~
2. Treatments; ~~[-]~~
3. Rehabilitative services; ~~[-]~~
4. Diet; ~~[-]~~
5. Special procedures recommended for the health and safety of the resident; ~~[patient;]~~
6. Activities; ~~[-]~~
7. Plans for continuing care; and
8. Discharge.

(b)

1. Each resident ~~[Patients]~~ shall be evaluated by a physician at least one (1) time ~~[once]~~ every thirty (30) days for the first sixty (60) days following admission.

2. After ~~[Subsequent to]~~ the 60th day following admission, the physician shall evaluate the resident ~~[patients shall be evaluated by a physician]~~ every sixty (60) days unless justified and documented by the attending physician in the resident's ~~[patient's]~~ medical record.

3. There shall be evidence in the resident's ~~[patient's]~~ medical record of the physician's ~~[physician]~~ visits ~~[to the patient]~~ at appropriate intervals.

(c) There shall be evidence in the resident's ~~[patient's]~~ medical record that the ~~[patient's]~~ attending physician has made arrangements ~~[arrangement]~~ for the medical care of the resident ~~[patient]~~ in the physician's absence.

(d)

1. ~~[Availability of physicians for emergency care.]~~ The facility shall have an arrangement ~~[arrangements]~~ with one (1) or more physicians who shall ~~[will]~~ be available to furnish necessary medical care in case of an emergency if the physician responsible for the care of the resident ~~[patient]~~ is not immediately available.

2. A schedule listing the names and telephone numbers of ~~[these]~~ physicians and the specific days each is ~~[shall be]~~ on call shall be posted in each nursing station.

3. There shall be established procedures for ~~[to be followed in an]~~ emergency situations that ~~[-, which cover]~~

a. Address immediate care of the resident; ~~[patient;]~~

b. Persons to be notified; ~~[-]~~ and

c. Reports to be prepared.

(2) Nursing services.

(a) ~~[Twenty-four (24) hour nursing service.]~~ There shall be twenty-four (24) hour nursing services ~~[service]~~ with a sufficient number of nursing personnel on duty at all times to meet the total needs of residents ~~[patients]~~.

~~(b) Nursing personnel shall include registered nurses, licensed practical nurses, and unlicensed staff members [aides and orderlies].~~

(c) The amount of nursing time available for resident ~~[patient]~~ care shall be exclusive of non-nursing ~~[nonnursing]~~ duties.

(d) Sufficient nursing time shall be available to ensure/assure that each resident ~~[patient]~~:

1. Receives ~~[Shall receive]~~ treatments, medication, and diets as prescribed;

2. Receives ~~[Shall receive]~~ proper care to prevent decubiti and is ~~[shall be]~~ kept comfortable, clean, and well-groomed;

3. Is ~~[Shall be]~~ protected from accident or ~~[and]~~ injury by the adoption of indicated safety measures; and

4. Is ~~[Shall be]~~ treated with kindness and respect.

(3) [(b)] Rehabilitative nursing care.

~~(a) There shall be an active program of rehabilitative nursing care that helps [directed toward assisting] each resident [patient to]~~

VOLUME 50, NUMBER 11– May 1, 2024

achieve and maintain the resident's[his] highest level of self-care and independence.

~~(b)[4.]~~ Rehabilitative nursing care initiated in a[the] hospital shall be continued immediately upon admission to the facility.

~~(c)[2.]~~ Nursing personnel shall:

1. Be taught rehabilitative nursing measures; and
2. Provide rehabilitative nursing care to residents daily, such as shall practice them in their daily care of patients. These measures shall include:

a. Maintaining good body alignment and proper positioning of bedfast residents[patients];

b. Encouraging and assisting bedfast residents[patients] to change positions at least every two (2) hours, day and night, to stimulate circulation and prevent decubiti and deformities;

c. Making every effort to keep residents[patients] active and out of bed for reasonable periods of time, except if[when] contraindicated by physician's orders; ~~and~~

d. Encouraging residents[patients] to achieve independence in activities of daily living by teaching self-care[self-care], transfer, and ambulation activities;

e. ~~(d.)~~ Assisting residents[patients] to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests if necessary; and

f. ~~(e.)~~ Assisting residents[patients] to carry out prescribed physical therapy exercises between visits of the physical therapist.

~~(4)[(e)]~~ Dietary supervision.

~~(a)~~ Nursing personnel shall ensure[assure] that each resident is[patients are] served a diet[diets] as prescribed.

~~(b)~~ A resident in need of ~~[Patients needing]~~ help ~~[in-]eating~~ shall be assisted promptly upon receipt of meals.

~~(c)~~ Food and fluid intake ~~[of patients-]shall~~ be observed and deviations from normal shall be reported to the charge nurse.

~~(d)~~ Persistent unresolved problems shall be reported to the physician.

~~(5)[(d)]~~ Nursing care plan.

~~(a)~~ There shall be a written nursing care plan[plans] for each resident[patient] based on the:

1. Nature of illness; ~~;~~
2. Treatment prescribed; ~~;~~
3. Long and short term goals; and
4. Other pertinent information.

~~(b)[1-]~~ The nursing care plan shall:

1. Be a personalized, daily plan for the resident;~~[individual patients. It shall]~~

2. Indicate the resident's~~[what]~~ nursing care needs, including;~~[is needed,]~~

a. How the nursing care~~[it]~~ can best be accomplished for the resident;

b. The resident's~~[each patient, what are the patients]~~ preferences; ~~;~~~~[what]~~

c. Methods and approaches that are most successful; ~~;~~ and

d. Any~~[what]~~ modifications that are necessary to ensure~~[insure]~~ best results; ~~;~~

~~3.[2.]~~ ~~[Nursing care plans shall]~~ Be available for use by all nursing personnel; and; ~~;~~

~~4.[3.]~~ ~~[Nursing care plans shall]~~ Be reviewed and revised as needed.

~~(c)[4-]~~ Relevant nursing information from a resident's~~[the]~~ nursing care plan shall be included with other medical information if the resident is~~[when patients are]~~ transferred.

~~(6)[(3)]~~ Specialized rehabilitative services.

~~(a)~~ Rehabilitative services shall:

1. Be provided upon written order of the physician;

2. Indicate the~~[which indicates]~~ anticipated goals; and

3. Prescribe~~[prescribes]~~ specific modalities to be used, including~~[and]~~ frequency of physical, speech, or~~[and]~~ occupational therapy services.

~~(b)~~ Therapy services ~~[shall]~~ include:

1. Physical therapy; ~~[which includes:]~~

~~[a.]~~ ~~[Assisting the physician in his evaluation of patients by applying muscle, nerve, joint, and functional ability tests;]~~

~~[b.]~~ ~~[Treating patients to relieve pain, develop or restore functions, and maintain maximum performance, using physical~~

~~means such as exercise, massage, heat, water, light, and electricity.]~~

2. Speech therapy; and~~[which includes:]~~

~~[a.]~~ ~~[Service in speech pathology or audiology;]~~

~~[b.]~~ ~~[Cooperation in the evaluation of patients with speech, hearing, or language disorders;]~~

~~[c.]~~ ~~[Determination and recommendation of appropriate speech and hearing services.]~~

3. Occupational therapy~~[services which include:]~~

~~[a.]~~ ~~[Assisting the physician in his evaluation of the patient's level of function by applying diagnostic and prognostic tests;]~~

~~[b.]~~ ~~[Guiding the patient in his use of therapeutic creative and self-care activities for improving function.]~~

~~(c)~~ Therapists shall collaborate with the facility's medical and nursing staff in developing the resident's~~[patient's]~~ total plan of care.

~~(d)~~ ~~[Ambulation and therapeutic equipment.]~~ Commonly used ambulation and therapeutic equipment necessary for services ~~[offered-]shall~~ be available, including:

1. ~~[for use in the facility such as-]~~ Parallel bars; ~~;~~

2. Hand rails; ~~;~~

3. Wheelchairs; ~~;~~

4. Walkers; ~~;~~

5. Walkerettes; ~~;~~

6. Crutches; and

7. Canes.

~~(e)~~ ~~[The-]Therapists~~ shall advise the administrator concerning the purchase, rental, storage, and maintenance of equipment and supplies.

~~(7)[(4)]~~ Personal care services. Personal care services shall include~~[-]assistance~~ with:

~~(a)~~ Bathing; ~~;~~

~~(b)~~ Shaving; ~~;~~

~~(c)~~ Cleaning and trimming of fingernails and toenails; ~~;~~

~~(d)~~ Cleaning of the mouth and teeth; ~~;~~ and

~~(e)~~ Washing, grooming, and cutting of hair.

~~(8)[(5)]~~ Pharmaceutical services.

~~(a)~~ The facility shall provide pharmaceutical services, including~~[appropriate methods and] procedures that~~ ensure~~[assure]~~ the accurate acquiring, receiving, ~~[for obtaining,]~~ dispensing, and administering of all drugs and biologicals to meet the needs of each resident~~[-, developed with the advice of a licensed pharmacist or a pharmaceutical advisory committee which includes one (1) or more licensed pharmacists].~~

~~(b)~~ ~~[If]~~ The facility shall employ or obtain the services of ~~[has a pharmacy department,] a licensed pharmacist who shall:~~

1. Provide consultation on all aspects of the provision of pharmacy services in the facility;

2. Establish a system of records of receipt and disposition of all controlled drugs in sufficient detail to enable an accurate reconciliation;

3. Determine that drug records are in order; and

4. Ensure that an account of all controlled drugs is maintained and reconciled~~[be employed to administer the department].~~

~~(c)~~ If the facility does not have a pharmacy department, it shall ensure that~~[have provision for promptly obtaining]~~ prescribed drugs and biologicals may be obtained from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy; ~~;~~ pursuant to KRS 315.035.

~~(d)~~ If the facility does not have a pharmacy department, but maintains~~[does maintain]~~ a supply of drugs; ~~;~~

~~[1-] the consultant pharmacist shall:~~

1. Be responsible for the control of all bulk drugs; ~~and]~~

2. Maintain records of the~~[their]~~ receipt and disposition of bulk drugs; and; ~~;~~

3. ~~[2-] [The consultant pharmacist shall]~~ Dispense drugs from the drug supply, properly label them, and make them available to appropriate licensed nursing personnel.

~~[3-] [Provisions shall be made for emergency withdrawal of medications from the drug supply.]~~

~~(e)~~ A facility that stores and administers non-controlled substances in an emergency medication kit (EMK) shall comply with the limitation on the number and quantity of medications established by 201 KAR 2:370, Section 2(4)(b).

VOLUME 50, NUMBER 11– May 1, 2024

(f) A facility that stores and administers non-controlled substances from a long-term care facility drug stock shall comply with the limitation on the number and quantity of medications established by 201 KAR 2:370, Section 2(5)(a)[An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used].

(9)[(f)] Medication services.

(a)[4-] Medication administered to a resident[All medications administered to patients] shall be ordered in writing by the prescribing;

1. Physician; or

2. Health care practitioner as authorized by the scope of practice, advanced practice registered nurse as authorized in KRS 314.011(8) and 314.042(8), therapeutically-certified optometrist in the practice of optometry as defined in KRS 320.210(2), or physician assistant as authorized in KRS 311.560(3) and (4).

(b) If an order is received by telephone, the order[orders] shall be;

1. Recorded in the resident's medical record; and

2. Signed by the physician or other health care practitioner as authorized under the practitioner's scope of practice within fourteen (14) days[given only to a licensed nurse or pharmacist immediately reduced to writing, signed by the nurse and countersigned by the physician, advanced practice registered nurse, therapeutically-certified optometrist, or physician assistant within forty-eight (48) hours].

(c) If an order for medication does not include a specific time limit or a specific number of dosages, the facility shall notify the physician or prescribing practitioner that the medication will be stopped at a certain date unless the medication order is continued[Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy on stop orders].

(d) A registered nurse or pharmacist shall review each resident[s][patient's] medication profile at least monthly.

(e) The prescribing physician or other prescribing practitioner shall review the resident's medication[patient's medical] profile at least every two (2) months.

(f) The facility shall release medications to a resident who is discharged upon[The patient's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the patient's therapeutic regimen is not interrupted. Medications are to be released to patients on discharge only on the] written authorization of the physician or prescribing practitioner.

(10)[2-] Administration of medications.

(a) A licensed health professional may:

1. Administer medications as authorized under the professional's scope of practice; or

2. Delegate medication administration tasks in accordance with paragraph (b) of this subsection.

(b) A facility may allow an unlicensed staff person to administer medication in accordance with KRS 194A.705(2)(c) and 201 KAR 20:700 as follows:

1. Medication administration is delegated to the unlicensed staff person by an available nurse;

2. If administration of oral or topical medication is delegated, the unlicensed staff person shall have a:

a. Certified medication aide (CMA) I credential from a training and skills competency evaluation program approved by the Kentucky Board of Nursing (KBN); or

b. Kentucky medication aide credential from the Kentucky Community and Technical College System; and

3. If administration of a preloaded insulin injection is delegated, the unlicensed staff person shall have a CMA II credential from a training and skills competency evaluation program approved by KBN[All medications shall be administered by licensed medical or nursing personnel in accordance with KRS 311.530 to 311.620 and Chapter 314 or by personnel who have completed a state approved training program from a state approved training provider. The administration of oral and topical medicines by certified medicine technicians shall be under the supervision of licensed medical or

nursing personnel].

(c) An intramuscular injection[injections] shall be administered by a licensed nurse or [a-]physician.

(d) If an intravenous injection is[injections are] necessary, the injection[they] shall be administered by a licensed physician or registered nurse.

(e) Each medication[dose] administered shall be recorded in the resident's medical record.

(f)[a-] The nursing station shall have readily available items necessary for the proper administration of medications.

(g)[b-] The facility shall ensure that[In administering medications,] medication cards or another[other] appropriate system is[state approved systems shall be] used and checked against the [physician's] orders of a physician or practitioner acting under the scope of practice.

(h)[c-] A medication that is[Medications] prescribed for one (1) resident[patient] shall not be administered to any other resident[patient].

(i)[d-] A resident shall not be allowed to self-administer a medication[Self-administration of medications by patients shall not be permitted] except;

1. On special order of the resident's[patient's] physician or prescribing practitioner; or

2. In a predischARGE program under the supervision of a licensed nurse.

(j) The facility shall ensure[assure] that a medication error or drug reaction is;

1.[e-] [Medication errors and drug reactions shall be] Immediately reported to the resident's[patient's] physician or practitioner; and

2. Documented in the resident's[an entry thereof made in the patient's] medical record and in[as well as on] an incident report.

(k)[f-] [Up-to-date medication reference texts and sources of information shall be provided for use by the nursing staff (e.g., the American Hospital Formulary Service of the American Society of Hospital Pharmacists, Physicians Desk Reference or other suitable references).]

[3-] [Labeling and storing medications.]

[a-] All resident medications shall be plainly labeled with the;

1. Resident's[patient's] name;[-, the]

2. Name of the drug;[-]

3. Strength;[-]

4. Name of the pharmacy;[-]

5. Prescription number;[-]

6. Date;[-]

7. Prescriber's[physician] name; and[-]

8. Caution statements and directions for use, unless a[except where accepted] modified unit dose distribution system is[systems conforming to federal and state laws are] used.

(l) All[The] medications [of each patient shall be -]kept by the facility shall be:[and]

1. Stored in their original containers; and

2. [Transferring between containers shall be prohibited. All medicines kept by the facility shall be -]Kept in a locked place.

(m) The facility shall ensure that:

1. All[- and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key-] medications requiring refrigeration are[shall be] kept in a separate locked box of adequate size in the refrigerator in the medication area;[-]

2. Drugs for external use are[shall be] stored separately from those administered by mouth and injection;[-]

3. [Provisions shall also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with federal and state laws and regulations.]

[b-] Medication containers having soiled, damaged, incomplete, illegible, or makeshift labels are[shall be] returned to the issuing pharmacist or pharmacy for relabeling or disposal;[-]

4. Containers with[having] no labels are appropriately[shall be] destroyed[- in accordance with state and federal laws-];

5.[c-] Cabinets are well-lighted[shall be well-lighted] and of sufficient size to permit storage without crowding; and[-]

6.[d-] Expired medications and medications no longer in use

VOLUME 50, NUMBER 11– May 1, 2024

~~are[shall be] disposed of or destroyed appropriately[in accordance with federal and state laws and regulations.]~~

~~[e.] [Medications having an expiration date shall be removed from usage and properly disposed of after such date].~~

~~(11)[4.] Controlled substances.~~

~~(a) A nurse may delegate administration of a regularly scheduled controlled substance to a CMA if the medication has been prescribed and labeled in a container for a specific resident. for example[~~(e.g.,)~~] in a locked box in a locked cabinet, and keys or access to the locked box and locked cabinet shall be accessible to designated staff only[~~]~~.~~

~~(b) A nurse may delegate administration of a regularly scheduled controlled substance to a CMA if the medication has been prescribed and labeled in a container for a specific resident.~~

~~(c) For a controlled substance ordered on a PRN basis, a nurse may delegate administration to a CMA if:~~

~~1. The medication has been prescribed and labeled in a container for a specific resident;~~

~~2. The nurse assesses the resident, in person or virtually, prior to administration of the PRN controlled substance;~~

~~3. The nurse assesses the resident, in person or virtually, following the administration of the PRN controlled substance; and~~

~~4. The nurse documents administration of the PRN controlled substance by a CMA in the resident's record.~~

~~(d) There shall be a controlled substances bound record book with numbered pages that includes:~~[, in which is recorded]~~~~

~~1. The name of the resident:~~[patient, the]~~~~

~~2. Date, time, kind, dosage, ~~[balance remaining]~~ and method of administration of each~~[all]~~ controlled substance~~[substances]~~; ~~[the]~~~~

~~3. Name of the physician or practitioner who prescribed the medications; and~~

~~4. Name of the:~~

~~a. Nurse or CMA~~[the name of the nurse]~~ who administered the controlled substance;~~[it,]~~ or~~

~~b. Staff member who supervised the self-administration.~~

~~(e) A staff member with access to controlled substances~~[In addition, there]~~ shall be responsible for maintaining a recorded and signed:~~

~~1. Schedule II controlled substances count daily;~~[,]~~ and~~

~~2. Schedule III, IV, and V controlled substances count at least one (1) time~~[once]~~ per week~~[by those persons who have access to controlled substances]~~.~~[All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with 21 C.F.R. 1307.21.]~~~~

~~(f) All expired or unused controlled substances shall be disposed of, or destroyed in accordance with 21 C.F.R. Part 1317 no later than thirty (30) days:~~

~~1. After expiration of the medication; or~~

~~2. From the date the medication was discontinued.~~

~~(g) If controlled substances are destroyed on-site:~~

~~1. The method of destruction shall render the drug unavailable and unusable;~~

~~2. The administrator or staff person designated by the administrator shall be responsible for destroying the controlled substances with at least one (1) witness present; and~~

~~3. A readily retrievable record of the destroyed controlled substances shall be maintained for a minimum of eighteen (18) months from the date of destruction and contain the:~~

~~a. Date of destruction;~~

~~b. Resident name;~~

~~c. Drug name;~~

~~d. Drug strength;~~

~~e. Quantity;~~

~~f. Method of destruction;~~

~~g. Name of the person responsible for the destruction; and~~

~~h. Name of the witness.~~

~~(h) A facility that stores and administers controlled substances in an emergency medication kit (EMK) shall comply with the:~~

~~1. Requirements for storage and administration established by 902 KAR 55:070, Section 2(2), (5), and (7) through (9); and~~

~~2. Limitation on the number and quantity of medications established by 902 KAR 55:070, Section 2(6).~~

~~(12)[5.] Use of restraints.~~

~~(a)[a-] Chemical and physical restraints~~[No restraints]~~ shall not be used, except as authorized~~[permitted]~~ by KRS 216.515(6).~~

~~(b)[b-] Restraints that require lock and key shall not be used.~~

~~(c)[e-] Emergency use of a restraint~~[Restraints]~~ shall be applied only by appropriately trained personnel if:~~

~~1. A resident poses an imminent risk of harm to self or others; and~~

~~2. The emergency restraint is the least restrictive intervention to achieve safety~~[safety]~~.~~

~~(d)[d-] Restraints shall not be used as:~~[a]~~~~

~~1. Punishment;~~[, as]~~~~

~~2. Discipline;~~[, as]~~~~

~~3. A convenience for ~~[the]~~ staff;~~[,]~~ or~~

~~4. Retaliation~~[as a mechanism to produce regression]~~.~~

~~(13)[6-] Infection control~~[and communicable diseases]~~.~~

~~(a)[a-] There shall be written infection control policies that address~~[,]~~ which are consistent with the Centers for Disease Control guidelines including:~~

~~1.~~[(#)] [Policies which address] The prevention of disease transmission; and[to and from patients, visitors and employees, including: universal blood and body fluid precautions, precautions for infections which can be transmitted by the airborne route, and work restrictions for employees with infectious diseases.]~~~~

~~2.~~[(#)] [Policies which address the] Cleaning, disinfection, and sterilization methods used for equipment and the environment.~~~~

~~(b)[b-] The facility shall provide in-service education programs on the cause, effect, transmission, prevention, and elimination of infections for all personnel responsible for direct ~~[patient]~~ care.~~

~~(14)[e-] Sharp wastes.~~

~~(a)[(#)] Sharp wastes~~[, including needles, scalpels, razors, or other sharp instruments used for patient care procedures,]~~ shall be segregated from other wastes and placed in puncture-resistant~~[puncture resistant]~~ containers immediately after use.~~

~~(b)[(##)] A needle or other contaminated sharp~~[Needles]~~ shall not be recapped~~[by hand]~~, purposely bent,~~[or]~~ broken, or otherwise manipulated by hand as a means of disposal, except as permitted by Centers for Disease Control and Occupational Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(d)(2)(vii).~~

~~(c)[(###)] A sharp waste container shall~~[The containers of sharp wastes shall either] be incinerated on or off-site~~[off site]~~, or be rendered nonhazardous~~[by a technology of equal or superior efficacy, which is approved by both the Cabinet for Health Services and the Natural Resources and Environmental Protection Cabinet]~~.~~~~

~~(d) Any nondisposable sharps shall be placed in a hard walled container for transport to a processing area for decontamination.~~

~~(15)[d-] Disposable waste.~~

~~(a)[(##)] All Disposable waste shall be:~~

~~1. Placed in a suitable bag~~[bags]~~ or closed container~~[containers]~~ so as to prevent leakage or spillage;~~[,]~~ and~~[shall be]~~~~

~~2. Handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.~~

~~(b)[(###)] The facility shall establish specific written policies regarding handling and disposal of all waste material~~[wastes]~~.~~

~~[(###)] ~~[The following wastes shall be disposed of by incineration, autoclaved before disposal, or carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.]~~~~

~~[(iv)] ~~[Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment regulations.]~~~~

~~(16) Infectious or communicable diseases.~~

~~(a)[e-] An individual~~[Patients]~~ infected with one (1) of the following diseases shall not be admitted to the facility:~~

~~1. Anthrax;~~[,]~~~~

~~2. Campylobacteriosis;~~[,]~~~~

~~3. Cholera;~~[,]~~~~

~~4. Diphtheria;~~[,]~~~~

~~5. Hepatitis A;~~[,]~~~~

~~6. Measles;~~[,]~~~~

~~7. Pertussis;~~[,]~~~~

~~8. Plague;~~[,]~~~~

~~9. Poliomyelitis;~~[,]~~~~

~~10. Rabies (human);~~[,]~~~~

~~11. Rubella;~~[,]~~~~

~~12. Salmonellosis;~~[,]~~~~

~~13. Shigellosis;~~[,]~~~~

VOLUME 50, NUMBER 11– May 1, 2024

14. Typhoid fever;[;]
15. Yersiniosis;[;]
16. Brucellosis;[;]
17. Giardiasis;[;]
18. Leprosy;[;]
19. Psittacosis;[;]
20. Q fever;[;]
21. Tularemia; or[, and]
22. Typhus.

(b)[f.] A facility may admit a noninfectious[~~(noninfectious)~~] tuberculosis resident in accordance with 902 KAR 20:200, Section 4 or Section 8(5)[~~patient under continuing medical supervision for his tuberculosis disease~~].

(c)[g.] A resident with symptoms or an abnormal chest x-ray consistent with tuberculosis shall be isolated and evaluated in accordance with 902 KAR 20:200, Section 6(4)[~~Patients with active tuberculosis may be admitted to the facility whose isolation facilities and procedures have been specifically approved by the cabinet~~].

(d)[h.] If a resident[, after admission, a patient] is suspected of having a communicable disease that would endanger the health and welfare of other residents[~~patients~~], the administrator or administrator's designee shall:

1. Contact[~~assure that~~] a physician;[~~is contacted~~] and
2. Ensure that appropriate measures are taken on behalf of the resident, other residents, and staff[~~patient with the communicable disease and the other patients~~].

(17) Laboratory, radiology, and other diagnostic services.

(a) Laboratory services.

1. The facility shall provide or obtain laboratory services to meet the needs of its residents from a laboratory that is:

- a. Part of a hospital; or
- b. Licensed in accordance with KRS 333.030.

2. The facility shall provide or obtain laboratory services if ordered by a physician or other health care practitioner acting within the practitioner's scope of practice.

3. The facility shall:

- a. Assist the resident in making transportation arrangements to and from the source of service, if applicable; and
- b. File in the resident's record a copy of each laboratory report with the:

- (i) Date of the service; and
- (ii) Name and address of the testing laboratory.

(b) Radiology and other diagnostic services. The facility shall:

1. Provide or obtain radiology and other diagnostic services if ordered by a physician or other health care practitioner acting within the practitioner's scope of practice;

2. Assist the resident in making transportation arrangements to and from the source of service, if applicable; and

3. File in the resident's record a copy of the signed and dated report of x-ray and other diagnostic services.

(18)[(6)] [~~The facility shall have provisions for obtaining required clinical laboratory, x-ray and other diagnostic services. Laboratory services may be obtained from a laboratory which is part of a licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any administrative regulations promulgated thereunder. Radiology services shall be obtained from a service licensed or registered pursuant to KRS 211.842 to 211.852 and any administrative regulations promulgated thereunder. If the facility provides its own diagnostic services, the service shall meet the applicable laws and administrative regulations. All diagnostic services shall be provided only on the written order of a physician, advanced practice registered nurse as authorized in KRS 314.011(8) and 314.042(8), therapeutically-certified optometrist in the practice of optometry as defined in KRS 320.210(2), or physician assistant as authorized in KRS 311.560(3) and (4). The physician, advanced practice registered nurse, therapeutically-certified optometrist, or physician assistant shall be notified promptly of the test results. Arrangements shall be made for the transportation of patients, if necessary, to and from the source of service. Simple tests, such as those customarily done by nursing personnel for diabetic patients may be done in the facility. All reports shall be included in the medical record.~~]

(7) Dental services.

(a) The facility shall assist residents in obtaining[~~patients to obtain~~] regular and emergency dental care.

- (b) A[~~Provision for dental care: patients shall be assisted to obtain regular and emergency dental care. An advisory~~] dentist shall:
1. Provide consultation;[;]
 2. Participate in in-service education;[;]
 3. Recommend policies concerning oral hygiene;[;] and[~~shall~~]
 4. Be available in case of emergency.

(c) If[~~The facility, when~~] necessary, the facility shall arrange for the resident[~~patient~~] to be transported to the dentist's office.

(d) Nursing personnel shall assist the resident with carrying[~~patient to carry~~] out the dentist's recommendations.

(19)[(8)] Social services. [~~Provision for medically-related social needs. The medically-related social needs of the patient shall be identified, and services provided to meet them, in admission of the patient, during his treatment and care in the facility, and in planning for his discharge.~~]

(a) The facility shall provide social services to:

1. Meet the medically-related social service needs of each resident;
2. Meet the physical, mental, and psycho-social well-being of each resident; and
3. Assist each resident in attaining or maintaining the highest practicable level of functioning.

(b)[4-] Upon admission, the facility shall evaluate a resident's need for social services[~~As a part of the process of evaluating a patient's need for services in a facility and whether the facility can offer appropriate care, emotional and social factors shall be considered in relation to medical and nursing requirements.~~]

[2-] [As soon as possible after admission, there shall be an evaluation, based on medical, nursing and social factors, of the probable duration of the patient's need for care and a plan shall be formulated and recorded for providing such care].

(c)[3-] If the resident appears eligible for financial assistance necessary to remain in the facility, the facility shall make a referral for a full evaluation of need[~~Where there are indications that financial help will be needed, arrangements shall be made promptly for referral to an appropriate agency~~].

(d) The facility shall take appropriate action to obtain any needed social services to help resolve issues related to a resident's:

- 1.[4-] Illness;[~~Social and emotional factors related to the patient's illness, to his~~]
2. Response to treatment; or[~~and to his~~]
3. Adjustment to care in the facility[~~shall be recognized and appropriate action shall be taken when necessary to obtain casework services to assist in resolving problems in these areas~~].

(e)[5-] The facility shall consider factors such as a resident's[~~Knowledge of the patient's~~] home situation, financial resources, community resources[~~available to assist him~~], and [pertinent-]information related to the resident's[~~his~~] medical and nursing care needs in any[~~requirements shall be used in making~~] decisions regarding [his-]discharge from the facility.

(f)[(b)] [Confidentiality of social data. Pertinent social data, and information about personal and family problems related to the patient's illness and care shall be made available only to the attending physician, appropriate members of the nursing staff, and other key personnel who are directly involved in the patient's care, or to recognized health or welfare agencies. There shall be appropriate policies and procedures for assuring the confidentiality of such information. 1-] The staff member responsible for coordinating social services shall:

1. Participate in clinical staff conferences;[~~and~~]
2. Confer with the attending physician and nurses[at intervals] during the resident's[~~patient's~~] stay in the facility; and[, and there shall be evidence in the record of such conferences.]

[2-] [The staff member and nurses responsible for the patient's care shall confer frequently and there shall be evidence of effective working relationships between them.]

3. Include[Records of pertinent social information and of action taken to meet social needs shall be maintained for each patient.] signed social service summaries in the resident's[~~shall be entered promptly in the patient's~~] medical record[~~for the benefit of all staff involved in the care of the patient~~].

(20)(9) ~~Resident~~ Patient activities.

(a) The facility shall provide activities as an adjunct to the active treatment program.

(b) Activities shall:

1. Be suited to the needs and interests of residents; and

2. [Patients shall be provided as an important adjunct to the active treatment program and to] Encourage restoration of [the] self-care and resumption of normal activities [Provision shall be made for purposeful activities which are suited to the needs and interests of patients].

(c)(a) The activity leader shall use [to the fullest possible extent,] community, social, and recreational opportunities to the fullest extent possible.

(d)(b) Residents [Patients] shall be encouraged, but not forced to participate in [such] activities.

(e) The facility shall provide suitable activities for residents who are [provided for patients] unable to leave their rooms.

(f)(c) The facility shall permit, and assist if needed, residents [Patients] who are able and [who] wish to [do so shall be assisted to] attend religious services.

(g)(d) The facility shall honor a resident's [Patients] request to see their clergymen or church leader and provide [shall be honored and] space [shall be provided] for privacy during visits.

(h)(e) The facility shall ~~ensure~~ assure that visiting hours are established in accordance with KRS 216.537 and 216.540 [shall be flexible and posted to permit and encourage visiting friends and relatives].

(i)(f) The facility shall make available a variety of supplies and equipment adequate to satisfy the individual interests of residents, such as:

1. [patients. Examples of such supplies and equipment are: Books and magazines;]

2. Daily newspapers;]

3. Games;]

4. Stationery;]

5. Radio and television; and

6. Craft and hobby supplies [the like].

(21)(4) Transportation.

(a) If transportation of residents [patients] is provided by the facility to community agencies or other activities, the following shall apply:

1. Special provision shall be made for each resident [patients] who uses a wheelchair [use wheelchairs].

2. An escort or assistant to the driver shall accompany a resident or residents [be provided in transporting patients to and from the facility] if necessary, to help ensure [for the patient's] safety during transport.

(b) The facility shall arrange for appropriate transportation in case of a medical emergency [emergencies].

(22)(11) Dietary [Residential] services.

(a) [Dietary services.] The facility shall provide or contract for food services [service] to meet the dietary needs of the residents [patients] including:

1. Modified diets; or

2. Dietary restrictions as prescribed by the attending physician.

(b)

1. If [When] a facility contracts for food services [service] with an outside food management company, the company shall provide a licensed dietitian [qualified] [dietician or certified nutritionist] on a full-time, part-time, or consultant basis to the facility.

2. The licensed dietitian [qualified] [dietician or certified nutritionist] shall make recommendations to [have continuing liaison with] the facility's medical and nursing staff [of the facility for recommendations] on dietetic policies affecting resident [patient] care.

3. The food management company shall comply with the [all of the appropriate requirements for] dietary services requirements of this subsection [in this administrative regulation].

(c)(4.) [Therapeutic diets.] If the facility provides therapeutic diets and the staff member responsible for the food services is not a licensed dietitian [dietician or certified nutritionist], the responsible staff person shall consult with a licensed dietitian [designated person responsible for food service is not a qualified] [dietician or certified nutritionist] [consultation by a qualified dietician or qualified nutritionist shall be provided].

(d) The facility shall:

1. [2.] Have [Dietary staffing. There shall be] sufficient number of food service personnel;

2. Ensure that the food service staff schedules are [employed and their working hours, schedules of hours, on duty and days off shall be] posted; and [.]

3. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety, or time required for regular dietary assignments.

(e)(3.) Menu planning.

1. [a.] Menus shall be planned, written, and rotated to avoid repetition.

2. The facility shall meet the nutrition needs of residents in accordance with a [shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with] physician's orders.

3. Except as established in subparagraph 5. of this paragraph, [b.] meals shall correspond with the posted menu.

4. Menus shall [must] be planned and posted one (1) week in advance.

5. If [When] changes in the menu are necessary; [.]

a. Substitutions shall provide equal nutritive value; [and]

b. The changes shall be recorded on the menu; and [all]

c. Menus shall be kept on file for at least thirty (30) days.

6. [c.] [The daily menu shall include daily diet for all modified diets served within the facility based on an approved diet manual. The diet manual shall be a current manual with copies available in the dietary department, that has the approval of the professional staff of the facility. The diet manual shall indicate nutritional deficiencies of any diet. The dietician shall correlate and integrate the dietary aspects of the patient care with the patient and patient's chart through such methods as patient instruction, recording diet histories and participation in rounds and conference.]

[4.] Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well balanced, palatable meals.

b. A record [Records] of food purchased for preparation shall be on file for thirty (30) days.

c. [b.] Food shall be prepared with consideration for any individual dietary requirement.

d. Modified diets, nutrient concentrates, and supplements shall be given only on the written orders of a:

(i) Physician; [.]

(ii) Advanced practice registered nurse; [as authorized in KRS 314.041(8) and 314.042(8);] or

(iii) Physician assistant [as authorized in KRS 311.560(3) and (4)].

e. [c.] At least three (3) meals per day shall be served with not more than a fourteen (14) [fifteen (15)] hour span between the substantial evening meal and breakfast.

f. Between-meal snacks and beverages, including [to include] an evening snack before bedtime, shall be available at all times for each resident, unless [offered to all patients. Adjustments shall be made when] medically contraindicated as documented by a physician in the resident's record [indicated].

g. [d.] Foods shall be:

(i) Prepared by methods that conserve nutritive value, flavor, and appearance; and

(ii) [shall be attractively] Served at the proper temperature [temperatures,] and in a form to meet [the] individual needs.

h. A file of tested recipes, adjusted to appropriate yield, shall be maintained.

i. Food shall be cut, chopped, or ground to meet individual needs.

j. If a resident [patient] refuses foods served, nutritional substitutions shall be offered.

k. [e.] All opened containers or left over food items shall be covered and dated when refrigerated.

7. [5.] Serving of food.

a. If a resident [When a patient] cannot be served in the dining room, trays shall:

(i) Be provided for bedfast residents [patients]; and [shall]

(ii) Rest on firm supports such as overbed tables.

VOLUME 50, NUMBER 11– May 1, 2024

b. Sturdy tray stands of proper height shall be provided for residents[patients] able to be out of bed.

c.[a.] Direct care staff shall be responsible for correctly positioning a resident to eat meals served on a tray[Correct positioning of the patient to receive his tray shall be the responsibility of the direct patient care staff].

d. A resident who requires help with [Patients requiring help in] eating shall be assisted within a reasonable length of time.

e.[b.] The facility shall provide adaptive feeding equipment if needed by a resident[self-help devices shall be provided to contribute to the patient's independence in eating].

f.[6.] Food services shall be provided in accordance with [Sanitation. All facilities shall comply with all applicable provisions of KRS 219.011 to KRS 219.084 and] 902 KAR 45:005.

(23)[(b)] Housekeeping and maintenance services.

(a)[1-] The facility shall:

1. Maintain a clean and safe facility free of unpleasant odors; and
2. Ensure that [-] odors are [shall be] eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans, and other [obvious] sources.

(b) The facility shall:

1.[2-] Have available at all times an adequate supply of clean linen essential to the proper care and comfort of residents;

2. Ensure that [shall be on hand at all times.] soiled clothing and linens [shall] receive immediate attention and [shall] not be allowed to accumulate;

3. Ensure that [-] clothing and linens [or bedding] used by one (1) resident [patient] shall not be used by another resident unless [until] it has been laundered or dry cleaned; and [-]

4.[3-] Ensure that soiled clothing and linens [linen] shall be:

a. Placed in washable or disposable containers; [-]

b. Transported in a sanitary manner; and

c. Stored in separate, well-ventilated areas in a manner to prevent contamination and odors.

(c) Equipment or areas used to transport or store soiled linen shall not be used for handling or storing of clean linen.

(d)[4-] Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area.

(e) Hand-washing facilities with hot and cold water, soap dispenser, and paper towels shall be provided in the laundry area.

(f)[5-] Clean linen shall be sorted, dried, ironed, folded, transported, stored, and distributed in a sanitary manner.

(g)[6-] Clean linen shall be stored in clean linen closets on each floor, close to the nurses' station.

(h)[7-] Personal laundry [of patients or staff] shall be:

1. Collected, transported, sorted, washed, and dried in a sanitary manner; [-] separate from bed linens; [-]

2.[8-] [Patients' personal clothing shall be] Laundered as often as [is] necessary; [-]

3. [Laundering of patients' personal clothing shall be] The responsibility of the facility unless the resident or resident's [patient or the patient's] family accepts this responsibility; and [-]

4. [Patient's personal clothing laundered by or through the facility shall be] Marked or labeled to identify the resident so that it may be [patient owner and] returned to the correct resident [patient].

(24)[9-] Maintenance. The premises shall be well kept and in good repair as established in this subsection. [-] Requirements shall include: [-]

(a)[a-] The facility shall ensure [insure] that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps, and fences are in good repair.

(b)[b-] The interior of the building, including walls, ceilings, floors, windows, window coverings, doors, plumbing, and electrical fixtures, shall be in good repair. Windows and doors shall be screened.

(c)[c-] Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

(d)[d-] A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

(25)[(e)] Room accommodations.

(a) A facility shall provide each resident with:

1. A bed that is [Each patient shall be provided a standard size bed or the equivalent] at least thirty-six (36) inches wide;

2. [-] equipped with substantial springs, [-] A clean, comfortable mattress with a support mechanism; [-]

3. A mattress cover; [-]

4. Two (2) sheets and a pillow; [-] and [-such]

5. Bed covering [as is required] to keep the resident [patients] comfortable.

(b) Each bed [Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by patients] shall be placed so that a resident does not [no patient may] experience discomfort because of proximity to a radiator, heat outlet, or [radiators, heat outlets, or by] exposure to drafts.

(c)[2-] The facility shall provide:

1. Window coverings; [-]

2. Bedside tables with reading lamps, [-] [if appropriate;] [-]

3. Comfortable chairs; [-]

4. A chest or dresser with a mirror for each resident;

5. [dressers with mirrors,] A night light; [-] and

6. Storage space for clothing and other possessions.

(d)[3-] A resident [Patients] shall not be housed in a room, detached building, or other enclosure that has not been previously inspected and approved for residential use by the Office of Inspector General and the Department of Housing, Buildings and Construction [unapproved rooms or unapproved detached buildings].

(e)[4-] Basement rooms shall not be used for sleeping rooms for residents [patients].

(f)[5-] Residents [Patients] may have personal items and furniture, if [when it is physically] feasible; [-]

[6-] [There shall be a sufficient number of tables provided that can be rolled over a patient's bed or be placed next to a bed to serve patients who cannot eat in the dining room].

(26) Living and dining area.

(a)[7-] Each living room or lounge area and recreation area shall have an adequate number of:

1. Reading lamps; [-] and

2. Tables and chairs or settees of sound construction and satisfactory design.

(b)[8-] Dining room furnishings shall be adequate in number, well constructed, and of satisfactory design for the residents [patients].

[9-] [Each patient shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other patients.]

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**CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(As Amended at ARRS, April 9, 2024)**

902 KAR 20:086. Operation and services; intermediate care facilities for individuals with intellectual disabilities [the mentally retarded and developmentally disabled].

RELATES TO: KRS 194A.705(2)(c), 209.030, 209.032, 216.510 – 216.525, 216.532, 216.789, 216.793, 216A.080, 310.031, 315.035, 620.030, 21 C.F.R. Part 1317, 29 C.F.R. 1910.1030(d)(2)(vii), 34 C.F.R. 300.8(c)(6), 42 C.F.R. 483.400 – 483.480, 45 C.F.R. 1325.3, [45 C.F.R.] Parts 160, 164, 42 U.S.C. 1320d-2 – 1320d-8 [216B.010-216B.131, 216B.990(1), (2), 222.240 et. seq.]

STATUTORY AUTHORITY: KRS 216B.042[-], 216B.105]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure

standards and procedures to ensure safe, adequate, and efficient [mandates that the Kentucky Cabinet for Human Resources regulate] health facilities and health services. This administrative regulation establishes minimum [provides] licensure requirements for the operation and services provided by intermediate care facilities for individuals with intellectual disabilities (ICF/IID) [of intermediate care facilities for the mentally retarded/developmentally disabled (MR/DD)].

Section 1. Definitions.

(1) "Active treatment" means the delivery of resident-specific specialized and generic training, treatment, health services, and related services directed toward the:

(a) Acquisition of behaviors necessary for the resident to function with as much self-determination and independence as possible; and

(b) Prevention or deceleration of regression or loss of current optimal functional status [daily participation, in accordance with an individual plan of care and service, in activities, experiences, or therapy which are part of a professionally developed and supervised program of health, social and/or rehabilitative services offered by or procured by contract or other written agreement by the institution for its residents.]

(2) "Administrator" means a person who has a license to practice long-term care administration [is licensed as a nursing home administrator] pursuant to KRS 216A.080.

(3) "Aversive stimuli" means things or events that the resident finds unpleasant or painful that are used to immediately discourage undesired behavior.

(4) **"Certified nutritionist" means a health care professional who is certified pursuant to KRS 310.031.**

~~(5)~~ "Developmental disability" is defined by 45 C.F.R. 1325.3 [means a severe chronic disability which is attributable to a mental or physical impairment or combination of mental and physical impairments manifested before the person attains the age of twenty-two (22) and is likely to continue indefinitely. This disability results in substantial limitations in three (3) or more areas of major life activity including self-care, receptive and expressive language, learning, self-direction, mobility, capacity for independent living and economic sufficiency and requires individually planned and coordinated services of a lifelong or extended duration].

~~(5)(6)~~ [(6)] "Developmental nursing services" means treatment of an individual's [a person's developmental] needs by designing interventions to modify the rate or [and/or] direction of the individual's development [especially] in the areas of:

(a) Self-help skills; [;]

(b) Personal hygiene; [;] and

(c) Sex education [while also meeting his physical and medical needs.]

[(6)] ["Facility" means an intermediate care facility for the mentally retarded and the developmentally disabled (MR/DD).]

[(7)] ["Induration" means a firm area in the skin which develops as a reaction to injected tuberculosis proteins when a person has tuberculosis infection. The diameter of the firm area is measured to the nearest millimeter to gauge the degree of reaction. A reaction of ten (10) millimeters or more of induration is considered highly indicative of tuberculosis infection].

~~(6)(7)~~ "Intellectual disability" is defined by 34 C.F.R. 300.8(c)(6).

~~(7)(8)~~ "Interdisciplinary team" means the group of people assembled by the facility who represent the professions, disciplines, or service areas that are relevant to:

(a) Identify the resident's needs; and

(b) Make recommendations for:

1. The resident's individual program plan; and

2. Services designed to meet the resident's needs [persons responsible for the diagnosis, evaluation and individualized program planning and service implementation for the resident. The team is composed of relevant professionals, and may include the resident, the resident's family, or the guardian.]

[(9)] ["License" means an authorization issued by the cabinet for the purpose of offering intermediate care MR/DD services.]

[(10)] ["MR/DD" means the mentally retarded and the

developmentally disabled persons].

~~(8)(9)~~ [(11)] "Normalization principle" means making available to all people with disabilities patterns of life and conditions of everyday living that are as close as possible to the regular circumstances and ways of life or society [is the utilization of means which are as culturally normative as possible in order to establish and maintain personal behavior and characteristics which are as culturally normative as possible.]

[(12)] ["Qualified dietician or nutritionist" means:]

[(a)] [A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or]

[(b)] [A person who has a masters degree in nutrition and is a member of the ADA or is eligible for registration by ADA; or]

[(c)] [A person who has a bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.]

[(13)] ["Qualified occupational therapist" means a graduate of a program of occupational therapy approved by the Council on Medical Education of the American Medical Association and licensed in the state, if required.]

[(14)] ["Qualified speech pathologist or audiologist" means a person who is licensed pursuant to KRS Chapter 334A who has been granted a certificate of clinical competence in the American Speech and Hearing Association or who has completed the equivalent education and experimental requirements for such a certificate].

~~(9)(10)~~ [(15)] "Qualified social worker" means a person who:

(a) Meets the requirements of 42 C.F.R. 483.430(b)(5)(vi); or

(b) Has [is licensed or exempt from licensure pursuant to KRS Chapter 335 with bachelor's degree in social work from an accredited program or] a bachelor's degree in a field other than social work and at least three (3) years of social work experience under the supervision of a [qualified] social worker who meets the requirements of 42 C.F.R. 483.430(b)(vi).

~~(10)(11)~~ [(16)] "[A] Qualified intellectual disability [mental retardation] professional (QIDP)" is defined by 42 C.F.R. 483.430(a) [means a person who has specialized training or one (1) year of experience in treating or working with the mentally retarded and/or developmental disabilities and is one (1) of the following:]

[(a)] [A psychologist with a master's degree from an accredited program;]

[(b)] [A licensed physician;]

[(c)] [A educator with a degree in education from an accredited program;]

[(d)] [A social worker who is licensed or exempt from licensure pursuant to KRS Chapter 335 with a bachelor's degree in:]

[1.] [Social work from an accredited program; or]

[2.] [A field other than social work and at least three (3) years of social work experience under the supervision of a qualified social workers;]

[(e)] [A physical or occupational therapist who is a graduate of a program of physical or occupational therapy approved by the Council on Medical Education of the American Medical Association.]

[(f)] [A speech pathologist or audiologist who is licensed pursuant to KRS Chapter 334A who has been granted a certificate of clinical competence in the American Speech and Hearing Association or who has completed the equivalent educational and experimental requirements for such a certificate;]

[(g)] [A registered nurse;]

[(h)] [A therapeutic recreation specialist who is graduate of an accredited program and is licensed in the state, if required, or who has:]

[1.] [A bachelor's degree in recreation, or in a specialty area, such as art, music, or physical education; or]

[2.] [An associate degree in recreation and one (1) year of experience in recreation; or]

[3.] [A high school diploma, or an equivalency certificate; and]

[a.] [Two (2) years of experience in recreation; or]

[b.] [One (1) year of experience in recreation plus completion of

VOLUME 50, NUMBER 11– May 1, 2024

comprehensive in-service training in recreation; or]

[4.] [Demonstrated proficiency and experience in conducting activities in one (1) or more recreation program areas; or]

[(4)] [A "rehabilitation/counselor" who is certified by the Committee on Rehabilitation Counselor Certification].

(11)~~(12)~~ [(17)] "Restraint" means any pharmaceutical~~[chemical]~~ agent or ~~[any]~~ physical or mechanical device used to restrict the movement of a portion of an individual's body~~[an individual or the movement or normal function of a portion of the individual's body, excluding only those devices used to provide support for the achievement of functional body position or proper balance (such as positioning chairs) and devices used for specific medical and surgical (as distinguished from behavioral) treatment]~~.

(12)~~(13)~~ [(18)] "Seclusion" means the involuntary separation of a resident from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving~~[the retention of a resident alone in a locked room]~~.

[(19)] ["Skin test" means a tuberculin skin test utilizing the intradermal (Mantoux) technique using five (5) tuberculin units of purified protein derivative (PPD). The results of the test must be read forty-eight (48) to seventy-two (72) hours after injection and recorded in terms of millimeters of induration.]

[(20)] ["Two (2) step skin testing" means a series of two (2) tuberculin skin tests administered seven (7) to fourteen (14) days apart].]

(13)~~(14)~~ [(24)] "Time-out" ["Time-out"] means a procedure ~~that~~~~[which]~~ involves removing an individual~~[the person]~~ from a reinforcing situation~~[-]~~ for a period of time ~~if~~~~[when]~~ the individual~~[person]~~ engages in a specified inappropriate behavior.

Section 2. Scope of Operation and Services.

(1) An ICF/IID shall~~[intermediate care facilities for mentally retarded and developmentally disabled persons]~~ provide services for all age groups on a twenty-four (24) hour basis, seven (7) days ~~per~~~~[a]~~ week~~[-]~~ in an establishment located in a~~[with]~~ permanent building ~~with~~~~[facilities including]~~ resident beds for individuals with intellectual disabilities or related conditions who require~~[persons whose mental or physical condition requires]~~ developmental nursing services ~~and~~~~[along with]~~ a planned program of active treatment.

(2) The facility shall ~~provide~~~~[provides special]~~ programs as indicated by a resident's individual program plan~~[care plans]~~ to maximize the resident's mental, physical, and social development in accordance with the normalization principle.

(3) The facility shall~~[intermediate care facilities for the mentally retarded and developmentally disabled must]~~ comply with the facility specification requirements ~~of~~~~[specifications for Intermediate Care Facilities.]~~ 902 KAR 20:056.

Section 3. Administration and Operation.

(1) Licensee. The licensee shall be legally responsible for:

(a) The operation of the facility; and~~[-for]~~

(b) Compliance with federal, state and local laws, and administrative regulations pertaining to the operation of the facility.

(2) Administrator. All facilities shall have an administrator who shall~~[-is]~~

(a) Be responsible for the day-to-day operation of the facility;

(b) Designate one (1) or more staff to act on behalf of the administrator or to perform the administrator's responsibilities in the administrator's~~[and delegating such responsibility in his]~~ absence; and~~[-]~~

(c) ~~The administrator shall~~~~[-]~~ Not be the nursing services supervisor.

(3) Contracted services. The licensee shall contract for professional and supportive services not available in the facility ~~based on~~~~[as dictated by]~~ the needs of each resident~~[the residents. The contract shall be in writing.]~~

(4) Administrative records.

(a) The facility shall maintain a ~~[bound, permanent, chronological-]~~ resident registry that documents the~~[-]~~~~[showing date of admission;]~~

1. Name of each resident;

2. Date of admission; and

3. Date of discharge.

(b) The facility shall ~~[require and]~~ maintain written recommendations or comments from consultants regarding the active treatment program and its development on a per visit basis.

(c) ~~The facility shall maintain~~ menu and food purchase records~~[-]~~ shall be maintained].

(d)

1. The administrator or administrator's designee shall make a written report of any incident or accident involving a:

a. Resident,~~[-]~~ including a medication error~~[errors]~~ or drug reaction;~~[-]~~~~[reactions];]~~

b. Visitor; or

c. Staff member.

2. The report shall:

a. Identify~~[-]~~ be made and signed by the administrator or nursing services supervisor, and] any staff member who witnessed the incident; and~~[-]~~

b. ~~The report shall~~~~[-]~~ Be filed in an incident file.

(5) Policies. The facility shall ~~have~~~~[establish]~~ written policies and procedures that govern all services provided by the facility. The ~~[written]~~ policies shall~~[-]~~ include:

(a) Address resident services, including medical, nursing, habilitation, pharmaceutical~~[-]~~ (including medication stop orders policy), and residential services;

(b) Require~~[Adult and child protection. The facility shall have written policies which assure]~~ the reporting of cases of abuse, neglect, or exploitation of adults or~~[and]~~ children ~~[to the Department for Human Resources]~~ pursuant to KRS 209.030 or 620.030, including evidence that all allegations of abuse, neglect, or exploitation shall be thoroughly investigated internally to prevent further potential abuse while the investigation is in process~~[Chapters 209 and 620];~~

(c) Ensure that residents are:

1. Free from unnecessary drugs and physical restraints; and

2. Provided active treatment to reduce dependency on drugs and physical restraints; and~~[-]~~ Use of restraints. The facility shall have a written policy that defines the use of restraints and supportive devices and a mechanism for monitoring and controlling their use; and]

(d) ~~Include~~~~[Missing resident procedures. The facility shall have a written procedure to~~~~[-]~~ ~~[Specify]~~ in a step-by-step manner the actions ~~that~~~~[which]~~ shall be taken by staff ~~if~~~~[when]~~ a resident is ~~[determined to be]~~ lost, unaccounted for, or on other unauthorized absence.

(6) Resident~~[Patient]~~ rights. Resident~~[Patient]~~ rights shall be provided for pursuant to KRS 216.510 to 216.525.

(7) Admission.

(a) A resident of an ICF/IID~~[Patients]~~ shall:

1. Be admitted only upon the referral~~[approval]~~ of a physician; and~~[-]~~

2. ~~The facility shall admit only persons who~~~~[-]~~ Have a ~~[physical or mental]~~ condition ~~that~~~~[which]~~ requires developmental nursing services and a planned program of active treatment.

(b) The interdisciplinary team shall consist of:

1. A physician;~~[-]~~

2. A psychologist;~~[-]~~

3. A registered nurse;~~[-]~~

4. A qualified social worker; and

5. Other professionals, at least one (1) of whom is a QIDP~~[qualified mental retardation professional]~~.

(c) Prior to admission, the interdisciplinary team shall:

1. Conduct a comprehensive evaluation of the individual ~~no less than ninety (90) days~~~~[-]~~ not more than three (3) months before the date of admission;

2. Assess the individual's~~[-]~~ covering] physical, emotional, social, and cognitive status~~[factors]~~; and

3. ~~2.] Determine~~~~[Prior to admission define]~~ the need for services, including a review ~~of~~~~[service without regard to availability of those services. The team shall review]~~ all available~~[-]~~ and applicable] programs of care, treatment, and training~~[-]~~ and record its findings].

(d) Admission decisions shall be made in accordance with 42 C.F.R. 483.440.

(e)~~[-]~~ Upon admission, the facility shall provide~~[-]~~ if admission is

not the best plan but the individual must be admitted nevertheless, the facility shall clearly acknowledge that the admission is inappropriate and initiate plans to actively explore alternatives;]

~~[(d)] [Before admission,] the resident and a responsible family member [of his family] or guardian, if applicable, with written information regarding the facility's policies, including:~~

~~1. Services offered and charges;~~

~~2. [Committee shall be informed in writing of the established policies of the facility and fees, reimbursement,] Visitation rights during serious illness;];]~~

~~3. Visiting hours; and];]~~

~~4. Type of diets offered,~~

~~[(f) and services offered; and]~~

~~[(e)] The facility shall [provide and] maintain a system for:~~

~~1. Identifying each resident's personal property; and [facilities for]~~

~~2. Safekeeping [of his declared] valuables, including **ensuring assurance** that[-] each resident's clothing and other property **shall be is**[shall be] reserved for the resident's[his] own use.~~

~~(8) Discharge planning. [Prior to discharge]~~

~~(a) The facility shall have a discharge planning program, which **begins at admission and is an integral part of each individual's treatment plan**, that[postinstitutional plan which] identifies other settings[the residential setting] and support services that may[which would] enable a [the] resident to live in a less restrictive environment[alternative to the current setting].~~

~~(b) If a resident is to be transferred or discharged, the facility shall comply with requirements of 42 C.F.R. **483.440(b)(4) 483.440(4)** and (5)[Before a resident is released, the facility shall:]~~

~~[(a)] [Offer counseling to parents or guardians who requests the release of a resident concerning the advantages and disadvantages of the release;]~~

~~[(b)] [Plan for release of the resident, to assure that appropriate services are available in the resident's new environment, including protective supervision and other follow-up services; and]~~

~~[(c)] [Prepare and place in the resident's record a summary of findings, progress, and plans].~~

~~(9) Transfer procedures and agreements.~~

~~(a) The facility shall have written transfer procedures and agreements for the transfer of a resident to a higher intensity level of care, if indicated[residents to other health care facilities which can provide a level of health care not provided by the facility].~~

~~(b) A[Any] facility that[which] does not have a transfer agreement in effect, but has attempted in[which documents a] good faith [attempt] to enter into an agreement shall be considered to be in compliance with the requirements of paragraph (a) of this subsection[licensure requirement].~~

~~(c) The facility's transfer procedures and agreements shall:~~

~~1. **State Specific** the responsibilities of each party[institution assumes] in the transfer of a resident;[- and shall]~~

~~2. Establish responsibility for notifying the other party[institution promptly] of an[the] impending transfer; and[- of a resident and shall]~~

~~3. Arrange for appropriate and safe transportation of the resident and resident's files.~~

~~(d) Except in cases of emergency, the administrator shall:~~

~~1. Initiate a transfer through the resident's physician if the resident's[When the resident's] condition exceeds the scope of services of the facility; or~~

~~2. Contract for services[- the resident, upon physician's orders (except in cases of emergency), shall be transferred promptly to a hospital or a skilled nursing facility, or services shall be contracted for] from another community resource to meet the resident's needs.~~

~~[(e)] [(e)] If a resident's condition improves and the resident may be served in a less restrictive environment, [When changes and progress occur which would enable the resident to function in a less structured and restrictive environment, and the less restrictive environment cannot be offered at the facility,] the facility shall offer assistance in making arrangements for the resident[residents] to be transferred to a lower intensity level of care[facilities providing appropriate services].~~

~~[(f)] [(e)] Except in an emergency, the resident, resident's~~

responsible family member[his next-of-kin], or guardian, if any, and the attending physician shall be consulted in advance of the transfer or discharge[- of any resident].

~~[(g)] [(e)] If a resident transfers[When a transfer is] to another level of care[- within the same facility], the complete medical record or a current summary of the resident's medical record shall accompany the resident[thereof shall be transferred with the resident].~~

~~[(h)] [(f)] If the resident is transferred to another health care facility or other community resource, a transfer form shall:~~

~~1. Accompany the resident;[-]~~

~~2. [The transfer form shall] include the following[at least]:~~

~~a. Physician's orders, [(if available)];[-]~~

~~b. Current information regarding the resident's[relative to] diagnosis with a history of any health conditions that require[problems requiring] special care;[-]~~

~~c. A summary of [the course of] prior treatment, special supplies, or equipment needed for the resident's[resident] care;[-] and~~

~~d. Pertinent social information on the resident and resident's family.~~

~~(10) Medical records.~~

~~(a) The facility shall maintain a record for each resident that includes documentation of[for]:~~

~~1. Planning and continuous evaluation of the resident's habilitation program, including evidence of the resident's progress; and~~

~~2. Protecting the resident's rights[Furnishing documentary evidence of each resident's progress and response to his habilitation program; and]~~

~~[3.] [Protecting the rights of the residents, the facility and the staff].~~

~~(b) Each entry in a[All entries in the] resident's record shall be legible, dated, and signed.~~

~~(c) Each record shall include:[At the time a resident is admitted, the facility must enter in the individual's record the following information:]~~

~~1. Identifying information, including:~~

~~a. Resident's name;[-]~~

~~b. Date of admission;[-]~~

~~c. Birth date and place of birth;[-]~~

~~d. Citizenship status;[-]~~

~~e. Marital status;[- and]~~

~~f. Social Security number;~~

~~g. [2.] Father's name and birthplace;[-]~~

~~h. Mother's maiden name and birthplace;[- and]~~

~~i. Parents' marital status;~~

~~j. [3.] [Name and] Address of parents, [legal-] guardian, or responsible family member, [and next-of-kin] if applicable[needed]; and~~

~~k. [4.] Sex, race, height, weight, color of hair, color of eyes, identifying marks, and recent photograph;~~

~~2. [5.] Reason for admission or referral[- problem];~~

~~3. [6.] Type and legal status of admission;~~

~~4. [7.] Legal competency status;~~

~~5. [8.] Language spoken or understood;~~

~~6. [9.] Sources of support, including Social Security, veterans' benefits, or[and] insurance;~~

~~7. [10.] Religious affiliation, if any;~~

~~8. [11.] Documentation of[Reports of] the preadmission evaluation[evaluations]; and~~

~~9. [12.] Documentation[Reports] of assessments[previous histories] and any other previous evaluations[-, if any].~~

~~(d) Within thirty (30) days[one (1) month] after [the-] admission[of each resident], the facility shall [ICF/MR must] enter the following in the resident's record:~~

~~1. A report of assessments or reassessments performed by the interdisciplinary team to supplement the[the review and updating of the] preadmission evaluation;~~

~~2. The resident's specific developmental and behavioral management needs[A prognosis that can be used for programming and placement]; and~~

~~3. A comprehensive functional assessment[evaluation] and individual program plan developed[-, designed] by the[an] interdisciplinary team.~~

VOLUME 50, NUMBER 11– May 1, 2024

(e) The facility ~~shall~~must enter the following information in a resident's record ~~during his residence~~:

1. ~~A written report of any accident, seizure, or illness, and treatment services provided~~Reports of accidents, seizures, illnesses, and treatments for these conditions;
2. ~~Documentation~~Records of immunizations;
3. ~~Documentation of the use of any restraint on the resident, including an explanation of~~Records of all time periods that restraints were used, with justification and authorization for the restraint~~each~~;
4. ~~Documentation of the interdisciplinary team's annual~~Reports of regular, at least annual, review and evaluation of the resident's individual program plan, developmental progress, and status ~~of each resident~~;
5. ~~Observations regarding~~of the resident's response to the individual~~his~~ program plan used to evaluate ~~to enable evaluation of~~ its effectiveness;
6. ~~A record~~Records of significant behavior incidents;
7. ~~Documentation~~Records of family visits and contacts;
8. ~~Documentation of any incident in which the resident is lost, unaccounted for, or on other unauthorized absence~~Records of attendance and absences;
9. Correspondence pertaining to the resident;
10. ~~Periodic~~Updates as needed to ~~of~~ the information initially recorded at the time of admission; and
11. ~~A record of any applicable~~Appropriate authorizations ~~or~~and consent.

(f) The facility ~~shall~~ICF/MR must enter a discharge summary in the resident's record at the time of discharge ~~he is discharged~~.

(11) Confidentiality and Security: Use and Disclosure.

(a) The facility shall maintain the confidentiality and security of resident records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 through 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, and as provided by applicable federal or state law.

(b) The facility may use and disclose resident records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 through 1320d-8, ~~and~~ 45 C.F.R. Parts 160 and 164, and/or as established in this administrative regulation, if applicable.

(c) The facility may establish higher levels of confidentiality and security than those required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.

(12)(11) Personnel.

(a) In accordance with KRS 216.532, an ICF/IID shall not employ or be operated by an individual who is listed on the nurse aide and home health aide abuse registry established by 906 KAR 1:100.

(b) In accordance with KRS 209.032, an ICF/IID shall not employ or be operated by an individual who is listed on the Vulnerable Adult Maltreatment~~caregiver misconduct~~ Registry established by 922 KAR 5:120.

(c) An ICF/IID shall obtain a criminal record check on each applicant for initial employment in accordance with KRS 216.789 and 216.793.

(d) An ICF/IID may participate in the Kentucky National Background Check Program established by 906 KAR 1:190 to satisfy the background check requirements of paragraphs (a) through (c) of this subsection.

(e) ~~A~~Job descriptions: written job description~~descriptions~~ shall be developed for each category of personnel, including~~to include~~

1. Qualifications;;
2. Lines of authority; and
3. Specific duty assignments.

(f)~~(b)~~ ~~Employee records:~~ Current employee records shall be maintained on each staff member and contain:

1. Name and address;
2. Verification of ~~shall include a resume of each employee's~~ training and experience, including evidence of current licensure, ~~or~~ registration, or certification, if applicable;
3. ~~Employee~~where required by law, health records;
4. Annual performance evaluations; and
5. Documentation of compliance with the background check

requirements of paragraphs (a) through (c) of this subsection~~;~~ records of ~~in-service training and ongoing education, and the employee's name, address and Social Security number.~~

(13)(e) Staffing requirements.

(a) Staffing in the facility shall be sufficient in number and qualifications ~~have adequate personnel~~ to meet the personal care, nursing care, supervision, and other needs of each resident~~the residents~~ on a twenty-four (24) hour basis. ~~The number and classification of personnel required shall be based on the number of residents, the amount and the kind of personal care, nursing care, supervision and program needed to meet the needs of the resident as determined by the interdisciplinary team, and the services required by this administrative regulation.~~

(b)~~(d)~~ The licensee shall have a QIPD~~qualified mental retardation professional~~ who is responsible for:

1. Supervising the delivery of each resident's individual program plan~~of care~~;
2. Supervising the delivery of training and habilitation services;
3. Integrating the various aspects of the facility's~~facility~~ program;
4. Recording each resident's progress; and
5. Initiating ~~a periodic~~ review of each individual program plan ~~of care~~ for necessary changes.

(c)~~(e)~~ Each residential~~resident~~ living unit shall maintain direct care staff-to-resident ratios in accordance with 42 C.F.R. 483.430(d), regardless of organization or design, must have, as a minimum, overall staff-resident ratios (allowing for a five (5) day work week plus holiday, vacation, and sick time) as follows unless program needs justify otherwise:

[1.] ~~For units serving children under the age of six (6) years, severely and profoundly retarded, severely physically handicapped, or residents who are aggressive, assaultive, or security risks, or who manifest severely hyperactive or psychotic-like behavior, the overall ratio is one (1) to two (2);~~

[2.] ~~For units serving moderately retarded residents requiring habit training, the overall ratio is one (1) to two and five tenths (2.5); and~~

[3.] ~~For units serving residents in vocational training programs and adults who work in sheltered employment situations, the overall ratio is one (1) to five (5);~~

[f] ~~When the staff/resident ratio does not meet the needs of the residents, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination.~~

(d)~~(g)~~ A responsible staff member shall be on duty and awake at all times to assure prompt, appropriate action in case of injury, illness, ~~or~~ fire, or other emergency~~emergencies~~.

(e)~~(h)~~ The use of volunteers shall not be:

1. Included in the ~~counted to make up~~ minimum staffing requirements of this subsection; or
2. Relied upon to perform direct care services for the facility.

(14) Nurse staffing.

(a)~~(f)~~ The facility shall have ~~Supervision of nursing services shall be by~~ a registered nurse or licensed practical nurse ~~during~~employed on the day shift, seven (7) days per week to supervise nursing services.

(b) The supervising nurse ~~supervisor~~ shall have training and experience in the field of intellectual and developmental disabilities and mental retardation.

(c) ~~If~~When a licensed practical nurse serves as the supervisor, ~~consultation shall be provided by~~ a registered nurse shall provide consultation ~~preferably with a baccalaureate degree,~~ at regular intervals, not less than four (4) hours weekly.

(d) The supervising nurse's responsibilities ~~of the nursing services supervisor~~ shall include developing and maintaining:

1. Nursing service objectives;;
2. Standards of nursing practice;;
3. Nursing procedure manuals;; and
4. A written job description for each level of nursing personnel.;

(e)~~2-~~ Nursing service personnel at all levels of experience and competence shall:

1. Be assigned responsibilities in accordance with their

qualifications;[.]

2. Delegate tasks as authorized under the nurse's scope of practice;[~~authority commensurate with their responsibility, and~~]

3. Provide appropriate professional nursing supervision; and

4.[3.] Participate in the development and implementation of resident care policies.

(15)[(j)] Each[~~The~~] facility shall retain a licensed pharmacist on a full-time, part-time, or consultant basis to direct pharmaceutical services.

(16)[(k)] Each facility shall have a full-time staff person designated by the administrator who shall be:[.]

(a) Responsible for the total food service operation of the facility; and

(b) On duty a minimum of thirty-five (35) hours each week.

(17)[(h)] Each facility shall ensure that supportive personnel, consultants, assistants, and volunteers shall be[~~are~~][~~shall be~~] supervised and shall [~~shall~~] function within the policies and procedures of the facility.

(18)[(m)] An employee who contracts a communicable or[~~Health requirements. No employee contracting an~~] infectious disease shall:

(a) Be immediately excluded from[~~appear at~~] work; and

(b) Remain off work until cleared as noninfectious by a health care practitioner acting within the practitioner's scope of practice.

(19) All employees of an ICF/IID shall be screened and tested for tuberculosis in accordance with the provisions of 902 KAR 20:205[~~until the infectious disease can no longer be transmitted. The facility shall comply with the following tuberculosis testing requirements:~~]

[4.] [~~The skin test status of all staff members shall be documented in the employee's personnel record. A skin test shall be initiated on all new staff members before or during the first week of employment and the results shall be documented in the employee's personnel record within the first month of employment. No skin testing is required at the time of initial employment if the employee documents a prior skin test of ten (10) or more millimeters of induration or if the employee is currently receiving or has completed six (6) months of prophylactic therapy or a course of multiple-drug chemotherapy for tuberculosis. Two (2) step skin testing is required for new employees over age forty-five (45) whose initial test shows less than ten (10) millimeters of induration, unless they can document that they have had tuberculosis skin test within one (1) year prior to their current employment. All staff who have never had a skin test of ten (10) or more millimeters induration must be skin tested annually on or before the anniversary of their last skin test.~~]

[2.] [~~All staff who are found to have a skin test of ten (10) or more millimeters induration, on initial employment testing or annual testing, must receive a chest x-ray unless a chest x-ray within the previous two (2) months showed no evidence of tuberculosis or the individual can document the previous completion of a course of prophylactic treatment with isoniazid. Such employees shall be advised of the symptoms of the disease and instructed to report to their employer and seek medical attention promptly, if symptoms persist.~~]

[3.] [~~The administrator shall be responsible for ensuring that all skin tests and chest x-rays are done in accordance with paragraphs 1 and 2 of this subsection. All skin testing dates and results and all chest x-ray reports shall be recorded as a permanent part of the personnel record.~~]

[4.] [~~The following shall be reported by the administrator to the local health department having jurisdiction immediately upon becoming known: names of staff who convert from a skin test of less than ten (10) to a skin test of ten (10) or more millimeters of induration; names of staff who have a skin test of ten (10) millimeters or more induration at the time of employment; and all chest x-rays suspicious for tuberculosis.~~]

[5.] [~~Any staff whose skin test status changes on annual testing from less than ten (10) to ten (10) or more millimeters of induration shall be considered to be recently infected with Mycobacterium tuberculosis. Such recently infected persons who have no signs or symptoms of tuberculosis disease on chest x-ray or medical history should be given preventive therapy with isoniazid for six (6) months unless medically contraindicated, as determined by a licensed physician. Medications shall be administered to patients only upon~~]

~~the written order of a physician. If such individual is unable to take isoniazid therapy, the individual shall be advised of the clinical symptoms of the disease, and have an interval medical history and a chest x-ray taken and evaluated for tuberculosis infection every six (6) months during the two (2) years following conversion for a total of five (5) chest x-rays.~~]

[6.] [~~Any staff who can document completion of preventive treatment with isoniazid shall be exempt from further screening requirements.~~]

(20) In-service training.

(a)[(n)] Each[~~The~~] facility shall have a staff training program adequate for the size and nature of the facility with a staff person who is assigned[~~designated the~~] responsibility for staff development and training.

(b) The training program shall include:

1. Orientation to acquaint[~~for~~] each new employee [~~to acquaint him~~] with the philosophy, organization, program, practices, and goals of the facility;

2. Follow-up[~~In-service~~] training for any employee who has not achieved the desired level of competence;

3. Continuing in-service training held at least annually for all employees to update and improve their skills; and

4. Supervisory and management training for each employee who is in, or a candidate for, a supervisory position.

Section 4. Provision of Services.

(1) The [~~professional~~] interdisciplinary team shall ensure[~~assure~~] that:

(a) The health needs of each resident[~~the residents~~] are met; and

(b) Each resident shall have[~~has~~] an individual program plan developed in accordance with the requirements of 42 C.F.R. 483.440(c) through (f)[~~that plans are developed for each resident which include treatments, medications, dietary requirements, and other program services. All activities shall reflect adherence to the normalization principle. The active treatment program shall assure:~~]

[(a)] [~~An individual written plan of care that sets forth measurable goals or objectives stated in terms of desirable behavior and that prescribes an integrated program of activities, experiences or therapies necessary for the individual to reach those goals or objectives. The plan is to help the individual function at the greatest physical, intellectual, social, or vocational level he can presently or potentially achieve.~~]

[(b)] [~~Regular participation, in accordance with an individualized plan, in a program of activities that are designed to attain the optimum physical, intellectual, social, and vocational functioning of which a resident is capable.~~]

[(c)] [~~Reevaluation medically, socially, and psychologically at least annually by the staff involved in carrying out the resident's individual plan of care. This must include review of the individual's progress toward meeting the plan objectives, the appropriateness of the individualized plan of care, assessment of his continuing need for institutional care, and consideration of alternate methods of care.~~]

(2) Infection control[~~and communicable diseases~~].

(a) There shall be written infection control policies that address:[~~which are consistent with the Centers for Disease Control guidelines including:~~]

1. [~~Policies which address~~]The prevention of disease transmission[~~to and from patients, visitors and employees~~], including:

a. Universal blood and body fluid precautions;

b. Precautions for infections that[~~which~~] can be transmitted by the airborne route; and

c. Work restrictions for employees with infectious diseases; and:[.]

2. [~~Policies which address the~~]Cleaning, disinfection, and sterilization methods used for equipment and the environment.

(b) The facility shall provide in-service education programs on the cause, effect, transmission, prevention, and elimination of infections for all personnel responsible for direct [~~patient~~]care.

(c) Sharp wastes.

1. Sharp wastes[~~, including needles, scalpels, razors, or other sharp instruments used for patient care procedures,~~] shall be

VOLUME 50, NUMBER 11– May 1, 2024

segregated from other wastes and placed in puncture-resistant~~[puncture resistant]~~ containers immediately after use.

2. A needle or other contaminated sharp~~[Needles]~~ shall not be recapped~~[by hand]~~, purposely bent,~~[or]~~ broken, or otherwise manipulated by hand as a means of disposal, except as allowed permitted by the Centers for Disease Control and Occupational Safety and Health Administration guidelines at 29 C.F.R. 1910.1030(d)(2)(vii).

3. A sharp waste container shall~~[The containers of sharp wastes shall either]~~ be incinerated on or off-site~~[off-site]~~, or be rendered nonhazardous ~~[by a technology of equal or superior efficacy, which is approved by both the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet].~~

4. Any non-disposable sharps be placed in a hard walled container for transport to a processing area for decontamination.

(d) Disposable waste.

1. All disposable waste shall be:

a. Placed in a suitable bag~~[bags]~~ or closed container~~[containers]~~ so as to prevent leakage or spillage;~~[;]~~ and~~[shall be]~~

b. Handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

2. The facility shall establish specific written policies regarding handling and disposal of all waste material~~[wastes]~~.

~~[3.] [The following wastes shall be disposed of by incineration, autoclaved before disposal, or carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.]~~

~~[4.] [Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment regulations pursuant to 40 C.F.R. 403 and 401 KAR 5:055, Section 9.]~~

(e) Infectious or communicable diseases. An individual~~[Patients]~~ infected with one (1) of the following diseases shall not be admitted to the facility:

1. Anthrax;~~[;]~~
2. Campylobacteriosis;~~[;]~~
3. Cholera;~~[;]~~
4. Diphtheria;~~[;]~~
5. Hepatitis A;~~[;]~~
6. Measles;~~[;]~~
7. Pertussis;~~[;]~~
8. Plague;~~[;]~~
9. Poliomyelitis;~~[;]~~
10. Rabies (human);~~[;]~~
11. Rubella;~~[;]~~
12. Salmonellosis;~~[;]~~
13. Shigellosis;~~[;]~~
14. Typhoid fever;~~[;]~~
15. Yersiniosis;~~[;]~~
16. Brucellosis;~~[;]~~
17. Giardiasis;~~[;]~~
18. Leprosy;~~[;]~~
19. Psittacosis;~~[;]~~
20. Q fever;~~[;]~~
21. Tularemia; or~~[, and]~~
22. Typhus.

(f) A facility may admit a noninfectious~~[noninfectious]~~ tuberculosis resident. A noninfectious admittance shall be in accordance with 902 KAR 20:200, Section 4 or Section 8(5)~~[patient under continuing medical supervision for his tuberculosis disease].~~

(g) A resident with symptoms or an abnormal chest x-ray consistent with tuberculosis shall be isolated and evaluated in accordance with 902 KAR 20:200, Section 6(4)~~[Patients with active tuberculosis may be admitted to the facility whose isolation facilities and procedures have been specifically approved by the cabinet].~~

(3) Resident behavior and facility practices~~[Use of control and discipline of residents].~~

(a) Each~~[The]~~ facility shall develop and implement~~[must have]~~ written policies and procedures for the management of conduct between staff and clients in accordance with 42 C.F.R. 483.450(a)~~[control and discipline of residents that are available in each living unit and to parents and guardians].~~

(b) The facility shall:

1. Develop and implement written policies and procedures that

govern the management of inappropriate resident behavior in accordance with 42 C.F.R. 483.450(b); and

~~2.[4.] Not allow corporal punishment or seclusion of a resident[;]~~

~~[2.] [A resident to discipline another resident, unless it is done as part of an organized self-government program conducted in accordance with written policy; or]~~

~~[3.] [Seclusion of a resident].~~

(c) Chemical and physical restraints shall not be used, except as authorized by KRS 216.515(6).

~~(d) Restraints that require lock and key shall not be used.~~

(e) Emergency use of a restraint shall be applied only by appropriately trained personnel if:

1. A resident poses an imminent risk of harm to self or others; and

2. The emergency restraint is the least restrictive intervention to achieve safely.

(f) A restraint shall not be used as:

1. Punishment;

2. Discipline;

3. Convenience for staff; or

4. Retaliation~~[On orders of a physician, or in the case of an emergency until a physician is contacted, the facility may allow the use of physical restraint on a resident only if absolutely necessary to protect the resident from injuring himself or others but may not use physical restraint as punishment, for the convenience of the staff, or as a substitute for activities or treatment].~~

~~(d) [The facility must have a written policy that specifies how and when physical restraint may be used, the staff members who must authorize its use, and the method for monitoring and controlling its use].~~

(g)[(e)] An order for physical restraint shall:[may]

1. Be by a physician or other licensed health care practitioner who is acting within the scope of practice and trained in the use of emergency safety interventions;

2. Be carried out by trained staff;

3. Be the least restrictive safety intervention that is most likely to be effective in resolving the emergency safety situation based on consultation with staff; and

4. Not be in effect longer than twelve (12) hours.

(h) Appropriately trained staff shall[must] check a resident placed in a physical restraint at least every thirty (30) minutes and document each check~~[keep a record of these checks].~~

(i) A resident who is in a physical restraint shall[must] be given an opportunity for motion and exercise for a period of not less than ten (10) minutes during each two (2) hours of restraint.

(j) A mechanical device~~[devices]~~ used for physical restraint shall~~[must]~~ be designed and used in a way that:

1. Avoids~~[causes the resident no]~~ physical injury; and

2. Results in the least possible physical discomfort~~[. Restraints that require lock and key shall not be used].~~

(k)[(f)] A mechanical support~~[supports]~~ used as a protective device shall~~[devices must]~~ be designed and applied:

1. Under the supervision of a qualified professional trained in the use of emergency safety interventions;~~[;]~~ and

2. In accordance with principles of good body alignment, concern for circulation, and allowance for change of position.

~~(l)[(g)] [The facility may not use chemical restraint excessively, as punishment, for the convenience of the staff, as a substitute for activities or treatment, or in quantities that interfere with a resident's habilitation program.]~~

(h) Behavior modification programs involving the use of aversive stimuli or time-out devices shall be:

1. Reviewed and approved by the facility's human rights committee or a QIPD in order to ensure that residents are not unnecessarily restricted~~[qualified mental retardation professional];~~

2. Conducted only with the consent of the affected resident's parents, responsible family member, or ~~[legal]~~ guardian; and

3. Described in written plans that are kept on file in the facility~~[ICF/MR].~~

(m)[(t)] A physical restraint used as a time-out device may be applied only:

1. During a behavior modification exercise~~[exercises] and~~ ~~[only]~~

2. In the presence of the trainer.

(n)(i) A time-out device or ~~devices and~~ aversive stimuli shall:

1. ~~may~~ Not be used for longer than one (1) hour; and

2. ~~Be used~~ only during a ~~the~~ behavior modification program ~~and only~~ under the supervision of the trainer.

(4) Medical supervision of residents.

(a) ~~Each~~ ~~The~~ facility shall maintain policies and procedures to ensure ~~assure~~ that each resident ~~shall be~~ **shall be is** under the medical supervision of a physician.

(b)(a) The facility shall ~~allow~~ **permit** the resident, resident's responsible family member, or guardian to have a ~~(or his guardian)~~ shall be permitted his choice of ~~physicians~~ ~~physician~~.

(c)(b) The physician shall visit ~~each resident at least every sixty (60) days or~~ ~~the residents~~ as often as necessary ~~and in no case less than every sixty (60) days~~, unless ~~justified and~~ documented by the attending physician.

(d)(e) No less than ninety (90) days prior to the date of admission, each resident shall have a complete medical evaluation to assess the resident's ~~include~~ social, physical, emotional, and cognitive status ~~factors shall be made of the person desiring or requiring institutionalization prior to, but not to exceed three (3) months before admission~~.

(e)(d) After admission, each resident shall have a medical evaluation ~~reevaluation~~ at least annually ~~shall be made by the resident's physician, a physician provided by a community service, or a registered visiting nurse, according to the resources for the community and the apparent needs of the resident receiving intermediate care~~.

(f)(e) The facility shall have formal arrangements to ensure that a physician or health care practitioner acting within the scope of practice ~~shall be is~~ available to provide necessary medical care in case ~~of~~ ~~shall be made to provide for~~ medical emergency ~~emergencies on a twenty-four (24) hour, seven (7) days a week basis. This shall be the responsibility of the facility providing care~~.

(5) Health services.

(a) Health services shall include:-

(a) the establishment of a nursing care plan that:

1. ~~is~~ ~~as~~ part of the total habilitation program for each resident; and

2. ~~Each plan~~ Shall be reviewed and modified as necessary, ~~but no less than~~ ~~or at least~~ quarterly; and

3. ~~Each plan~~ Shall include goals and nursing care needs;

(b) Nursing care shall help enable each resident ~~to~~ achieve and maintain the highest degree of function, self-care, and independence, including ~~with those procedures requiring medical approval ordered by the attending physician. Nursing care shall include~~:

1. Positioning and turning in which nursing personnel shall encourage and assist residents in maintaining good body alignment while standing, sitting, or lying in bed to prevent decubiti;

2. Exercises in which nursing personnel shall assist residents in maintaining maximum range of motion;

3. Bowel and bladder training in which nursing personnel shall make every effort to train incontinent residents to gain bowel and bladder control;

4. Training in habits of personal hygiene, family life, and sex education that includes ~~but is not limited to~~ family planning and venereal disease counseling;

5. Ambulation in which nursing personnel shall assist and encourage residents with daily ambulation unless otherwise ordered by the physician; and

6. Administration of medications and appropriate treatment.

(c) A written monthly assessment of the resident's general condition with any changes in the resident's condition, actions, responses, attitudes, or appetite shall be recorded in the resident's record by licensed personnel.

(6) Pharmaceutical services.

(a) The facility shall provide ~~pharmaceutical services, including appropriate methods and~~ procedures that ~~ensure~~ **assure** the accurate acquiring, receiving, ~~for obtaining,~~ dispensing, and administering of all drugs and biologicals to meet the needs of each resident ~~developed with the advice of a licensed pharmacist or a pharmaceutical advisory committee which includes~~

one (1) or more licensed pharmacist].

(b) ~~The facility shall employ or obtain the services of~~ ~~has a~~ pharmacy department, a licensed pharmacist who shall:

1. Provide consultation on all aspects of the provision of pharmacy services in the facility;

2. Establish a system of records of receipt and disposition of all controlled drugs in sufficient detail to enable an accurate reconciliation;

3. Determine that drug records are in order; and

4. Ensure that an account of all controlled drugs ~~shall be is~~ maintained and reconciled ~~be employed to administer the pharmacy department~~.

(c) If the facility does not have a pharmacy department, it shall ensure that ~~have provision for promptly obtaining~~ prescribed drugs and biologicals may be obtained from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy; pursuant to KRS 315.035.

(d) If the facility does not have a pharmacy department, but maintains a supply of drugs, the consultant pharmacist shall:

1. Be responsible for the control of all bulk drugs;

2. Maintain records of the receipt and disposition of bulk drugs; and

3. Dispense drugs from the drug supply, properly label them, and make them available to appropriate licensed nursing personnel.

(e) A facility that stores and administers non-controlled substances in an emergency medication kit (EMK) shall comply with the limitation on the number and quantity of medications established by 201 KAR 2:370, Section 2(4)(b).

(f) A facility that stores and administers non-controlled substances from a long-term care facility drug stock shall comply with the limitation on the number and quantity of medications established by 201 KAR 2:370, Section 2(5)(a) ~~An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used~~.

(7)(e) Medication ~~Medication requirement and~~ services.

(a) ~~4.~~ Medication administered to a resident ~~Conformance with physician's orders. All medications administered to residents~~ shall be ordered in writing by the prescribing:

1. Physician; or

2. Health care practitioner as authorized by the scope of practice.

(b) If an order is received by telephone, the order shall be:

1. Recorded in the resident's medical record; and

2. Signed by the physician or other health care practitioner as authorized under the practitioner's scope of practice within fourteen (14) days.

(c) If an order for medication does not include a specific time limit or a specific number of dosages, the facility shall notify the physician or prescribing practitioner that the medication will be stopped at a certain date unless the medication order is continued ~~Oral orders shall be given only to a licensed nurse or pharmacist, immediately reduced to writing, and signed. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy on stop orders~~.

(d) A registered nurse or ~~The~~ pharmacist ~~or nurse~~ shall review the resident's medication profile at least monthly ~~on a regular basis~~.

(e) The prescribing physician or other prescribing practitioner shall review the resident's medication profile at least every two (2) months.

(f) The facility shall release medications to a resident who is discharged upon ~~The resident's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the resident's therapeutic regimen is not interrupted. Medications shall be released to residents on discharge or visits only after being labeled appropriately and on the~~ written authorization of the physician or prescribing practitioner.

(8) ~~2.~~ Administration of medications.

(a) A licensed health professional ~~may~~:

1. **Shall only** administer medications as authorized under the professional's scope of practice; or

2. **May** delegate medication administration tasks. **Delegation**

shall be in accordance with paragraph (b) of this subsection.

(b) A facility may allow an unlicensed staff person to administer medication. Medication given by an unlicensed staff person shall be administered in accordance with KRS 194A.705(2)(c) and 201 KAR 20:700 as follows:

1. Medication administration shall be/is delegated to the unlicensed staff person by an available nurse;

2. If administration of oral or topical medication is delegated, the unlicensed staff person shall have a:

a. Certified medication aide (CMA) I credential from a training and skills competency evaluation program approved by the Kentucky Board of Nursing (KBN); or

b. Kentucky medication aide (KMA) credential from the Kentucky Community and Technical College System (KCTCS); and

3. If administration of a preloaded insulin injection is delegated, the unlicensed staff person shall have a CMA II credential from a training and skills competency evaluation program approved by KBN[All medications shall be administered by licensed nurses or personnel who have completed a state approved training program, from a state approved training provider].

(c) Each medication[dose] administered shall be recorded in the resident's medical record.

(d) An intramuscular injection[injections] shall be administered by a licensed nurse or [a]physician.

(e) If an intravenous injection is[injections are] necessary, the injection[they] shall be administered by a licensed physician or [a] registered nurse.

(f)[a-] The nursing station shall have readily available items necessary[required] for the proper administration of medication[readily available].

(g)[b-] A medication that is[Medications] prescribed for one (1) resident shall not be administered to any other resident.

(h)[c-] A resident shall not be allowed to self-administer a medication[Self-administration of medications by residents shall not be permitted] except:[for drugs]

1. On special order of the resident's physician or prescribing practitioner; or[and]

2. In a pre-discharge program under the supervision of a licensed nurse as a part of the resident's treatment plan.

(i) The facility shall ensure/assure that a medication error or drug reaction shall be/is:

1.[d.] [Medication errors and drug reactions shall be] Immediately reported to the resident's physician or practitioner; and

2. Documented[pharmacist and an entry thereof made] in the resident's medical record and in[as well as on] an incident report.

(j)[3.] [The facility shall provide up-to-date medication reference texts for use by the nursing staff (e.g., Physician's Desk Reference).]

[4.] [Labeling and storing medications.] All resident medications shall be plainly labeled with the:

1. Resident's name:[the]

2. Name of the drug:[]

3. Strength:[]

4. Name of the pharmacy:[]

5. Prescription number:[]

6. Date:[]

7. Prescriber's[Physician] name: and:[]

8. Caution statements and directions for use, unless a[except where accepted] modified unit dose distribution system is[systems conforming to federal and state laws are] used.

(k) All[The] medications [of each resident shall be-]kept by the facility shall be:[and]

1. Stored in their original containers; and

2. [transferring between containers shall be prohibited. All medicines kept by the facility shall be-]Kept in a locked place.

(l) The facility shall ensure that:

1. All[and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key.] medications requiring refrigeration shall be/are[shall be] kept in a separate locked box of adequate size in the refrigerator in the medication area;[-]

2. Drugs for external use shall be/are[shall be] stored separately from those administered by mouth injection; and

3. Medication containers having soiled, damaged, incomplete,

illegible, or makeshift labels shall be/are returned to the issuing pharmacist or pharmacy for relabeling or disposal[. Provisions shall also be made for the locked separate storage of medications of deceased and discharge resident until such medication is surrendered or destroyed in accordance with federal and state laws and regulations].

(9)[5-] Controlled substances.

(a) Controlled substances shall be kept under double lock, for example[(i.e.,) in a locked box in a locked cabinet, and keys or access to the locked box and locked cabinet shall be accessible to designated staff only[)].

(b) A nurse may delegate administration of a regularly scheduled controlled substance to a CMA if the medication has been prescribed and labeled in a container for a specific resident.

(c) For a controlled substance ordered on a PRN basis, a nurse may delegate administration to a CMA if:

1. The medication has been prescribed and labeled in a container for a specific resident;

2. The nurse assesses the resident, in person or virtually, prior to administration of the PRN controlled substance;

3. The nurse assesses the resident, in person or virtually, following the administration of the PRN controlled substance; and

4. The nurse documents administration of the PRN controlled substance by a CMA in the resident's record.

(d) There shall be a controlled substances bound record book with numbered pages that includes:[in which is recorded]

1. The name of the resident;[- the]

2. Date, time, kind, dosage, [balance remaining-]and method of administration of each[all] controlled substance[substances];[- the]

3. Name of the physician or practitioner who prescribed the medications; and

4. Name of the:

a. Nurse or CMA who administered the controlled substance;[it,]or

b. Staff member who supervised the self-administration.

(e) A staff member with access to controlled substances[In addition, there] shall be responsible for maintaining a recorded and signed:

1. Schedule II controlled substances count daily;[-] and

2. Schedule III, IV, and V controlled substances count at least one (1) time[once] per week[- by those persons who have access to controlled substances].

(f) All expired or unused controlled substances shall be disposed of[.] or destroyed in accordance with 21 C.F.R. Part 1317 no later than thirty (30) days:

1. After expiration of the medication; or

2. From the date the medication was discontinued.

(g) If controlled substances are destroyed on-site:

1. The method of destruction shall render the drug unavailable and unusable;

2. The administrator or staff person designated by the administrator shall be responsible for destroying the controlled substances with at least one (1) witness present; and

3. A readily retrievable record of the destroyed controlled substances shall be maintained for a minimum of eighteen (18) months from the date of destruction and contain the:

a. Date of destruction;

b. Resident name;

c. Drug name;

d. Drug strength;

e. Quantity;

f. Method of destruction;

g. Name of the person responsible for the destruction; and

h. Name of the witness[All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with KRS 218A.230, or 21 C.F.R. 1307.21, or sent via registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources].

(h) A facility that stores and administers controlled substances in an EMK shall comply with the:

1. Requirements for storage and administration established by 902 KAR 55:070, Section 2(2), (5), and (7) through (9); and

2. Limitation on the number and quantity of medications

VOLUME 50, NUMBER 11– May 1, 2024

established by 902 KAR 55:070, Section 2(6).

~~(10)(7)~~ Personal care services.

(a) Each resident shall receive training in personal skills essential for privacy and independence, ~~be trained to be as independent as possible to achieve and maintain good personal hygiene~~ including:

1. Bathing in which the facility shall:

a. [of the body to maintain clean skin and freedom from offensive odors. In addition to assistance with bathing, the facility shall] Provide soap, clean towels, and wash cloths for each resident; and[-]

b. Ensure that toilet articles such as brushes and combs shall not be used in common;[-]

2. Personal hygiene;[Shaving-]

3. Dental hygiene;[Cleaning and trimming of fingernails and toenails.]

4. Dressing;

5. Grooming;

6. Self-feeding; and

7. Communication of basic needs[Cleaning of the mouth and teeth to maintain good oral hygiene as well as care of the lips to prevent dryness and cracking. All residents shall be provided with tooth brushes, a dentifrice, and denture containers, when applicable].

~~[5-] [Washing, grooming, and cutting of hair].~~

(b) If a[Each] resident [who-]does not eliminate appropriately and independently, the facility shall:

1. Provide a[must be in a regular, systematic] toilet training program; and

2. Document the resident's[a record must be kept of his] progress[- in the program].

(c) A resident who is incontinent shall[must] be bathed or cleaned immediately upon voiding or soiling[- unless specifically contraindicated by the training program;-] and all soiled items shall[must] be changed.

(d) The staff shall train and if[when] necessary, assist a resident with dressing[the residents to dress in their own street clothing (unless otherwise indicated by the physician)].

~~(11)(8)~~ Dental services.

(a) The facility shall provide or make arrangements for dental services, comprehensive dental diagnostic services, and comprehensive dental treatment in accordance with 42 C.F.R. 483.460(e) through (g).

(b) The facility shall maintain documentation of dental services in accordance with 42 C.F.R. 483.460(h)[shall be provided and if not available within the facility, arrangements with specialists in the dental field will be made for such service;-]

~~[4-] [Appropriate dental services shall be provided through personal contact with all residents by dentists, dental hygienists, and dental assistants under the supervision of the dentists, health educators, and oral hygiene aids].~~

~~(c)[2-] A dental professional shall participate, as appropriate, on the facility's interdisciplinary team[- serving the facility].~~

~~[3-] [There shall be sufficient supporting personnel, equipment, and facilities available to the dental professional if dental services are delivered within the facility;-]~~

~~[(b)] [Dental records shall be part of each resident's record-]~~

~~(d)[(e)] A dentist shall be responsible for ensuring[insuring] that direct care staff shall be[are] instructed in the proper use of oral hygiene methods for residents.~~

~~(12)(9)~~ Social services.

(a) The facility shall provide social services directly or by contract to[shall be available either on staff or by formal arrangement with community resources for all] residents and their families, including:

1. Evaluation and counseling with referral to, and use of, other planning for community placement; and[-]

2. Discharge and follow up services rendered by or under the supervision of a qualified social worker.

(b) A facility's[The] social worker [of the intermediate care facility, providing services for the mentally retarded and developmentally disabled-]shall be under the supervision of a:

1. Qualified social worker; or

2. QIDP[who is a qualified mental retardation professional].

(c) Social services shall be integrated with other elements of the individual program plan[- of care].

(d) A plan for social services[such care] shall be recorded in the resident's record and [periodically-]evaluated in conjunction with resident's individual program plan[total plan of care].

~~[(e)] [Social services records shall be maintained as an integral part of case record maintained on each resident;-]~~

~~(13)[(10)]~~ Recreation services. The facility shall:

(a) Coordinate recreational services with other services and programs that are provided to each resident;[- and shall-]

(b)[(a)] Provide recreation equipment and supplies in a quantity and variety that shall be[is] sufficient to carry out the stated objectives of the activities programs;

(c) Maintain in the resident's record a review conducted at least annually of each resident's recreational[-]

~~[(b)] [Keep resident records that include periodic surveys of the residents' recreation] interests, including a determination of[and] the extent and level of the resident's[residents'-] participation in the recreation program; and[-]~~

(d)[(e)] Have enough qualified staff who meet the requirements of 42 C.F.R. 483.430(b)(5)(viii) and support personnel available to carry out the various recreation services[- with the qualifications as defined in the definitions].

(14)[(14)] Speech-language[Speech] pathology and audiology services. The facility shall provide speech-language[speech] pathology and audiology services;

(a) By an individual who meets the requirements of 42 C.F.R. 483.430(b)(5)(vii); and

(b) As needed to maximize the communication skills of each resident in need of services[residents needing such services. These services shall be provided by, or under the supervision of, a certified speech pathologist or audiologist who is a member of the interdisciplinary team].

~~(15)[(12)]~~ Occupational therapy.

(a) The facility shall provide occupational therapy [shall be provided-]by or under the supervision of an[a qualified] occupational therapist who meets the requirements of 42 C.F.R. 483.430(b)(5)(i) to meet a resident's need for services[to residents as required by the resident's needs].

(b) The occupational therapist or occupational therapy assistant shall provide services in accordance with[act upon] the individual program plan designed by the [professional-]interdisciplinary team[of which the therapist is a member].

~~(16)[(13)]~~ Physical therapy.

(a) The facility shall provide physical therapy [shall be provided -]by or under the supervision of a licensed physical therapist who meets the requirements of 42 C.F.R. 483.430(b)(5)(iii) to meet a resident's need for services[to residents as required by the resident's needs].

(b) The physical therapist or physical therapy assistant shall provide services in accordance with[act upon] the individual program plan designed by the [professional-]interdisciplinary team[- of which the therapist is a member].

~~(17)[(14)]~~ Psychological services.

(a) The facility shall provide psychological services as needed by a[shall be provided by a licensed or certified] psychologist who meets the requirements of 42 C.F.R. 483.430(b)(5)(v).

(b) The psychologist[pursuant to KRS Chapter 319 who] shall participate in [the-]evaluation of each resident[and periodic review], individual treatment, and consultation and training of direct care[program] staff as a member of the interdisciplinary team.

~~(18)[(15)]~~ Transportation.

(a) If transportation of residents is provided by the facility to community agencies or other activities, the provisions established in subparagraphs 1. and 2. of this paragraph[following] shall apply[-]

1. Special provision shall be made for each resident[residents] who uses a wheelchair[use wheelchairs].

2. An escort or assistant to the driver shall accompany a resident or residents, [be provided in transporting residents to and from the facility] if necessary, to help ensure[for the resident's] safety during transport.

VOLUME 50, NUMBER 11– May 1, 2024

(b) The facility shall arrange for appropriate transportation in case of a medical emergency~~(emergencies)~~.

~~(19)~~~~(16)~~ Residential care services.

(a) All facilities shall provide residential care services to all residents including:

1. Room accommodations;
2. ~~(-)~~ Housekeeping and maintenance services~~;~~~~(-)~~ and
3. Dietary services.

~~(b)~~ ~~[All facilities shall meet the following requirements relating to the provision of residential care services:]~~

~~(a)~~ Room accommodations.

1. The facility shall provide each resident with:

a. ~~A~~~~[shall be provided a standard size] bed that is at least thirty-six (36) inches wide;~~

b. ~~(-)~~ ~~equipped with substantial spring,~~ A clean, comfortable mattress with a support mechanism~~;~~~~(-)~~

c. A mattress cover~~;~~~~(-)~~

d. Two (2) sheets and a pillow; and~~(-)~~

e. ~~[an such]~~ Bed covering ~~[as is required]~~ to keep the resident comfortable.

2. ~~Each bed~~ ~~[Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by residents]~~ shall be placed so that ~~a~~~~[ne]~~ resident ~~does not~~~~[may]~~ experience discomfort because of proximity to a radiator, heat outlet, or~~[radiators, heat outlets, or by]~~ exposure to drafts.

3.~~(2-)~~ The facility shall provide:

a. Window coverings~~;~~~~(-)~~

b. Bedside tables with reading lamps~~;~~~~(-)~~ ~~[if appropriate]~~~~;~~~~(-)~~

c. Comfortable chairs;

d. A chest or dresser with a mirror for each resident;

e. ~~(-)~~ ~~chests or dressers with mirrors,~~ A night light~~;~~~~(-)~~ and

f. Storage space for clothing and other possessions.

4.~~(3-)~~ A resident~~[Residents]~~ shall not be housed in a room, detached building, or other enclosure that has not been previously inspected and approved for residential use by the Office of Inspector General and the Department for Housing, Building, and Construction~~[unapproved rooms or unapproved detached buildings]~~.

5.~~(4-)~~ Basement rooms shall not be used for sleeping rooms for residents.

6.~~(5-)~~ Residents may have personal items and furniture, if~~[when it is physically]~~ feasible.

7.~~(6-)~~ Each living room or lounge area shall have an adequate number of:

a. Reading lamps~~;~~~~(-)~~ and

b. Tables and chairs or settees of sound construction and satisfactory design.

8.~~(7-)~~ Dining room furnishings shall be adequate in number, well-constructed~~[well-constructed]~~, and of satisfactory design for the residents.

~~(c)~~~~(8-)~~ ~~[Each resident shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other residents.]~~

~~(b)~~ Housekeeping and maintenance services.

1. The facility shall:

a. Maintain a clean and safe facility free of unpleasant odors; and

b. Ensure that~~(-)~~ odors are~~[shall be]~~ eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans, and other sources.

2. The facility shall:

a. Have available at all times, an adequate supply of clean linen essential to the proper care and comfort of residents;

b. Ensure that~~[shall be on hand at all times.]~~ soiled clothing and linens shall~~[shall]~~ receive immediate attention and shall~~[shall]~~ not be allowed to accumulate~~;~~~~(-)~~

c. Ensure that clothing and linens~~[or bedding]~~ used by one (1) resident shall not be used by another unless~~[until]~~ it has been laundered or dry cleaned; and~~(-)~~

d.~~(3-)~~ Ensure that soiled clothing and linens~~[linen]~~ shall be:

(i) Placed in washable or disposable containers~~;~~~~(-)~~

(ii) Transported in a sanitary manner; and

(iii) Stored in separate, well-ventilated areas in a manner to prevent contamination and odors.

3. Equipment or areas used to transport or store soiled linen shall not be used for handling or storing of clean linen.

4. Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area.

5. Handwashing facilities with hot and cold water, soap dispenser, and paper towels shall be provided in the laundry area.

6.~~(5-)~~ Clean linen shall be sorted, dried, ironed, folded, transported, stored, and distributed in a sanitary manner.

7.~~(6-)~~ Clean linen shall be stored in clean linen closets on each floor, close to the nurses' station.

8.~~(7-)~~ Personal laundry ~~[of residents or staff]~~ shall be:

a. Collected, transported, sorted, washed, and dried in a sanitary manner~~;~~~~(-)~~ separate from bed linens~~;~~~~(-)~~

b.~~(8-)~~ ~~[Resident's personal clothing shall be]~~ Laundered ~~[by the facility]~~ as often as necessary;

c. ~~(-)~~ ~~Resident's personal clothing shall be]~~ Laundered by the facility unless the resident or the resident's family accepts this responsibility; and

d. ~~(-)~~ ~~Residents capable of laundering their own personal clothing may be provided the facilities to do so. Resident's personal clothing laundered by the facility shall be]~~ Marked or labeled to identify the resident so that it may be ~~owner and]~~ returned to the correct resident.

~~(20)~~~~(9-)~~ Maintenance. The premises shall be well kept and in good repair as established in paragraphs (a) through (d) of this subsection.

~~(a)~~ ~~[Requirements shall include:]~~

~~(a-)~~ The facility shall ensure~~[insure]~~ that the grounds are well kept and the exterior of the building, including the sidewalks, wide walks, steps, porches, ramps, and fences, are in good repair.

~~(b)~~~~(b-)~~ The interior of the building, including walls, ceilings, floors, windows, window coverings, doors, plumbing, and electrical fixtures shall be in good repair. Windows and doors shall be screened.

~~(c)~~~~(c-)~~ Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

~~(d)~~~~(d-)~~ A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

~~(21)~~~~(e-)~~ Dietary services.

~~(a)~~ The facility shall provide or contract for food services~~[service]~~ to meet the dietary needs of the residents, including:

1. Modified diets; or

2. Dietary restrictions as prescribed by the attending physician.

~~(b)~~

1. ~~[When]~~ a facility contracts for food services~~[service]~~ with an outside food management company, the company shall provide a licensed dietitian~~[qualified]~~~~[dietician or certified nutritionist]~~ on a full-time, part-time~~[full time, part time]~~ or consultant basis to the facility.

2. The licensed dietitian~~[qualified]~~~~[dietician or certified nutritionist]~~ shall make recommendations to~~[have continuing liaison with]~~ the medical and nursing staff ~~[of the facility for recommendations.]~~ on dietetic policies affecting resident care.

3. The food management company shall comply with the~~[all of the appropriate requirements for]~~ dietary services requirements of this subsection~~[in this administrative regulation].~~

~~(c)~~~~(4-)~~ ~~[Therapeutic diets.]~~ If the facility provides therapeutic diets and the staff member responsible for the food services is not a licensed dietitian~~[dietician or certified nutritionist]~~, the responsible staff person shall consult with a licensed dietitian~~[designated person responsible for food service is not a qualified]~~~~[dietician or certified nutritionist]~~ ~~[consultation by a qualified dietician or qualified nutritionist shall be provided].~~

~~(d)~~ The facility shall:

1.~~(2-)~~ Have a~~[Dietary staffing. There shall be]~~ sufficient number of food service personnel;

2. Ensure that the food service staff schedules shall be~~[are]~~ employed and their working hours, schedules of hours on duty, and days off shall be posted; and~~(-)~~

VOLUME 50, NUMBER 11– May 1, 2024

3. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety, or time required from regular dietary assignments.

~~(e)[3.] Menu planning.~~

1.[a.] Menus shall be planned, written, and rotated to avoid repetition.

2. The facility shall meet the nutrition needs of residents in accordance with a~~[shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with]~~ physician's orders.

3.[b.] Except as established in subparagraph 5. of this paragraph, meals shall correspond with the posted menu.

4. Menus ~~shall~~must be planned and posted one (1) week in advance.

5. ~~If~~When changes in the menu are necessary:~~;~~

a. Substitutions shall provide equal nutritive value;

b. The changes shall be recorded on the menu; and~~and~~

c. ~~Menus shall be~~ kept on file for at least thirty (30) days.

~~(f)[c.] [The daily menu shall include regular and all modified diets served within the facility based on a currently approved diet manual. The manual shall be available in the dietary department. The diet manual shall indicate nutritional deficiencies of any diet. The dietician shall correlate and integrate the dietary aspects of the resident's care with the resident and resident's chart through such methods as resident instruction, recording diet histories and through participation in rounds and conferences.]~~

[4.] Food preparation and storage.

1.[a.] There shall be at least a three (3) day supply of food to prepare ~~well-balanced~~well-balanced, palatable meals.

2.[b.] Food shall be prepared with consideration for any individual dietary requirement.

3. Modified diets, nutrient concentrates, and supplements shall be given only on the written orders of a:

a. Physician;

b. ~~Advanced practice~~ registered nurse; or

c. Physical assistant.

4.[c.] At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the ~~substantial~~ evening meal and breakfast.

5. Between-meal snacks and beverages, including~~[to include]~~ an evening snack before bedtime, shall be available at all times for each resident, unless~~offered to all residents. Adjustments shall be made when~~ medically contraindicated as documented by a physician in the resident's record.

6.[d.] Foods shall be:

a. Prepared by methods that conserve nutritive value, flavor, and appearance; and

b. ~~[shall be attractively]~~ Served at the proper ~~temperature~~temperatures, and in a form to meet individual needs.

7. ~~{[A file of tested recipes, adjusted to appropriate yield shall be maintained.]}~~

8. Food shall be cut, chopped, or ground to meet individual needs.

9. If a resident refuses the food served, nutritious substitutions shall be offered.

10.[e.] All opened containers or leftover food items shall be covered and dated when refrigerated.

~~(g)[5.] Serving of food.~~

1. ~~If~~When a resident cannot be served in the dining room, trays shall:

a. Be provided; and~~shall~~

b. Rest on firm supports.

2. Sturdy tray stands of proper height shall be provided for residents able to be out of bed.

3.[a.] Direct care staff shall be responsible for correctly positioning a resident to eat meals served on a tray~~Correct positioning of the resident to receive his tray shall be the responsibility of the direct care staff.~~

4. A resident in need of~~[Residents requiring]~~ help ~~[in-]eating~~ shall be assisted promptly upon receipt of meals~~[according to their training plan].~~

5.[b.] The facility shall provide adaptive feeding equipment if

~~needed by a resident~~[self-help devices shall be provided to contribute to the resident's independence in eating, if assessments deem necessary].

6. Food services shall be provided in accordance with~~[Sanitation. All facilities shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and] 902 KAR 45:005~~[Kentucky's Food Service Establishment Act and Food Service Code]. 902 KAR 20:086

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Fiscal Management
(As Amended at ARRS, April 9, 2024)

907 KAR 1:065. Payments for price-based nursing facility services.

RELATES TO: KRS 142.361, 142.363, 216.380, 42 C.F.R. Parts 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 482.58, 483.10, 483.20, 42 U.S.C. 1395tt, 1396, 1396a, 1396b, 1396c, 1396d, 1396g, 1396l, 1396n, 1396o, 1396p, 1396r, 1396r-2, 1396r-5

STATUTORY AUTHORITY: KRS 142.361(5), 142.363(3), 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the Medicaid program for services provided by a price-based nursing facility.

Section 1. Definitions.

(1) "Ancillary service" means a direct service~~[for which a charge is customarily billed separately from the per diem rate]~~ including:

(a) Ancillary services pursuant to 907 KAR 1:023; or

(b) If ordered by a physician:

1. Laboratory procedures; or

2. X-rays.

(2) "Appraisal" means an evaluation of a price-based nursing facility building, excluding equipment and land, conducted by the department in accordance with Section 4 of this administrative regulation for the purpose of calculating the depreciated replacement cost of a price-based nursing facility.

(3) "Appraisal base year" means a year in which the department conducts an appraisal of each price-based NF.

(4) "Auxiliary building" means a roofed and walled structure:

(a) Serviced by electricity, heating, and cooling;

(b) Independent of an NF;

(c) Used for administrative or business purposes related to an NF; and

(d) Constructed on the same tract of ground as an NF.

(5) "Capital rate component" means a calculated per diem amount for an NF based on:

(a) The NF's appraised depreciated replacement cost;

(b) A value for land;

(c) A value for equipment;

(d) A rate of return;

(e) A risk factor;

(f) The number of calendar days in the NF's cost report year;

(g) The number of licensed NF beds in the NF; and

(h) The NF's bed occupancy percentage.

VOLUME 50, NUMBER 11– May 1, 2024

(6) "Case-mix" means the time-weighted average price-based NF acuity for Medicaid-eligible and dual-eligible Medicare and Medicaid residents under a Medicare Part A reimbursed stay in a price-based nursing facility, and is based on Minimum Data Set (MDS) 3.0 data classified through the Patient Driven Payment Model (PDPM)[RUG-III, M3-p1, (version 5.20) thirty-four (34) group model] resident classification system or equivalent.

(7) "Core based statistical area" or "CBSA" means the designation of metropolitan and micropolitan population centers based on the national census, as published by the Federal Office of Management and Budget.

(8) "Department" means the Department for Medicaid Services or its designee.

(9) "Equipment" means a depreciable tangible asset, other than land or a building, which is used in the provision of care for a resident by an NF staff person.

(10) "Governmental entity" means a unit of government for the purposes of 42 U.S.C. 1396b(w)(6)(A).

(11) "Hospital-based NF" means an NF that:

(a) Is separately identifiable as a distinct part of the hospital; and

(b) If separated into multiple but distinct parts of a single hospital, is combined under one (1) provider number.

(12) "Land" means a surveyed tract or tracts of ground that share a common boundary:

(a) As recorded in a county government office;

(b) Upon which a building licensed as an NF is constructed; and

(c) Including site preparation and improvements.

(13) "Local unit of government" means a city, county, special purpose district, or other governmental unit in the state.

(14) "NF" or "nursing facility" means:

(a) A facility:

1. To which the state survey agency has granted an NF license;

2. For which the state survey agency has recommended to the department certification as a Medicaid provider; and

3. To which the department has granted certification for Medicaid participation; or

(b) A hospital swing bed that provides services in accordance with 42 U.S.C. 1395t and 1396f, if the swing bed is certified to the department as meeting requirements for the provision of swing bed services in accordance with 42 U.S.C. 1396r(b), (c), (d), 42 C.F.R. 447.280, and 482.58.

(15) "NF building" means a roofed and walled structure serviced by electricity, heating, and cooling and that is also an NF.

(16) "Nursing facility with Medicaid waiver" or "NF-W" means an NF to which the state survey agency has granted a waiver of the nursing staff requirement.

(17) "Provider assessment" means the assessment imposed by KRS 142.361 and 142.363.

(18) "Routine services" means the services covered by the Medicaid program pursuant to 42 C.F.R. 483.10(f)(11)(i).

(19) "Site improvement" means a depreciable asset element, other than an NF building or auxiliary building, on NF land extending beyond an NF's foundation if used for NF-related purposes.

(20) "Standard price" means a facility-specific reimbursement that includes a case-mix adjusted component, noncase-mix adjusted component including an allowance to offset a provider assessment, noncapital-facility related component, and capital rate component.

(21) "State survey agency" means the Cabinet for Health and Family Services, Office of Inspector General, Division of Health Care.

(22) "Time-weighted" means a method of calculating case-mix by determining the number of days that a minimum data set (MDS) record is active over a calendar quarter rather than captured from a single day during the calendar quarter.

Section 2. NF Reimbursement Classifications and Criteria.

(1) An NF or a hospital-based NF shall be reimbursed as a price-based NF pursuant to this administrative regulation if:

(a) It provides NF services to an individual who:

1. Is a Medicaid recipient;

2. Meets the NF patient status criteria pursuant to 907 KAR 1:022; and

3. Occupies a Medicaid-certified bed; and

(b)

1. It has more than ten (10) NF beds and the greater of:

a. Ten (10) of its Medicaid-certified beds participate in the Medicare program; or

b. Twenty (20) percent of its Medicaid certified beds participate in the Medicare program; or

2. It has less than ten (10) NF beds and all of its NF beds participate in the Medicare program.

(2) An NF-W shall be reimbursed as a price-based NF pursuant to this administrative regulation if it meets the criteria established in subsection (1)(a) of this section.

(3) The following shall not be reimbursed as a price-based NF and shall be reimbursed pursuant to 907 KAR 1:025:

(a) An NF with a certified brain injury unit;

(b) An NF with a distinct part ventilator unit;

(c) An NF designated as an institution for mental disease;

(d) A dually-licensed pediatric facility; or

(e) An intermediate care facility for individuals with an intellectual disability.

Section 3. Reimbursement for Federally-Defined Swing Beds and for Skilled Nursing Facility Services in Critical Access Hospital Swing Beds.

(1) The reimbursement rate for a federally-defined swing bed shall be:

(a) The average rate per patient day paid to freestanding price-based NFs for routine services furnished during the preceding calendar year, excluding any payment made pursuant to Section 14 of this administrative regulation; and

(b) Established effective January 1 of each year.

(2)

(a) The department shall reimburse a critical access hospital for skilled nursing facility services in a swing bed at the same rate as established by the Centers for Medicare and Medicaid Services for Medicare.

(b) The department shall pay an interim per diem rate as established by CMS for the Medicare program.

(c) The effective date of a rate shall be the same as used by the Medicare program.

(d) A critical access hospital's final reimbursement for skilled nursing facility services in a swing bed shall reflect any adjustment made by the Centers for Medicare and Medicaid Services.

(e) Total payments made to a critical access hospital for skilled nursing facility services provided in a swing bed under this section shall be subject to the payment limitation established in 42 C.F.R. 447.271.

(f) The provisions established in this subsection shall apply to a critical access hospital that complies with all requirements established in KRS 216.380.

Section 4. Price-based NF Appraisal.

(1) The department shall appraise a price-based NF to determine the facility specific capital component in 2009, and every fifth year, in order to calculate the NF's depreciated replacement cost.

(2) The department shall not appraise equipment or land. A provider shall be given the following values for land and equipment:

(a) Ten (10) percent of an NF's average licensed bed value for land; and

(b) \$2,000 per licensed NF bed for equipment.

(3) The department shall utilize the following variables and fields of the nursing home or convalescent center CoreLogic Commercial Express[#5290 model of the Marshall & Swift Boeckh Building] Valuation System [(BVS)]-to appraise an NF identified in Section 2(1) of this administrative regulation:

(a) Provider number;

(b) Property owner - NF name;

(c) Address;

(d) Zip code;

(e) Section number - the lowest number shall be assigned to the oldest section and a basement, appraised as a separate section, immediately follows the section it is beneath;

(f) Occupancy code - nursing home or substructure;

(g) Average story height;

VOLUME 50, NUMBER 11– May 1, 2024

- (h) Construction type;
- (i) Number of stories;
- (j) Gross floor area (which shall be the determination of the exterior dimensions of all interior areas including stairwells of each floor, specifically excluding outdoor patios, covered walkways, carports, and similar areas). In addition, interior square footage measurements shall be reported for:
 - 1. A non-NF area;
 - 2. A shared service area by type of service; and
 - 3. A revenue-generating area;
- (k) Gross perimeter (common walls between sections shall be excluded from both sections);
- (l) Construction quality;
- (m) Year built;
- (n) Building effective age;
- (o) Building condition;
- (p) Depreciation percent;
- (q) Exterior wall material;
- (r) Roof covering material and roof pitch;
- (s) Heating system;
- (t) Cooling system;
- (u) Floor finish;
- (v) Ceiling finish;
- (w) Partition wall structure and finish;
- (x) Passenger and freight elevators - actual number;
- (y) Fire protection system (sprinklers, manual fire alarms, and automatic fire detection) - percent of gross area served. If both the floor and attic areas are protected by a sprinkler system or automatic detection, the percent of gross area served shall be twice the floor area; and
 - (z) Miscellaneous additional features, which shall be limited to:
 - 1. Canopies;
 - 2. Entry foyers (sheltered entry ways):
 - a. The glass and aluminum standard allowance shall be fifty (50)~~thirty (30)~~ dollars per square foot;
 - b. Bulkhead standard allowance shall be:
 - (i) Eleven (11)~~Seven (7)~~ dollars per square foot for a wood frame;
 - (ii) Twelve (12)~~Eight (8)~~ dollars per square foot for a steel frame; or
 - (iii) Thirty-one (31)~~Twenty (20)~~ dollars per square foot for brick masonry;
 - 3. Loading docks;
 - 4. Code alerts, Wanderguards, or other special electronically-secured doorways, except for a door with a sound detector or sensing unit (the standard allowance shall be \$1,420~~\$1,500~~ for each fully-functioning door at the time of appraisal);
 - 5. A door with a sound detector or sensing unit shall have a standard allowance of \$865~~\$500~~ per door;
 - 6. Automatic sliding doors (the standard allowance shall be \$25,450~~\$47,000~~ per doorway);
 - 7. An automatic door opener shall have a standard allowance of \$9160~~\$6,500~~ per door;
 - 8. Detached garages or storage sheds (which shall have an attached reinforced concrete floor and a minimum of 200 square feet);
 - 9. Modular buildings or trailers, if the structure has a minimum of 200 square feet, electrical service, and heating or cooling services (the standard allowance shall be eighty (80)~~fifty-six (56)~~ dollars per square foot);
 - 10. Walk-in coolers or freezers;
 - 11. Laundry chutes (the standard allowance shall be \$2,530~~\$2,400~~ per floor serviced);
 - 12. Dumb waiters (which shall have a minimum speed of fifty (50) feet per minute. The standard allowance shall be \$20,500~~\$8,000~~ for the initial two (2) stops for a manual door or \$52,520~~\$24,000~~ for the initial two (2) stops for an electric door and \$5,050~~\$7,000~~ per additional stop);
 - 13. Skylights (the standard allowance shall be fifty-seven~~forty (40)~~ dollars per square foot);
 - 14. Operable built-in oxygen delivery systems (valued at \$425~~\$300~~ per serviced bed);
 - 15. Carpeted wainscoting (the standard allowance shall be

- eighty (80)~~sixty (60)~~ dollars per licensed bed);
 - 16. Balconies;
 - 17. Ceiling fans for which the standard allowance shall be \$375~~\$250~~ for each ceiling fan without a light and \$675~~\$400~~ for each ceiling fan with a light;
 - 18. Cupolas for which the standard allowance shall be \$990~~\$720~~ each;
 - 19. Fireplaces;
 - 20. Concrete-lined utility tunnels for which the standard allowance shall be thirty-two~~twenty-five (25)~~ dollars per cubic foot; and
 - 21. Mechanical penthouses.
- (4) An item listed in subsection (3)(z) of this section shall be subject to the CoreLogic Commercial Express valuation system~~Marshall & Swift Boeckh BVS model #5200~~ monetary limit unless a monetary limit is provided for that item in subsection (3)(z) of this section.
- (5) The department shall use the corresponding CoreLogic Commercial Express valuation system~~Marshall & Swift Boeckh BVS~~ default value for any variable listed in subsection (3) of this section if no other value is stated for that variable in subsection (3) of this section.
- (6)
- (a) Values from the most recent CoreLogic Commercial Express valuation system~~Marshall & Swift Boeckh BVS~~ tables shall be used during an appraisal.
- (b) An adjustment calculation shall be performed if the most recent CoreLogic Commercial Express valuation system~~Marshall & Swift Boeckh BVS~~ tables do not correspond to an appraisal base year.
- (7) In addition to an appraisal cited in subsection (1) of this section, the department shall appraise an NF identified in Section 2(1) of this administrative regulation if:
- (a) The NF submits written proof of construction costs to the department; and
- (b)
- 1. The NF undergoes renovations or additions costing a minimum of \$150,000 and the NF has more than sixty (60) licensed beds; or
 - 2. The NF undergoes renovations or additions costing a minimum of \$75,000 and the NF has sixty (60) or fewer licensed beds.
- (8) An auxiliary building shall be:
- (a) Appraised if it rests on land, as defined in Section 1(12) of this administrative regulation; and
 - (b) Appraised separately from an NF building.
- (9) To appraise an auxiliary building, the department shall utilize a CoreLogic Commercial Express valuation system~~Marshall & Swift Boeckh BVS model other than the nursing home or convalescent center #5200~~ model, if the model better fits the auxiliary building's use and type.
- (10) If an NF building has beds licensed for non-NF purposes or a provider conducts business activities not related to the NF, the appraisal shall be adjusted between NF and non-NF activity. The appraiser shall determine if the adjustment shall be made by dividing the number of licensed NF beds by the total number of beds, or through the use of an adjustment factor determined in accordance with appraisal industry standards by the appraiser, regardless of the occupancy factor. For example, an adjustment factor may be used to apportion the appraisal by the percent of NF square footage relative to the square footage on non-NF-related business activities.
- (11) Cost of an appraisal shall be the responsibility of the NF being appraised.
- (12) A building held for investment, future expansion, or speculation shall not be considered for appraisal purposes.
- (13) The department shall not consider the following location factors in rendering an appraisal:
- (a) Climate;
 - (b) High-wind zone;
 - (c) Degree of slope;
 - (d) Position;
 - (e) Accessibility; or
 - (f) Soil condition.

VOLUME 50, NUMBER 11– May 1, 2024

Section 5. Standard Price Overview.

(1) Rates shall reflect the differential in wages, property values, and cost of doing business in rural and urban designated areas.

~~(2)(a) [Except as provided by paragraph (b) of this subsection, and beginning in 2018,] On July 1 of each year, the department shall utilize the most recent Federal Office of Management and Budget's core based statistical area (CBSA) designations to classify an NF as being in an urban or rural area, with metropolitan areas always being classified as urban. The urban and rural designations shall be based on the location of the NF under the CBSA designation.~~

~~[(b)]~~

~~[4.] [On July 7, 2017, the department shall utilize the most recent Federal Office of Management and Budget's core based statistical area (CBSA) designations to classify an NF as being in an urban or rural area, with metropolitan areas classified as urban. The urban and rural designations shall be based on the location of the NF under the CBSA designation.]~~

~~[2.] [On July 7, 2017, a change in designation from:]~~

~~[a.] [Rural to urban shall take effect on July 1, 2017; and]~~

~~[b.] [Urban to rural shall take effect July 1, 2018.]~~

(3) The department shall utilize an analysis of fair-market pricing and historical cost for the following data:

(a) Staffing ratios;

(b) Wage rates;

(c) Cost of administration, food, professional support, consultation, and nonpersonnel operating expenses as a percentage of total cost;

(d) Fringe benefit levels;

(e) Capital rate component; and

(f) Noncapital facility-related component.

(4) The following components shall comprise the case-mix adjustable portion of an NF's standard price:

(a) The personnel cost of:

1. A director of nursing;

2. A registered nurse (RN);

3. A licensed practical nurse (LPN);

4. A nurse aide;

5. An activities staff person; and

6. A medical records staff person; and

(b) Nonpersonnel operating cost including:

1. Medical supplies; and

2. Activity supplies.

(5) The following components shall comprise the noncase-mix adjustable portion of an NF's standard price:

(a) Administration to include an allowance to offset a provider assessment;

(b) Nondirect care personnel;

(c) Food;

(d) Professional support; and

(e) Consultation.

(6) The following components shall comprise the facility and capital component of an NF's standard price:

(a) The noncapital facility-related component, which shall be a fixed, uniform amount for all price-based NFs; and

(b) The NF's capital rate component, which shall be facility specific.

(7) Excluding capital rate components, the following is an example of an urban and a rural price-based NF's standard price based on rebased wages at the ~~2024~~~~[2008]~~ level:

CBSA Designation	Case-Mix Adjustable Portion of Standard Price	Noncase-Mix Adjustable Portion of Standard Price Without Capital Rate Component	Total Standard Price Excluding Capital Rate Components
Urban	\$160.14 [\$88.05]	\$101.81 [\$62.89]	\$261.95 [\$150.85]
Rural	\$135.87 [\$74.62]	\$89.68 [\$55.63]	\$225.55 [\$130.25]

(8) A price-based NF's standard price may be:

(a) Adjusted for inflation every July 1 using the version of the CMS Nursing Home without Capital Market Basket that was effective on the July 1 that the inflation adjustment occurred; and

(b) Rebased:

1. Effective July 1, 2024; and

2. At least once every four (4) years thereafter.

~~(9) [Effective July 1, 2004, an NF shall not receive a rate less than its standard price.]~~

~~[(10)] [Effective July 1, 2022:]~~

~~[(a)] [A nursing home relief reimbursement increase of twenty-nine (29) dollars shall be included in the noncase-mix adjustable portion of the per diem rate.]~~

~~[(b)] [The nursing home relief reimbursement increase shall be included in the administration line of the calculation and shall not receive annual inflationary adjustments.]~~

~~[(c)] [The nursing home relief reimbursement increase of twenty-nine (29) dollars shall continue until the standard price is rebased.]~~

~~[(14)] The department shall adjust an NF's standard price if:~~

(a) A governmental entity imposes a mandatory minimum wage or staffing ratio increase and the increase was not included in the inflation adjustment; or

(b) A new licensure requirement or new interpretation of an existing requirement by the state survey agency results in changes that affect all facilities within the class. The provider shall document that a cost increase occurred as a result of a licensure requirement or policy interpretation.

Section 6. Standard Price Calculation.

(1) Based on the classification of urban or rural, the department shall calculate an individual NF's standard price to be the sum of:

(a) The case-mix adjustable portion of the NF's standard price, adjusted by the NF's current case-mix index pursuant to Section 7 of this administrative regulation;

(b) The noncase-mix adjustable portion of the NF's standard price, which shall include[:]

~~[4.] an allowance to offset a provider assessment;[and]~~

~~[2.] [The nursing home relief reimbursement increase of twenty-nine (29) dollars;]~~

(c) The noncapital facility-related component; and

(d) Pursuant to subsection (2) of this section, the capital rate component.

(2) An NF's capital rate component shall be calculated as follows:

(a) The department shall add the total of:

1. The NF's average licensed bed value, which shall:

a. Be determined by dividing the NF's depreciated replacement cost, as determined from an appraisal conducted in accordance with Section 4 of this administrative regulation, adjusted every July 1 using the RS Means Construction Cost Indexes, and applying the total weighted average annual change of the Kentucky cities by the NF's total licensed NF beds; and

b. Not exceed ~~\$79,775~~~~[\$56,003]~~ effective July 1, ~~2023~~~~[2016]~~, which shall be adjusted every July 1 thereafter by the same factor applied to the NF's depreciated replacement cost;

2. A value for land, which shall be ten (10) percent of the NF's average licensed NF bed value, established in accordance with subparagraph 1. of this paragraph; and

3. A value for equipment, which shall be \$2,000 per licensed NF bed;

(b) The department shall multiply the sum of paragraph (a) of this subsection by a rate of return factor, which shall:

1. Be equal to the sum of:

a. The yield on a twenty (20) year treasury bond as of the first business day on or after May 31 of the most recent year; and

b. A risk factor of two (2) percent; and

2. Not be less than nine (9) percent nor exceed twelve (12) percent;

(c) The department shall determine the NF's capital cost-per-bed day by:

1. Dividing the NF's total patient days by the NF's available bed days to determine the NF's occupancy percentage;

2. If the NF's occupancy percentage is less than ninety (90) percent, multiplying ninety (90) percent by 365 days; and

3. If the NF's occupancy percentage exceeds ninety (90) percent,

VOLUME 50, NUMBER 11– May 1, 2024

multiplying the NF's occupancy percentage by 365 days; and

(d) The department shall divide the sum of paragraphs (a) and (b) of this subsection by the NF's capital cost-per-bed day established in paragraph (c) of this subsection to determine an NF's capital rate component.

(3) If a change of ownership occurs pursuant to 42 C.F.R. 447.253(d), the new owner shall:

(a) Receive the capital cost rate of the previous owner unless the NF is eligible for a reappraisal pursuant to Section 4(7) of this administrative regulation; and

(b) File an updated provider application with the Medicaid program pursuant to 907 KAR 1:672, Section 3(4).

(4) A new facility shall be:

(a) Classified as a new facility if the facility does not have a July 1, of the current state fiscal year, Medicaid rate;

(b) Determined to be urban or rural; and

(c) Reimbursed at its standard price, which shall:

1. Be based on a case-mix of 1.0;

2. Be adjusted prospectively based upon no less than one (1) complete calendar quarter of available MDS 3.0 data following the facility's Medicaid certification;

3. Utilize ~~\$79,775~~~~[\$56,003]~~ effective July 1, ~~2023~~~~[2016]~~, as adjusted through the current state fiscal year as the facility's average licensed NF bed value until the facility is appraised in accordance with Section 4 of this administrative regulation; and

4. Be adjusted, if necessary, following the facility's appraisal if the appraisal determines the facility's average licensed NF bed value to be less than ~~\$79,775~~~~[\$56,003]~~ effective July 1, ~~2023~~~~[2016]~~, as adjusted through the current state fiscal year.

(5) The amounts calculated pursuant to subsection (4)(c)3. and 4. of this section shall be adjusted annually consistent with the adjustments made to the depreciated replacement cost, as described in subsection (2)(a)1.b. of this section for the capital component calculation.

Section 7. PDPM Adapted Minimum Data Set (MDS) 3.0, Resource Utilization Group (RUG-III), and Validation.

(1) A price-based NF's Medicaid MDS data shall be utilized to determine its case-mix index each quarter.

(2) A price-based NF's case-mix index shall be applied to its case-mix adjustable portion of its standard price.

(3) To determine a price-based NF's case-mix index, the department shall:

(a) Calculate case-mix on a time-weighted basis using MDS data: 1. Extracted on the last date of each calendar quarter from the NF's MDS item sets:

a. Included in the PDPM Adapted Minimum Data Set (MDS) - Version 3.0, Resident Assessment and Care Screening; and

b. Transmitted by the NF to the Centers for Medicare and Medicaid Services; and

2. Which, if revised, shall be revised no later than the last date of the quarter following the date on which MDS data was extracted. For example, MDS data submitted after September 30, ~~2023~~~~[2016]~~, for the purpose of revision to MDS data extracted June 30, ~~2023~~~~[2016]~~, shall not be utilized;

(b) Classify the data cited in paragraph (a) of this subsection through the Patient Driven Payment Model (PDPM)~~[RUG-III, (M3 p1), version five point twenty (5.20) thirty-four (34) group or equivalent model]~~ resident classification system, nursing component; and

(c) Validate the data cited in paragraph (a) of this subsection as follows:

1. The department shall generate a stratified random sample of ~~thirty (30)~~~~[twenty-five (25)]~~ percent of the Medicaid residents in a price-based NF;

2. The department shall review one (1) MDS assessment from each resident in the sample referenced in subparagraph 1. of this paragraph; and

3. The department shall review medical records corresponding to the individuals included in the sample identified in subparagraphs 1. and 2. of this paragraph to determine if the medical records accurately support the MDS assessments submitted for the sample residents]; and

~~[4.] [If a review of records cited in subparagraph 3. of this paragraph reveals that the price-based NF fails to meet the minimum accuracy threshold, the department shall determine if the NF fails to meet the minimum accuracy threshold by reviewing 100 percent of the price-based NF's Medicaid MDS assessments:]~~

~~[a.] [Extracted in accordance with paragraph (a) of this subsection; and]~~

~~[b.] [Selecting one (1) MDS assessment per resident].~~

(4) If the department's review, in accordance with subsection (3)(c)3. ~~[and 4.]~~ of this section, of a price-based NF's MDS assessment data reveals that the NF fails to meet the MDS data minimum accuracy threshold, the department shall conduct another review of the same data utilizing an individual or individuals not involved in the initial validation process if the price-based NF requests a reconsideration within ten (10) business days of being notified of the findings of the review ~~[cited in subsection (3)(c)4. of this section]~~.

(5) Only MDS data extracted in accordance with subsection (3)(a)2. of this section shall be allowed during a review or reconsideration.

(6) If a reconsideration of a price-based NF's MDS assessment data, in accordance with subsection (4) of this section, confirms that the NF fails to meet the minimum accuracy threshold, the department shall:

(a) Conduct a conference with the NF to review preliminary findings of the reconsideration; and

(b) Send the final results of the reconsideration to the NF within ten (10) business days of the conference.

(7) In performing validation reviews on MDS data, the department shall:

(a) Notify the NF at the time of the MDS assessment review of any assessment that is not validated and allow the NF to provide supporting documentation that had been utilized to support the assessment;

(b) Consider all MDS supporting documentation provided by the NF prior to the exit conference; and

(c) Not consider MDS supporting documentation provided by the NF after the exit conference has occurred.

(8)

(a) Reconsideration of a price-based NF's MDS assessment data validation shall be provided if the NF:

1. Requests a reconsideration and clearly identifies each specific resident's review and MDS elements that are being disputed;

2. States the basis on which the department's decision on each issue is believed to be erroneous; and

3. Provides a summary supporting the NF's position.

(b) After a reconsideration of a price-based NF's MDS assessment data has been completed, the NF may appeal the department decision regarding the data in accordance with 907 KAR 1:671, Section 9.

(9)(a) The department shall refer any suspected intentional alteration of clinical documentation or creation of documentation after an MDS assessment has been transmitted to the Office of Inspector General (OIG) for investigation of possible fraud.

(b) A fraud investigation may result in a felony or misdemeanor criminal conviction.

(10) An NF's rate shall be effective beginning on the first date of the second quarter following the MDS extraction date.

(11) An MDS validation review, if conducted, shall be initiated in the month containing the corresponding rate effective date.

(12) A rate sanction shall be applied on the rate effective date following the validation review initiation date.

(13) MDS assessment accuracy thresholds and corresponding rate sanctions shall be established in accordance with this subsection.

(a) If a price-based NF's percentage of accurate MDS assessments is between sixty-five (65) and seventy-nine (79) percent, the price-based NF's rate shall be sanctioned by fifty (50) cents per patient day.

(b) If a price-based NF's percentage of accurate MDS assessments is between forty (40) and sixty-four (64) percent, the price-based NF's rate shall be sanctioned by sixty (60) cents per patient day.

VOLUME 50, NUMBER 11– May 1, 2024

(c) If a price-based NF's percentage of accurate MDS assessments is below forty (40) percent, the price-based NF's rate shall be sanctioned by seventy (70) cents per patient day.

(d) Rate sanctions shall not be applied:

1. Until the rates effective July 1, 2025 are in effect; and

2. Except for those rates that are effective on and after July 1, 2025 as specified in subsection (14) of this section.

(14) Beginning with rates effective July 1, 2025, upon conclusion of a departmental review of MDS data, in accordance with this section of this administrative regulation:

(a) The department shall recalculate the facility's case mix index based on the review's findings; and

(b) If a recalculated case mix index results in a change to the NF's established rate or rates, the rate or rates shall be recalculated and any payment adjustment shall be made.

(15) For rates effective April 1, 2024, through June 30, 2024, the rate shall be equal to the rate effective January 1, 2024.

(16) Beginning July 1, 2024, the PDPM case-mix index shall be phased in using the following schedule:

(a) For rates effective July 1, 2024 through September 30, 2024, the case-mix index shall be comprised of twenty-five (25) percent of the PDPM CMI and seventy-five (75) percent of the RUG-III CMI that was in effect prior to the transition.

(b) For rates effective October 1, 2024 through December 31, 2024, the case-mix index shall be comprised of fifty (50) percent of the PDPM CMI and fifty (50) percent of the RUG-III CMI that was in effect prior to the transition.

(c) For rates effective January 1, 2025 through March 31, 2025, the case-mix index shall be comprised of seventy-five (75) percent of the PDPM CMI and twenty-five (25) percent of the RUG-III CMI that was in effect prior to the transition.

(d) Beginning April 1, 2025, the case-mix index shall be comprised of 100 percent of the PDPM CMI and zero percent of the RUG-III CMI that was in effect prior to the transition.

Section 8. Limitation on Charges to Residents.

(1) Except for applicable deductible and coinsurance amounts, an NF that receives reimbursement for a resident pursuant to Section 6 of this administrative regulation shall not charge a resident or his representative for the cost of routine or ancillary services.

(2) An NF may charge a resident or his representative for an item pursuant to 42 C.F.R. 483.10(f)(11)(ii) if:

(a) The item is requested by the resident;

(b) The NF informs the resident in writing that there will be a charge; and

(c) Medicare, Medicaid, or another third party does not pay for the item.

(3) An NF shall:

(a) Not require a resident, or responsible representative of the resident, to request any item or services as a condition of admission or continued stay; and

(b) Inform a resident, or responsible representative of the resident, requesting an item or service for which a charge will be made in writing that there will be a charge and the amount of the charge.

(4) Reserved bed days, per resident, for an NF or an NF-W shall be:

(a) Reimbursed for a maximum of thirty (30)~~fourteen (14)~~ days per calendar year due to hospitalization. Accumulated bed reserve days shall follow a resident if the resident relocates to another facility within a calendar year rather than starting over at zero due to relocation;

(b) Reimbursed for a maximum of ten (10) days during a calendar year for leaves of absence other than hospitalization. Accumulated bed reserve days shall follow a resident if the resident relocates to another facility within a calendar year rather than starting over at zero due to the relocation;

(c) Reimbursed at seventy-five (75) percent of a facility's rate~~[if the facility's occupancy percent is ninety-five (95) percent or greater for the calendar quarter preceding the bed reserve day; and]~~

~~[(d)] [Reimbursed at fifty (50) percent of a facility's rate if the facility's occupancy percent is less than ninety-five (95) percent for the calendar quarter preceding the bed reserve day].~~

(5) Except for oxygen therapy, durable medical equipment (DME) and supplies shall:

(a) Be furnished by an NF; and

(b) Not be billed to the department under a separate DMS claim pursuant to 907 KAR 1:479, Section 6(3).

(6) ~~Except as otherwise covered pursuant to Title 907 KAR,~~ dentures, lenses, frames, or hearing aids shall be paid for through the resident's patient liability or spend down amounts and limited to one (1) replacement per item per calendar year.

Section 9. Reimbursement for Required Services Under the Preadmission Screening Resident Review (PASRR).

(1) Prior to an admission of an individual, a price-based NF shall conduct a level I PASRR in accordance with 907 KAR 1:755, Section 4.

(2) The department shall reimburse an NF for services delivered to an individual if the NF complies with the requirements of 907 KAR 1:755.

(3) Failure to comply with 907 KAR 1:755 may be grounds for termination of the NF's participation in the Medicaid Program.

Section 10. Price-Based NF Protection Period and Budget Constraints.

(1) A county-owned hospital-based nursing facility shall not receive a rate that is less than the rate that was in effect on June 30, 2002.

(2) For each year of the biennium, a price-based NF shall:

(a) Receive an adjustment pursuant to Section 5(8) and ~~9(14)~~ of this administrative regulation; or

(b) Except for a county-owned hospital-based nursing facility pursuant to subsection (1) of this section, not receive an increase if the price-based NF's rate is greater than its standard price.

Section 11. Cost Report.

(1) A Medicare cost report and the Supplemental Medicaid Schedules shall be submitted pursuant to time frames established in the CMS Medicare Provider Reimbursement Manual - Part 2 (Pub. 15-2) Sections 102, 102.1, 102.3, and 104, using the Instructions for Completing the Medicaid Supplemental Schedules.

(2) A copy of a price-based NF's Medicare cost report shall be submitted for the most recent fiscal year end.

Section 12. Ancillary Services.

(1) Except for oxygen therapy and for ancillary services provided to an individual in a critical access hospital swing bed, the department shall reimburse for an ancillary service that meets the criteria established in 907 KAR 1:023 utilizing a per diem component to the rates, updated every July 1. Prior year utilization based on claims and the corresponding outpatient procedure code rate listed in the Medicaid Physician Fee Schedule established in 907 KAR 3:010, Section ~~1(17)3~~ shall be divided by the number of the provider's paid Medicaid days for the same time period.

(2) The department shall reimburse for an oxygen therapy utilizing the Medicaid DME Program fee schedule established in 907 KAR 1:479.

(3) Respiratory therapy and respiratory therapy supplies shall be a routine service.

(4) Reimbursement for ancillary services provided to an individual in a critical access hospital swing bed shall be included in the critical access hospital swing bed reimbursement established in Section 3(2) of this administrative regulation.

Section 13. Appeal Rights. A price-based NF may appeal a department decision as to the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 14. Supplemental Payments to Nonstate Government-Owned or Operated Nursing Facilities.

(1) Beginning July 1, 2001, subject to state funding made available for this provision by a transfer of funds from a governmental entity, the department shall make a supplemental

VOLUME 50, NUMBER 11– May 1, 2024

payment to a qualified nursing facility.

(2) To qualify for a supplemental payment under this section, a nursing facility shall:

(a) Be owned or operated by a local unit of government pursuant to 42 C.F.R. 447.272(a)(2);

(b) Have at least 140 or more Medicaid-certified beds; and

(c) Have a Medicaid occupancy rate at or above seventy-five (75) percent.

(3) For each state fiscal year, the department shall calculate the maximum supplemental payment that it may make to qualifying nursing facilities in accordance with 42 C.F.R. 447.272.

(4) Using the data reported by a nursing facility on a Schedule NF-7 submitted to the department as of December 31, 2000, the department shall identify each nursing facility that meets the criteria established in subsection (2) of this section.

(5) The department shall determine a supplemental payment factor for a qualifying nursing facility by dividing the qualifying nursing facility's total Medicaid days by the total Medicaid days for all qualifying nursing facilities.

(6) The department shall determine a supplemental payment for a qualifying nursing facility by applying the supplemental payment factor established in subsection (5) of this section to the total amount available for funding under this section.

(7) Total payments made under this section shall not exceed the amount determined in subsection (3) of this section.

(8) Payments made under this section shall:

(a) Apply to services provided on or after April 1, 2001; and

(b) Be made on a quarterly basis.

Section 15. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 16. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Medicare Provider Reimbursement Manual - Part 2 (Pub. 15-2), Sections 102, 102.1, 102.3, and 104", October 2007;

(b) The "Instructions for Completing the Medicaid Supplemental Schedules", April 2015;

(c) The "Supplemental Medicaid Schedules", April 2015; and

(d) "PDPM Adapted Minimum Data Set (MDS)", October 1, 2023["Minimum Data Set (MDS) - Version 3.0, Resident Assessment and Care Screening", 10/1/2016].

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

(a) Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; and

(b) Following location on the department's Web site: <https://chfs.ky.gov/agencies/dms/dafm/Pages/default.aspx>.

FILED WITH LRC: April 9, 2024

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Health Care Policy
(As Amended at ARRS, April 9, 2024)

907 KAR 1:479. Medical supplies, equipment, and appliances[Durable medical equipment] covered benefits and reimbursement.

RELATES TO: KRS 205.520, 205.560, 205.6333, 42 C.F.R. Part 414, 424.57, 440.230, 440.70, 45 C.F.R. Part 160, 162.1002,

Part 164, 42 U.S.C. 1320d, 1395m, 1395w-4, 1396d(i)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet[~~, by administrative regulation,~~] to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the provisions relating to coverage and reimbursement requirements for [~~durable medical equipment,~~] medical supplies, equipment, and appliances (MSEA)[~~prosthetics, and orthotics~~].

Section 1. Definitions.

(1) [~~"Certificate of Medical Necessity" or "CMN" means a form required by the department to document medical necessity for durable medical equipment, medical supplies, prosthetics, or orthotics.~~]

[(2)] "CMS" means the Centers for Medicare and Medicaid Services.

[(2)] [(3)] "Covered benefit" or "covered service" means an item of MSEA[~~durable medical equipment, a prosthetic, an orthotic, or a medical supply~~] for which coverage is provided by the department.

[(3)] [(4)] "Customized" means that an item has been constructed, fitted, or altered to meet the unique medical needs of an individual Medicaid recipient and does not include the assemblage of modular components or the addition of various accessories that do not require unique construction, fitting, or alteration to individual specifications.

[(4)] [(5)] "Date of service" means:

(a) 1. The date the MSEA[~~durable medical equipment, prosthetic, orthotic, or supply (DMEPOS)~~] is provided to the recipient; or

2. Thirty (30) days from the scheduled date of delivery with:

a. Proof from the provider the recipient was unable to be reached after a good faith effort to deliver; and

b. Product is unable to be resold due to customization for the recipient;

(b) For mail order MSEA[~~DMEPOS~~], the later of the shipping date or the date the recipient was discharged home or to a place where normal life activities take place, except as limited by 42 C.F.R. 440.70(c)(1)[~~from an inpatient hospital stay or nursing facility~~];

(c) For MSEA[~~DMEPOS~~] delivered to a recipient's home immediately subsequent to a hospital inpatient stay, the date of final discharge; or

(d) Up to two (2) calendar days prior to discharge from a hospital or nursing facility if:

1. The item was provided for purposes of fitting or training of the patient;

2. The item is ready for use in the recipient's home; and

3. Billing is not done prior to the date of the recipient's discharge from the facility.

[(5)] [(6)] "Department" means the Department for Medicaid Services or its designee.

[(6)] [(7)] "DMEPOS" means durable medical equipment, prosthetics, orthotics, or supplies.

[(7)] [(8)] "Durable medical equipment" or "DME" means medical equipment that:

(a) Withstands repeated use;

(b) Is primarily and customarily used to serve a medical purpose;

(c) Is generally not useful to a person in the absence of an illness or injury; and

(d) Is appropriate for use in the home or community.

[(8)] [(9)] "Healthcare common procedure coding system" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or items.

[(9)] [(10)] "Home" means a place in which normal life activities take place, and as limited by 42 C.F.R. 440.70(c)(1)[~~where the recipient resides excluding:~~]

[(a)] [A nursing facility;]

[(b)] [A hospital;]

VOLUME 50, NUMBER 11– May 1, 2024

~~[(c)] [An intermediate care facility for individuals with an intellectual disability; or]~~

~~[(d)] [An institution for mental diseases as defined by 42 U.S.C. 1396d(4)].~~

~~[(10)][(14)] "Incidental" means that a medical procedure or service:~~

~~(a) Is performed at the same time as a more complex primary procedure or service; and~~

~~(b)1. Requires little additional resources; or~~

~~2. Is clinically integral to the performance of the primary procedure or service.~~

~~[(11)][(12)] "Invoice price" means an itemized account of a manufacturer's actual charges that are billed to a supplier for goods or services provided by the manufacturer or distributor.~~

~~[(12)][(13)] "Medicaid Program MSEA[DME] Fee Schedule" means a list, located at <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx> [<http://chfs.ky.gov/dms>], that:~~

~~(a) Contains the current Medicaid maximum allowable amount established by the department for a covered item of MSEA[durable medical equipment, a prosthetic, an orthotic, or a medical supply]; **and**~~

~~(b) Is updated at least yearly; **and** quarterly to coincide with the quarterly updates made by the Centers for Medicare and Medicaid Services as required by 42 U.S.C. 1395m and 1395w-4 and 42 C.F.R. Part 414]~~

(c) Is consistent with and informed by this administrative regulation and the applicable Centers for Medicare and Medicaid Services published DMEPOS Fee Schedule.

~~[(13)] "Medical supplies, equipment, and appliances" or "MSEA":~~

~~(a) Means:~~

~~1. Durable medical equipment;~~

~~2. DMEPOS;~~

~~3. Orthotics; and~~

~~4. A medical supply item;~~

~~(b) Includes:~~

~~1. Prosthetics;~~

~~2. Orthotics;~~

~~3. Beds;~~

~~4. Canes;~~

~~5. Walkers;~~

~~6. Wheelchairs;~~

~~7. Traction equipment;~~

~~8. Oxygen;~~

~~9. Oxygen equipment; and~~

~~10. Routine maintenance of a rental item; and~~

~~(c) Does not mean:~~

~~1. Items which are covered under other areas and disciplines within KAR Title 907[~~KAR~~], such as frames, lenses, hearing aids, and pacemakers; or~~

~~2. Routine maintenance of a purchased item. Routine maintenance includes testing, cleaning, regulating, and accessing equipment described as the type of servicing an owner may perform in the operator's manual for the item.~~

~~(14) "Medical supply" means an item that is:~~

~~(a) Consumable;~~

~~(b) Nonreusable;~~

~~(c) Disposable; and~~

~~(d) Primarily and customarily used to serve a medical purpose.~~

~~(15) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.~~

~~(16) "Medicare accreditation" means having met the quality standards established in 42 U.S.C. 1395m(a)(20).~~

~~(17) "Mutually exclusive" means that two (2) MSEA[DMEPOS] items:~~

~~(a) Are not reasonably provided in conjunction with each other during the same patient encounter on the same date of service;~~

~~(b) Represent duplicate or very similar items; or~~

~~(c) Represent medically inappropriate use of HCPCS codes.~~

~~(18) "Nutritional supplement" means a liquid or powder administered enterally or orally that is specially formulated to supply complete diagnosis-appropriate nutrition, including kilocalories,~~

~~protein, vitamins, and minerals.~~

~~(19) "Orthotic" means a mechanical device or brace that is designed to support or correct a defect or deformity or to improve the function of a movable part of the body.~~

~~(20) "Prescriber" means a physician, podiatrist, optometrist, dentist, advanced practice registered nurse, physician assistant, or chiropractor who:~~

~~(a) Is acting within the legal scope of clinical practice under the licensing laws of the state in which the health care provider's medical practice is located;~~

~~(b) If the individual is an enrolled Kentucky Medicaid provider, is in compliance with all requirements of:~~

~~1. 907 KAR 1:671; and~~

~~2. 907 KAR 1:672;~~

~~(c) Is in good standing with the appropriate licensure board and CMS; and~~

~~(d) Has the legal authority to write an order for a medically necessary item of MSEA[durable medical equipment, a medical supply, a prosthetic, or an orthotic] for a recipient.~~

~~(21) "Prior authorization" means approval that a supplier shall obtain from the department before being reimbursed.~~

~~(22) "Prosthetic" means an item that replaces all or part of the function of a body part or organ.~~

~~(23) "Reasonableness" means:~~

~~(a) The expense of the item does not exceed the therapeutic benefits that could ordinarily be derived from use of the item;~~

~~(b) The item is not substantially more costly than a medically-appropriate alternative; and~~

~~(c) The item does not serve the same purpose as an item already available to the recipient.~~

~~(24) "Supplier" means a Medicare-certified provider of MSEA[durable medical equipment, medical supplies, prosthetics, or orthotics] who is enrolled in the Kentucky Medicaid Program.~~

~~(25) "Usual and customary charge" means the uniform amount that a supplier bills to the general public for a specific covered benefit.~~

Section 2. General Coverage.

~~(1) Except as provided in subsection (2) of this section, coverage for an item of MSEA[durable medical equipment, a medical supply, a prosthetic, or an orthotic] shall:~~

~~(a) Be based on medical necessity and reasonableness;~~

~~(b) Be clinically appropriate pursuant to the criteria established in 907 KAR 3:130;~~

~~(c) Require prior authorization in accordance with Section 7 of this administrative regulation;~~

~~(d) Be provided in compliance with 42 C.F.R. 440.230(c); and~~

~~(e) Be restricted to an item used primarily in the home and community.~~

~~(2)(a) Except as provided in paragraph (b) of this subsection, the criteria referenced in subsection (1) of this section that was in effect on the date the MSEA[durable medical equipment, prosthetic, orthotic, or medical supply] is provided shall be used as the basis for the determination of coverage, subject to medical necessity override by the department to ensure compliance with 42 C.F.R. 440.230(c).~~

~~(b) If criteria referenced in subsection (1) of this section does not exist or is unavailable for a given item or service, the Medicare criteria in effect on the date the MSEA[durable medical equipment, prosthetic, orthotic, or medical supply] is provided shall be used as the basis for the determination of coverage, subject to medical necessity override by the department to ensure compliance with 42 C.F.R. 440.230(c).~~

~~(3) [Unless specifically exempted by the department, a DME item, medical supply, prosthetic, or orthotic shall require a CMN that shall be kept on file by the supplier for the period of time mandated by 45 C.F.R. 164.316.]~~

~~[(4)] An item [for which a CMN is not required] shall require a prescriber's written order.~~

~~[(4)][(5)] [If Medicare is the primary payor for a recipient who is dually eligible for both Medicare and Medicaid, the supplier shall comply with Medicare's CMN requirement and a separate Medicaid CMN shall not be required.]~~

~~[(6)] [A required CMN shall be:]~~

VOLUME 50, NUMBER 11– May 1, 2024

~~[(a)] [The appropriate Medicare-CMN in use at the time the item or service is prescribed;]~~

~~[(b)] [A MAP-1000, Certificate of Medical Necessity, Durable Medical Equipment; or]~~

~~[(c)] [A MAP-1000B, Certificate of Medical Necessity, Metabolic Formulas and Foods;]~~

~~[(7)] [A CMN shall contain:]~~

~~[(a)] [The recipient's name and address;]~~

~~[(b)] [A complete description of the item or service ordered;]~~

~~[(c)] [The recipient's diagnosis;]~~

~~[(d)] [The expected start date of the order;]~~

~~[(e)] [The length of the recipient's need for the item;]~~

~~[(f)] [The medical necessity for the item;]~~

~~[(g)] [The prescriber's name, address, telephone number, and National Provider Identifier (NPI), if applicable; and]~~

~~[(h)] [The prescriber's signature and date of signature.]~~

~~[(8)] Except as specified in subsections (5)(9) and (6)(10) of this section, a prescriber shall examine a recipient within sixty (60) calendar days prior to the initial order of a MSEA[DME] item, medical supply, prosthetic, or orthotic.~~

~~[(5)(9)] [Except as specified in subsection (11) of this section,] A prescriber shall not be required to examine a recipient prior to subsequent orders for the same MSEA[DME] item[, medical supply, prosthetic, or orthotic] unless there is a change in the order.~~

~~[(6)(10)] A prescriber shall not be required to examine a recipient prior to the repair of MSEA[a DME item, prosthetic, or orthotic].~~

~~[(7)(11)] [A change in supplier shall require a new CMN signed and dated by a prescriber who shall have seen the recipient within sixty (60) calendar days prior to the order.]~~

~~[(12)] [A CMN shall be updated with each request for prior authorization.]~~

~~[(13)] The department shall only purchase a new MSEA[DME] item.~~

~~[(8)(14)] A new MSEA[DME] item that is placed with a recipient initially as a rental item shall be considered a new item by the department at the time of purchase.~~

~~[(9)(15)] A used MSEA[DME] item that is placed with a recipient initially as a rental item shall be replaced by the supplier with a new item prior to purchase by the department.~~

~~[(10)(16)] A supplier shall not bill Medicaid for the MSEA[a DME item, medical supply, prosthetic, or orthotic] before the item is provided to the recipient.~~

~~[(11)(17)] A supplier shall not ship supplies to a recipient unless the supplier has:~~

~~(a) First had direct contact with the recipient, [or] the recipient's caregiver, or an authorized representative, such as a case manager for a 1915(c) waiver participant; and~~

~~(b) Verified:~~

- ~~1. That the recipient wishes to receive the shipment of supplies;~~
- ~~2. The quantity of supplies in the shipment; and~~
- ~~3. Whether or not there has been a change in the use of the supply.~~

~~[(12)(18)] A verification referenced in subsection (11)(17) of this section for each recipient shall be documented in a file regarding the recipient.~~

~~[(13)(19)] If a supplier ships more than a one (1) month supply of an item, the supplier shall assume the financial risk of nonpayment if the recipient's Medicaid eligibility lapses or a HCPCS code is discontinued.~~

~~[(14)(20)] A supplier shall have an order from a prescriber before dispensing any MSEA[DMEPOS] item to a recipient.~~

~~[(15)(21)] A supplier shall have a written order on file prior to submitting a claim for reimbursement.~~

~~Section 3. Purchase or Rental of Medical Supplies, Equipment, and Appliances [Durable Medical Equipment].~~

~~(1) Except as established on the Medicaid Program MSEA[DME] Fee Schedule, MSEA[durable medical equipment] shall be covered through purchase or rental based upon anticipated duration of medical necessity.~~

~~(2)(a) A MAP 1001 form shall be completed if a recipient requests an item or service not covered by the department.~~

~~(b) A recipient shall be financially responsible for an item or~~

service requested by the recipient via a MAP 1001 that is not covered by the department.

(c) A MAP 1001 shall be completed as follows:

1. The MSEA[DME] supplier shall ensure that the recipient or authorized representative reads and understands the MAP 1001;

2. The recipient or authorized representative shall indicate on the MAP 1001 if the recipient chooses to receive a noncovered service;

3. The MSEA[DME] supplier shall complete the supplier information on the MAP 1001;

4. The MSEA[DME] supplier shall provide a copy of the completed MAP 1001 to the recipient; and

5. The MSEA[DME] supplier shall maintain the completed MAP 1001 on file for at least the period of time mandated by 45 C.F.R. 164.316.

(d) If an item or service was denied due to the supplier not meeting the timeframes to obtain a prior authorization or the item or service does not meet medical necessity for a prior authorization, the MAP 1001 shall not be used to obligate the recipient for payment.

Section 4. Special Coverage.

(1) An augmentative communication device or other electronic speech aid shall be covered for a recipient who is permanently unable to communicate through oral speech if:

(a) Medical necessity is established based on a review by the department of an evaluation and recommendation submitted by a speech-language pathologist; and

(b) The item is prior authorized by the department.

(2) A customized MSEA[DME] item shall be covered only if a noncustomized medically appropriate equivalent is not commercially available.

(3) A physical therapy or occupational therapy evaluation shall be required for:

(a) A power wheelchair; or

(b) A wheelchair for a recipient who, due to a medical condition, is unable to be reasonably accommodated by a standard wheelchair.

(4) Orthopedic shoes and attachments shall be covered if medically necessary for:

(a) A congenital defect or deformity;

(b) A deformity due to injury; or

(c) Use as a brace attachment.

(5) A therapeutic shoe or boot shall be covered if medically necessary to treat a nonhealing wound, ulcer, or lesion of the foot.

(6) An enteral or oral nutritional supplement shall be covered if:

(a) The item is prescribed by a licensed prescriber;

(b) Except for an amino acid modified preparation or a low-protein modified food product specified in subsection (7) of this section, it is the total source of a recipient's daily intake of nutrients;

(c) The item is prior authorized; [and]

(d) Nutritional intake is documented on the medical record; and [on the CMN]

(e) For a child under the age of six (6) years, the Women, Infants and Children's Program (WIC) is unable to provide coverage of a formula.:

1. A letter from WIC shall be obtained and submitted with a prior authorization request for a prescribed formula that is included on an official posting, publication, or publicly available listing of the most current WIC formulary; or

2. If a prescribed formula is not included on an official posting, publication, or publicly available listing of the most current WIC formulary, a letter shall not be required to accompany any prior authorization request.

(7) An amino acid modified preparation or a low-protein modified food product shall be covered:

(a) If prescribed for the treatment of an inherited metabolic condition specified in KRS 205.560(1)(c);

(b) If not covered through the Medicaid outpatient pharmacy program;

(c) Regardless of whether it is the sole source of nutrition; and

(d) If the item is prior authorized.

(8) An MSEA[A-DME] item intended to be used for postdischarge rehabilitation in the home may be delivered to a

VOLUME 50, NUMBER 11– May 1, 2024

hospitalized recipient within two (2) calendar days prior to discharge home for the purpose of rehabilitative training.

(9) An electric breast pump shall be covered;

(a) 1. Within six (6) weeks prior to birth; or

2. Within six (6) weeks after birth; and

(b) For up to one (1) replacement per child, [for the following:]

[(a)] [Medical separation of mother and infant;]

[(b)] [Inability of an infant to nurse normally due to a significant feeding problem; or]

[(c)] [An illness or injury that interferes with effective breast feeding.]

(10) Rental of an airway clearance vest system for a three (3) month trial period shall be required before purchase of the equipment.

(11) Non-sole source nutrition:

(a) Shall be provided for a twelve (12) month period; and

(b) 1. [For adults,] Shall be medically necessary; or

2. For children, services shall be determined by assessing the child via a growth chart as measured by height and weight. The following criteria shall be utilized, a child that is:

a. Below the 50th percentile **or who requires an enteral access device for alternate means of nutrition** shall meet the guidelines for receiving non-sole source nutrition;

b. Above the 50th percentile, but has a valid diagnosis to support the request, shall meet the guidelines for receiving non-sole source nutrition. For example, disorders of significant mental, **behavioral**, or physical health including trauma, significant weight loss, chronic illness, or cancers; and

c. Above the 50th percentile and without a supporting diagnosis shall be referred to the medical director who may approve non-sole source nutrition services.

Section 5. Coverage of Repairs and Replacement of Equipment.

(1) The department shall not be responsible for repair or replacement of ~~the MSEA[a DME item, prosthetic, or orthotic]~~ if the repair or replacement is covered by a warranty.

(2) Reasonable repair to a purchased ~~MSEA[DME item, prosthetic, or orthotic]~~ shall be covered:

(a) During a period of medical need;

(b) If necessary to make the item serviceable;

(c) If a warranty is not in effect on the requested repair; and

(d) In accordance with Section 6(3) of this administrative regulation.

(3) Extensive maintenance to purchased equipment, as recommended by the manufacturer and performed by an authorized technician, shall be considered to be a repair.

(4) The replacement of a medically necessary ~~MSEA[DME item, medical supply, prosthetic, or orthotic]~~ shall be covered for the following:

(a) Loss of the item;

(b) Irreparable damage or wear; or

(c) A change in a recipient's condition that requires a change in equipment.

(5) Suspected malicious damage, culpable neglect, or wrongful disposition of ~~MSEA[a DME item, medical supply, prosthetic, or orthotic]~~ shall be reported by the supplier to the department if the supplier is requesting prior authorization for replacement of the item.

Section 6. Limitations on Coverage.

(1) The following items shall be excluded from Medicaid coverage through the ~~MSEA[DME]~~ program:

(a) An item covered for Medicaid payment through another Medicaid program;

(b) Equipment that is not primarily and customarily used for a medical purpose;

(c) Physical fitness equipment;

(d) Equipment used primarily for the convenience of the recipient or caregiver;

(e) A home modification;

(f) Routine maintenance of ~~MSEA[DME]~~ that includes:

1. Testing;

2. Cleaning;

3. Regulating; and

4. Assessing the recipient's equipment;

(g) Except as specified in Section 7(1)(j) of this administrative regulation, backup equipment; or

(h) An item determined not medically necessary, clinically appropriate, or reasonable by the department.

(2) Except if Medicare is the primary payer, the following diabetic supplies (HCPCS codes) shall be covered as a pharmacy benefit at the point of sale:

(a) A4206, a syringe with needle (sterile, 1cc or less);

(b) A4250, urine test or reagent strips or tablets;

(c) A4252, blood ketone test or reagent strip;

(d) A4253, blood glucose test or reagent strips;

(e) A4256, calibrating solutions;

(f) A4258, lancet device;

(g) A4259, lancets; or

(h) E0607, home blood glucose monitor.

(3) An estimated repair shall not be covered if the repair cost equals or exceeds:

(a) The purchase price of a replacement item; or

(b) The total reimbursement amount for renting a replacement item of equipment for the estimated remaining period of medical need.

(4) ~~MSEA[Durable medical equipment, prosthetics, orthotics, and medical supplies]~~ shall be included in the facility reimbursement for a recipient residing in a hospital, nursing facility, or intermediate care facility or institution for individuals with an intellectual or developmental disability.

Section 7. Prior Authorization Requirements and Process.

(1) Prior authorization shall be required for the following:

(a) An item or repair billed to the department at \$500 or more;

(b) Rental of equipment as indicated on the Medicaid Program ~~MSEA[DME]~~ Fee Schedule excluding oxygen services after twelve (12) ~~[continuous]~~ months of service;

(c) Orthopedic shoes;

(d) An adjustment to a prosthetic or orthotic;

(e) An augmentative communication device;

(f) A customized ~~MSEA[DME]~~ item;

(g) A replacement ~~MSEA[DME item, prosthetic, or orthotic]~~ if replacement is prior to the:

1. Usual and customary lifetime of the item; or

2. Limitation set by the department as indicated in the Medicaid Program ~~MSEA[DME]~~ Fee Schedule;

(h) A nutritional supplement;

(i) An amino acid modified preparation or a low-protein modified food product;

(j) 1. A loaner item for a member-owned piece of equipment that is being repaired; and

2. Any loaner item for a member-owned piece of equipment shall be the equivalent or better of the item that is being repaired;

(k) A ~~MSEA[DMEPOS]~~ item denoted by a general or nonspecific HCPCS code;

(l) An item designated on the Medicaid Program ~~MSEA[DME]~~ Fee Schedule as requiring prior authorization;

(m) An item that exceeds the quantity limitation established in the Medicaid Program ~~MSEA[DME]~~ Fee Schedule; or

(n) An item designated by an HCPCS code not indicated on the Medicaid Program ~~MSEA[DME]~~ Fee Schedule that is determined by the department to be a covered benefit.

(2)(a) If an item requires prior authorization, a supplier shall:

1.a. Submit all required documentation prior to the date of service; or

b. Within one (1) year from the date of service with department approval; and

2. Submit a written request to the department for prior authorization, which shall include the prescriber's order; and

~~[3.] [Submit a completed CMN to the department within ninety (90) business days of the date of the request for prior authorization].~~

(b) If the required prior authorization submittals required by paragraph (a) of this subsection are not submitted within the established time frames, the prior authorization request shall be denied.

(3) If an item requires an evaluation or recommendation by a specialist, the evaluation or recommendation shall be in writing and

VOLUME 50, NUMBER 11– May 1, 2024

submitted ~~with a prior authorization~~[with the CMN].

(4) The supplier shall not bill a recipient for the ~~MSEA~~[a DME item, medical supply, prosthetic, or orthotic] if the supplier has not completed the prior authorization process within the timeframe specified in subsection (2) of this section.

(5) If a supplier provides an item that requires prior authorization before the prior authorization is received, the supplier shall assume the financial risk that the prior authorization might not be subsequently approved.

(6) ~~[A supplier may initially obtain a faxed CMN from a prescriber to expedite the prior authorization process, but a signed, original CMN subsequently shall be required.]~~

~~[(7)]~~ A supplier shall request prior authorization by mailing, faxing, or electronically submitting the following information to the department:

(a) A completed prior authorization form MAP-9; and

(b) ~~[A completed CMN; and]~~

~~[(c)]~~ If requested by the department, additional information required to establish medical necessity, clinical appropriateness, or reasonableness.

~~[(7)]~~~~[(8)]~~ The following additional information shall be required for prior authorization of a customized item:

(a) ~~[An estimate of the fitting time;]~~

~~[(b)]~~ ~~[An estimate of the fabrication time;]~~

~~[(c)]~~ A description of the materials used in customizing the item; and

~~[(d)]~~ An itemized estimate of the cost of the item, including the cost of labor.

~~[(8)]~~~~[(9)]~~ The following additional information shall be required for prior authorization of a repair to purchased equipment:

(a) A description of the nature of the repair;

(b) An itemization of the parts required for the repair;

(c) An itemization of the labor time involved in the repair; and

(d) A copy of the manufacturer's warranty indicating the purchase date or a written notice from the ~~MSEA~~[DME] supplier stating that the requested repair is not covered by the warranty.

~~[(9)]~~~~[(40)]~~ An item shall be prior authorized based on:

(a) Medical necessity and the corresponding prior-authorized period of medical necessity; and

(b)1. Clinical appropriateness pursuant to the criteria established in 907 KAR 3:130; or

2. Medicare criteria if the criteria referenced in subparagraph 1. of this paragraph does not exist or is unavailable.

~~[(10)]~~~~[(11)]~~ A prior authorization period shall be extended as indicated by~~[upon the provision of a new CMN indicating current medical necessity and]~~:

(a) Clinical appropriateness pursuant to the criteria established in 907 KAR 3:130; or

(b) Medicare criteria if the criteria referenced in paragraph (a) of this subsection does not exist or is unavailable.

~~[(11)]~~~~[(12)]~~

(a) Prior authorization by the department shall not:

1. Be a guarantee of recipient eligibility; or

2. Guarantee reimbursement.

(b) Eligibility verification shall be the responsibility of the supplier.

~~[(12)]~~~~[(13)]~~ Upon review and determination by the department that removing prior authorization shall be in the best interest of Medicaid recipients, the prior authorization requirement for a specific covered benefit shall be discontinued, at which time the covered benefit shall be available to all recipients without prior authorization.

~~[(13)]~~~~[(14)]~~ If it is determined by the department to be in the best interest of Medicaid recipients, the department may designate that an item of ~~MSEA~~[durable medical equipment] suitable for use in the home or community may be provided, if prior authorized, to a recipient~~[temporarily residing in a hospital that does not bill patients, Medicaid, or other third-party payers for any health care services].~~

~~[(14)]~~~~[(15)]~~(a) For purposes of obtaining prior authorization, a signed invoice price quote from the manufacturer shall be acceptable documentation.

(b) If the invoice price differs from the manufacturer's invoice price quote, the supplier shall amend the prior authorization and shall maintain documentation of the quote and the invoice.

Section 8. Reimbursement for Covered Services.

(1) Except for an item specified in subsections (2) and ~~[(4)]~~~~[(5)]~~ of this section, a new item that is purchased shall be reimbursed at the lesser of:

(a) The supplier's usual and customary charge for the item;

(b) The purchase price specified in the Medicaid Program ~~MSEA~~[DME] Fee Schedule; or

(c) If indicated in the Medicaid Program ~~MSEA~~[DME] Fee Schedule as manually priced, which shall be the manufacturer's suggested retail price minus eighteen (18) percent, or if not available, invoice price plus twenty (20) percent~~[invoice price plus twenty (20) percent]~~ for an item not utilizing a billing code.

(2) Pursuant to 45 C.F.R. 162.1002, the department shall recognize U.S. Department for Health and Human Services quarterly HCPCS code updates.

(a) An item denoted by an HCPCS code not currently on the Medicaid Program ~~MSEA~~[DME] Fee Schedule that has been determined by the department to be a covered service shall be manually priced, which shall be the manufacturer's suggested retail price minus eighteen (18) percent, or if not available, invoice price plus twenty (20) percent for an item not utilizing a billing code~~[using the actual invoice price plus twenty (20) percent]~~.

(b)1. The department shall post HCPCS code change information on its Web site accessible at <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>~~[http://chfs.ky.gov/dms]~~.

2. The information may also be obtained by writing the Department for Medicaid Services at 275 East Main Street, Frankfort, Kentucky 40621.

~~[(3)]~~ ~~[If a copayment is required, copayment provisions, including any provider deduction, shall be as established in 907 KAR 1:604.]~~

~~[(3)]~~~~[(4)]~~ For a service covered under Medicare Part B, reimbursement shall be in accordance with 907 KAR 1:006.

~~[(4)]~~~~[(5)]~~ Reimbursement for the purchase of an item that has been rented for ~~[less than] ten (10) months~~ shall be the purchase price specified in subsection (1) of this section minus the cumulative rental payment made to the supplier.

~~[(5)]~~~~[(6)]~~ A rental item shall be reimbursed as follows, but reimbursement shall not exceed the supplier's usual and customary charge for the item:

(a) The rental price specified in the Medicaid Program ~~MSEA~~[DME] Fee Schedule; or

(b) If indicated in the Medicaid Program ~~MSEA~~[DME] Fee Schedule as manually priced:

1. Ten (10) percent of the purchase price per month for the monthly rental of an item; or

2. Two and one-half (2.5) percent of the purchase price per week for the weekly rental of an item that is needed for less than one (1) month.

~~[(6)]~~~~[(7)]~~ If reimbursement for a rental item has been made for a period of ten (10) ~~[consecutive] months by the same provider within a two (2) year period~~, the item shall be considered to be purchased and shall become the property of the recipient.~~[(a)]~~

(b) A provider may demonstrate that a break in service or need for a rental item has occurred due to hospitalization during the two (2) year period. In the event of a successful demonstration, reimbursement shall be provided for each demonstrated month that a break in need occurred until a cumulative ten (10) month period has been reached.

~~[(7)]~~~~[(8)]~~ Labor costs for a repair shall be billed in quarter hour increments using the HCPCS codes for labor specified in the Medicaid Program ~~MSEA~~[DME] Fee Schedule and shall be reimbursed the lessor of:

(a) The supplier's usual and customary charge; or

(b) The reimbursement rate specified in the Medicaid Program ~~MSEA~~[DME] Fee Schedule.

~~[(8)]~~~~[(9)]~~ Reimbursement shall include instruction and training provided to the recipient by the supplier.

~~[(9)]~~~~[(10)]~~ The rental price of an item shall include rental of the item and the cost of:

(a) Shipping and handling;

(b) Delivery and pickup;

(c) Setup;

VOLUME 50, NUMBER 11– May 1, 2024

- (d) Routine maintenance; and
- (e) Essential medical supplies required for proper use of the equipment.

~~(10)(14)~~ The purchase price of a prosthetic or orthotic shall include:

- (a) Acquisition cost and applicable design and construction;
- (b) Required visits with a prosthetist, ~~orthotist,~~ or other appropriate MSEA provider for fitting prior to receipt of the item;
- (c) Proper fitting and adjustment of the item for a period of one (1) year;
- (d) Required modification, if not a result of physical growth or excessive change in stump size, for a period of one (1) year; and
- (e) A warranty covering defects in material and workmanship.

Section 9. Conditions for Provider Participation. A participating ~~MSEA~~[DME] provider shall:

- (1) Have an active Medicare ~~MSEA~~[DME] provider number;
- (2) Adhere to all CMS supplier standards in accordance with 42 C.F.R. 424.57;
- (3)(a) Provide proof of Medicare accreditation, by an approved Medicare accreditation entity, to the department every three (3) years unless exempt from Medicare accreditation by CMS; or
- (b) If exempt from Medicare accreditation by CMS, provide a letter to the department on company letterhead that indicates the CMS exemption status;
- (4) Be enrolled in the Kentucky Medicaid Program in accordance with:
 - (a) 907 KAR 1:671; and
 - (b) 907 KAR 1:672;
- (5) Comply with the requirements regarding the confidentiality of personal medical records pursuant to 42 U.S.C. 1320d and 45 C.F.R. Parts 160 and 164; and
- (6) Comply with the following:
 - (a) A supplier shall bill Medicaid rather than a recipient for a covered service;
 - (b) A supplier shall not bill a recipient for a service that is denied by the department on the basis that the service is incidental to, or mutually exclusive with, a covered service; and
 - (c) A supplier may bill a recipient for a service not covered by Medicaid if the provider informed the recipient of noncoverage prior to providing the service and a completed MAP 1001 form is signed and included in the medical record.

Section 10. Managed Care Organizations and Reimbursement. A managed care organization shall not be required to reimburse the same amount as the department reimburses for a service or item covered pursuant to this administrative regulation, except as otherwise required by applicable law, such as any reimbursement required pursuant to KRS 205.6333.

Section 11. Federal Approval and Federal Financial Participation. The department's coverage and reimbursement for services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the coverage and reimbursement; and
- (2) Centers for Medicare and Medicaid Services' approval for the coverage and ~~reimbursement~~re-imbusement.

Section 12. Appeal Rights.

- (1) If an individual is denied prior authorization for ~~MSEA~~[DMEPOS] based upon an application of this administrative regulation, the ~~MSEA~~[DME] supplier involved in the prior authorization request may appeal the denial. To appeal the denial, the ~~MSEA~~[DME] supplier shall submit to the department, within thirty (30) calendar days of the prior authorization denial, a written request, by mail or fax, for a reconsideration review.
- (2) Upon receipt of a reconsideration request and any supporting documentation, the department shall:
 - (a) Conduct a reconsideration review within thirty (30) calendar days from the receipt of the request;
 - (b) Base the reconsideration review decision solely upon information that is:

- 1. Contained in the individual's medical records; and
- 2. Submitted with the written request pursuant to subsection (1) of this section; and
- (c) Issue a notification of approval or denial within five (5) working days of a reconsideration review.
- (3) If an outcome of a services reconsideration review results in a denial, the department shall grant an appeal.
- (4) An appeal of a department decision regarding a Medicaid recipient who is:
 - (a) Enrolled with a managed care organization shall be in accordance with 907 KAR 17:010; or
 - (b) Not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.
- (5) An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

Section 13. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) Form MAP-9, "Prior Authorization for Health Services", July 2010;
 - (b) ~~[Form MAP-1000, "Certificate of Medical Necessity, Durable Medical Equipment", July 2010;]~~
 - ~~[(c)] [Form MAP-1000B, "Certificate of Medical Necessity, Metabolic Formulas and Foods", July 2010 edition; and]~~
 - ~~[(d)] Form MAP 1001, "Advance Member Notice", September 2006.~~
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law:
 - (a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or
 - (b) Online at the department's Web site at <https://www.chfs.ky.gov/agencies/dms/dpo/bpb/Pages/dme.aspx>~~[http://www.chfs.ky.gov/dms/incorporated.htm]~~.

FILED WITH LRC: April 9, 2024

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; email CHFSregs@ky.gov.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Health Care Policy
(As Amended at ARRS, April 9, 2024)**

907 KAR 3:066. Nonemergency medical transportation waiver services and payments.

RELATES TO: KRS 96A.095, 205.520, 281.010, 281.605(9), 281.635(5), 281.872, 281.875, 42 C.F.R. 431.53, 440.170, 42 U.S.C. 1396n(b)

STATUTORY AUTHORITY: KRS 194A.050(1), 205.520(3), 42 C.F.R. 431.53, 42 U.S.C. 1396a

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the Cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage and payment requirements for nonemergency medical transportation services, excluding ambulance stretcher services, provided pursuant to 42 U.S.C. 1396n(b) and approved by the Centers for Medicare and Medicaid Services to waive Medicaid requirements related to nonemergency medical transportation of Medicaid requirements.

Section 1. Definitions.

- (1) "Capitated rate" means one (1) amount paid each month:
 - (a) For each Medicaid recipient covered under authority of the

VOLUME 50, NUMBER 11– May 1, 2024

waiver; and

(b) That is:

1. Not a statewide rate; and

2. Set individually for each human service transportation delivery region as established in 603 KAR 7:080.

(2) "Department" means the Department for Medicaid Services or its designee.

(3) "Human service transportation" means provision of mass transportation and taxi services to transport an individual who is eligible to receive Medicaid transportation services.

(4) "Nonemergency medical transportation" or "NEMT" means medical transportation not of an emergency nature, excluding ambulance stretcher services, provided to an eligible Medicaid recipient by the Transportation Cabinet pursuant to an agreement between the Transportation Cabinet and the department.

(5) "Waiver authority" means the provisions contained in 42 U.S.C. 1396n(b).

Section 2. Interagency Agreement. Pursuant to waiver authority granted by the Centers for Medicare and Medicaid Services, the Department for Medicaid Services may enter into an agreement with the Transportation Cabinet for the provision of nonemergency medical transportation to a Medicaid recipient.

Section 3. Coverage.

(1) The coverage provisions established in 603 KAR 7:080 shall comply with this administrative regulation.

(2) ~~(a)~~ A Medicaid-eligible recipient may receive nonemergency medical transportation services if the recipient meets the following conditions:

~~1. (a)~~ The recipient is traveling to or from a Medicaid-covered service;

~~2. (b)~~ The service is determined to be of medical necessity; and

~~3. (c) 1. The recipient does not own a vehicle; or~~

~~2. The recipient owns a vehicle, but a clinician, employer, school, mechanic, or transportation authority issues a note that is submitted by the recipient that states the vehicle is not:~~

~~(i) Operable; or~~

~~(ii) Usable for the recipient.~~

~~(b) 1. A recipient who is under the age of eighteen (18) shall have the same vehicle ownership status as the custodial parent or legal guardian.~~

~~(c) 1. A parent or guardian may request a two (2) week exemption to subparagraph a. of this paragraph (b) of this subsection in order to allow a child recipient to attend medically necessary services.~~

~~(3) (a) A transportation provider shall not self-refer or solicit a recipient or a recipient's parent or guardian to use NEMT if the recipient or recipient's parent or guardian owns or has access to appropriate transportation pursuant to this section.~~

~~(b) A transportation provider that self-refers or solicits a recipient or a recipient's parent or guardian pursuant to paragraph (a) of this subsection may be excluded from offering NEMT on a permanent or temporary basis [Free transportation, which is appropriate for the recipient's medical needs, is not available or use of an appropriate and operational household vehicle is not available].~~

Section 4. Reimbursement.

(1) The Transportation Cabinet shall be reimbursed at a monthly capitated rate set by the department for each Medicaid recipient receiving services pursuant to this administrative regulation.

(2) The capitated rate shall not exceed the Medicaid Program's usual aggregate cost on a projected statewide basis of providing nonemergency medical transportation services to the covered group of recipients.

Section 5. Appeal Rights.

(1) An appeal of a negative action regarding a Medicaid recipient shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action regarding a Medicaid provider

shall be in accordance with 907 KAR 1:671.

Section 6. Implementation. The provisions of this administrative regulation shall be applicable for nonemergency transportation waiver services provided in accordance with KRS Chapter 45A and Section 2 of this administrative regulation.

Section 7. Federal Approval and Federal Financial Participation. The ~~department's~~~~cabinet's~~ coverage and reimbursement of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage and reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval of the coverage and reimbursement, as relevant.

FILED WITH LRC: April 9, 2024

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; email CHFSregs@ky.gov.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Health Policy
(As Amended at ARRS, April 9, 2024)**

907 KAR 13:010. Private duty nursing service coverage provisions and requirements.

RELATES TO: KRS 205.520, 205.622, 369.101-369.120, 42 C.F.R. 431.17, 45 C.F.R. Part 164

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 440.80, 440.330, 42 U.S.C. 1396u-7

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 the Medicaid Program coverage provisions and requirements regarding private duty nursing services.

Section 1. Provider Participation.

(1) To be eligible to provide services under this administrative regulation, a provider shall be:

(a) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

(b) Except as established in subsection (2) of this section, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; and

(c) 1. A private duty nursing agency; or

2. A licensed home health agency.

(2) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

Section 2. Coverage and Limit.

(1) The department shall reimburse for a private duty nursing service or supply if the service or supply is:

(a) Provided:

1. By a:

a. Registered nurse employed by a:

(i) Private duty nursing agency that meets the requirements established in Section 1 of this administrative regulation; or

(ii) Home health agency that meets the requirements established in Section 1 of this administrative regulation; or

b. Licensed practical nurse employed by a:

(i) Private duty nursing agency that meets the requirements established in Section 1 of this administrative regulation; or

(ii) Home health agency that meets the requirements

VOLUME 50, NUMBER 11– May 1, 2024

established in Section 1 of this administrative regulation;

2. To a recipient in the recipient's home, except as provided in subsection (2) of this section; and

3. Under the direction of the recipient's physician in accordance with 42 C.F.R. 440.80;

(b)1. Prescribed for the recipient by a physician; and

2. Stated in the recipient's plan of treatment developed by the prescribing physician;

(c) Established as being needed for the recipient in the recipient's home;

(d) Prior authorized; and

(e) Medically necessary.

(2) A private duty nursing service may be covered in a setting other than in the recipient's home, if the service is provided during a normal life activity of the recipient that requires the recipient to be out of his or her home.

~~[(3)](a) [There shall be a limit of private duty nursing services per recipient of 2,000 hours per twelve (12) consecutive month period.]~~

~~[(b)] [The limit established in paragraph (a) of this subsection may be exceeded if services in excess of the limit are determined to be medically necessary.]~~

Section 3. No Duplication of Service. The department shall not reimburse for any of the following services provided during the same time that a private duty nursing service is provided to a recipient:

- (1) A personal care service;
- (2) A skilled nursing service or visit; or
- (3) A home health aide service.

Section 4. Conflict of Interest. The department shall not reimburse for a private duty nursing service provided to a recipient if the individual providing the service is:

- (1) An immediate family member of the recipient; or
- (2) A legally responsible individual who maintains his or her primary residence with the recipient.

Section 5. Records Maintenance, Protection, and Security.

(1)(a) A provider shall maintain a current health record for each recipient.

(b)1. A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

2. The individual who provided the service shall date and sign the health record on the date that the individual provided the service.

(2)(a) A provider shall maintain a health record regarding a recipient for at least five (5) years from the date of the service.

(b) If the United States Department of Health and Human Services secretary requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(3) A provider shall comply with 45 C.F.R. Part 164.

Section 6. Medicaid Program Participation Compliance.

(1) A provider shall comply with:

- (a) 907 KAR 1:671;
- (b) 907 KAR 1:672; and
- (c) All applicable state and federal laws.

(2)(a) If a provider receives any duplicate payment or overpayment from the department, regardless of reason, the provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

- 1. Interpreted to be fraud or abuse; and
- 2. Prosecuted in accordance with applicable federal or state law.

Section 7. Third Party Liability. A provider shall comply with KRS 205.622.

Section 8. Use of Electronic Signatures.

(1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the

requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

- 1. A copy of the provider's electronic signature policy;
- 2. The signed consent form; and
- 3. The original filed signature.

Section 9. Auditing Authority. The department shall have the authority to audit any claim, medical record, or documentation associated with any claim or medical record.

Section 10. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the coverage; and
- (2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 11. Appeal Rights.

(1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

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**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Behavioral Health, Developmental and
Intellectual Disabilities
Division of Substance Use Disorder
(As Amended at ARRS, April 9, 2024)**

908 KAR 1:410. Recovery housing.

RELATES TO: 26 U.S.C. 501(c), 42 U.S.C. 3607, 12187
STATUTORY AUTHORITY: KRS 194A.030, 194A.050,
210.450, 222.211, 222.500-510

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect the health of Kentucky citizens and to implement programs mandated by federal law or to qualify for the receipt of federal funds. KRS 222.504(3) ~~authorizes the cabinet to promulgate~~ ~~allows for the promulgation of~~ administrative regulations governing recovery housing certification. This administrative regulation establishes the standards and requirements for recovery housing certification.

Section 1. Definitions.

(1) "Applicant" means the owner, operator, or agency that submits an application for the certification of a recovery residence.

(2) "Cabinet" is defined by KRS 222.500(1).

VOLUME 50, NUMBER 11– May 1, 2024

(3) "Certified recovery residence" means a recovery residence that has met the required standards recognized and approved by the Cabinet for Health and Family Services.

(4) "Certifying organization" is defined by KRS 222.500(2).

(5) "Department" means the Department for Behavioral Health, Developmental and Intellectual Disabilities.

(6) "Kentucky Recovery Housing Network" means the organization recognized by the National Alliance for Recovery Residences (NARR) as the state affiliate.

(7) "Local government" is defined by KRS 222.500 (3).

(8) "National Alliance for Recovery Residence Standards" or "NARR standards" means a set of published national standards for all levels of recovery residences and is available on the NARR Web site at <https://narronline.org/affiliate-services/standards-and-certification-program/>.

(9) "Recovery residence" is defined by KRS 222.500(5).

(10) "Recovery support services" is defined by KRS 222.500(6).

Section 2. Application Process for Certification of Recovery Residences.

(1) Entities required by KRS 222.502 to obtain certification as a recovery residence shall submit:

(a) A ["]Recovery Housing Certification Application["] that includes full, complete, and accurate information for each residence;

(b) A completed ["]Recovery Housing Assurances["] for each residence;

(c) A signed ["]Recovery Housing Code of Ethics["];

(d) A signed, notarized statement granting permission by the property owner of record, if other than the applicant, to operate a recovery residence on the owner's property;

(e) Proof of fire, liability, and hazard insurance coverage on the building in which the residence is located;

(f) ~~Proof of current inspections for:~~

~~[1.] Health and safety;~~

~~[2.] Building and occupancy;~~

~~[3.] Fire codes; and~~

~~[4.] Zoning requirements;~~

~~(g) Proof of current registration with the Kentucky Secretary of State;~~

~~(h) A copy of resident program policies that include:~~

~~1. Terms of occupancy, including policies related to residents' a residents' prescription and non-prescription medication usage and storage;~~

~~2. Financial obligations, including any fees, charges, or rents that may accrue to the resident and the process, time frame, and requirements for the collection of the[such] obligations;~~

~~3. Financial deposits that may be collected, if any, and the time frame process, and requirements for the return of the[such] deposits; and~~

~~4. Any circumstances under which the resident may be entitled to a refund of any amount for financial obligations collected by the recovery residence, if applicable;~~

~~(i) A copy of the emergency preparedness plan for the recovery house, that includes:~~

~~1. Emergency contact numbers;~~

~~2. An evacuation plan and map;~~

~~3. An emergency relocation plan that specifies where residents may live temporarily; and~~

~~4. A continuity of operations plan; and~~

~~(j) If applicable, any forms, documents, and guides used to mentor each resident or monitor each resident's participation in the development of the resident's recovery plan.;~~

(2) If an application is incomplete or inaccurate, the certifying organization:

(a) Shall return the application within ten (10) business days to the applicant with written instructions regarding proper completion and resubmission of the application within a specified time frame; and

(b) May conduct[, ~~or delegate a designee to conduct,~~] a pre-inspection site visit.

(3) The cabinet ~~or,~~ certifying organization[, ~~or its designee~~] may conduct an inspection of the residence at any time without prior notice, including inspecting and copying financial and resident records.

(4) Required entities, as established by KRS 222.502, shall

submit a ["]Kentucky Recovery Housing Application["] with the required supporting documentation identified in Section 2(1) to the Department for Behavioral Health, Developmental, and Intellectual Disabilities, attention: Kentucky Recovery Housing Certification Program ~~by~~ via:

(a) Electronic mail to kyrecoveryhousing@ky.gov; or

(b) Written mail to 275 E. Main Street, 4W, Frankfort, Kentucky 40621.

Section 3. Approval or Denial of the Application for Recovery Residence Certification.

(1) The certifying organization shall conduct a site visit after the completed application and required documentation is received to determine if the application for certification for a recovery residence is:

(a) Approved;

(b) Provisionally approved; or

(c) Denied.

(2) The certifying organization shall grant approval for certification for a period of twelve (12) months if the applicant is in compliance with the ["]NARR standards["] ~~;~~ or

(3) The certifying organization may grant provisional approval of the application for initial certification of a recovery residence ~~if in the following circumstances~~:

(a) The certifying organization has identified deficiencies with respect to specific NARR standards; and

(b) The identified deficiencies do not pose an imminent risk to the health, safety, or welfare of a resident. ~~;~~ or

(4) The certifying organization shall deny the application for certification of a recovery residence ~~if in the following circumstances~~:

(a) The applicant is in noncompliance with the NARR standards;

(b) One (1) or more deficiencies have been identified that pose an imminent risk to the health, safety, or welfare of the residents; or

(c) Information contained on the application reveals that there would be an unreasonable risk of harm to the residents if certification were granted. ~~;~~ or

(5) The certifying organization may deny the application for certification of a recovery residence if the applicant has previously discontinued operations of a recovery residence without prior notification to staff, residents, and the certifying organization, and without implementation of a transition plan for residents to alternative living arrangements.

(6) If provisional approval is granted, it shall:

(a) Be for a period of six (6) months from the date of the issuance of the provisional approval;

(b) Require the entity to request the certifying organization to conduct a site visit for reconsideration of certification prior to the expiration of the provisional approval; and

(c) Require the entity to submit documentation that demonstrates that the identified deficiencies have been eliminated.

(7)(a) Provisional approval may be granted two consecutive times, for a maximum of twelve (12) months, at the end of which ~~that~~ time the application for certification shall be denied;

(b) The entity shall have up to thirty (30) days to continue to operate and assist residents in securing alternative housing;

(c) The entity shall cease all operations by the thirty-first day after the date of notification of denial; and

(d) The entity shall submit a new application for certification as a recovery residence ~~and~~

~~[(b)] [The entity shall wait twelve (12) months from the date of denial before a new application may be submitted].~~

(8) Certification, if granted, shall be valid for the residence and address for which the original certification is issued.

(9) Recovery residence certification is not transferable, if the sale or transfer of a recovery residence causes a change in at least twenty-five (25) percent of ownership, the new owner shall ~~must~~ apply for certification as established in Section 2 of this administrative regulation.

Section 4. Recertification.

(1) An entity that has been granted certification as a recovery residence, shall submit an application for recertification to the certifying organization at least sixty (60) days prior to the expiration

date of the current certification.

(2) The certifying organization shall conduct a site visit as part of the recertification process.

(3)(a) Recertification shall be granted **for a period of two (2) years** if the applicant is currently certified and is in compliance with the NARR standards; or

(b) Subsequent to the issuance of provisional recovery residence certification, the identified deficiencies on the basis of which the provisional certification was granted have been fully and satisfactorily remediated.;

(4) Provisional approval shall be granted of the application for recertification of a recovery residence if:

(a) The certifying organization has identified deficiencies with respect to specific NARR standards; and

(b) The identified deficiencies do not pose an imminent risk to the health, safety, or welfare of a resident.;

(5) If provisional approval is granted during recertification, it shall be granted once and for a period not to exceed six (6) months.

(6) If an applicant is granted provisional approval during the recertification process before being granted certification, then certification shall be for a period of one (1) year.

(7) An application for recertification shall be denied if in the following circumstances:

(a) The applicant is in noncompliance with the NARR standards;

(b) One **(1)** or more deficiencies have been identified that pose an imminent risk to the health, safety, or welfare of the residents; or

(c) The application reveals that there would be an unreasonable risk of harm to the residents if certification were granted.

(8)(7) If the applicant has discontinued operations of a recovery residence without complying with the provisions of this administrative regulation an application for recertification may be denied.

(9)(8) If the certifying organization does not conduct a site visit before the expiration of certification, the certifying organization shall issue a written notification to the owner or operator of the recovery residence that extends certification **for a period of up to ninety (90) days or** until the certifying organization is able to conduct a site visit of the recovery residence.

(10)(9) The certifying organization shall notify the department of the organizations determination of an application for certification within ten (10) business days from the date of notification to the applicant.

Section 5. Department Responsibilities.

(1) The department shall:

(a) Require certified recovery residences to provide proof of certification at least annually;

(b) Require certified recovery residences to notify the department of any change in their certification status by a certifying organization;

(c) Require separate proof of certification for each recovery residence owned or operated by an individual or entity in the commonwealth;

(d) Post on its Web site the name, telephone number, and location by local jurisdiction of each certified recovery residence and shall update the list at least quarterly;

(e) Post on its Web site the name of each certifying organization approved by the cabinet; and

(f) Notify local governments with appropriate jurisdiction of receipt of proof of certification from a recovery residence within thirty (30) days of receipt of proof of certification.

(2) The department may seek legal action, up to and including cessation of operations and monetary penalties, against a recovery residence that fails to meet the requirements of this administrative regulation.

(3) The department, **or certifying organization**, shall not disclose the address of a recovery residence except to local governments, local law enforcement, and emergency personnel.

Section 6. Recovery Residence Owner or Operator Responsibilities. The owner or operator of a certified recovery residence shall ensure ~~the following~~:

(1) The residence and its operations are in compliance with the NARR standards;

(2) The residence ~~develops~~**shall develop** and

~~adheres~~**adhere** to a written policy regarding the criminal history, including substantiated abuse or neglect of a child or vulnerable adult, of any staff member, employee, peer, or volunteer who serves in a staff capacity with the recovery residence and, in that capacity, has direct and regular interaction with residents; **and**

(3) If the certified recovery residence plans to discontinue operations, the owner or operator ~~submits~~**shall submit**, at least sixty (60) calendar days before the residence intends to cease operations, to the certifying organization, a written plan that includes ~~the following information~~:

(a) Date operations will cease; and

(b) Notification to residents of the planned discontinuation of operations and of other certified recovery residences and housing options.

Section 7. **Background Checks.**

(1) All staff of a recovery residence shall:

(a) Have a criminal record check performed upon initial hire through the Administrative Office of the Courts or the Kentucky State Police; and

(b) Not have a criminal conviction, or plea of guilty, to a:

1. Sex crime as specified in KRS 17.500;

2. Criminal offense against a minor as specified in KRS 17.500; or

3. Felony offense related to neglect, physical abuse, sexual abuse, or exploitation of a child or adult.

(2) A recovery residence that houses individuals under the age of eighteen (18) shall not employ anyone listed on the central registry established by 922 KAR 1:470.

Section 8. **Request for Reconsideration.**

(1) An applicant for certification dissatisfied by a decision of the cabinet, or certifying agency, may submit a request for reconsideration by submitting, in writing, to the commissioner for the department, or designee, within ten (10) days following notice of the decision.

(2) The written request shall include:

(a) The application for certification that was denied; and
(b) Documentation that addresses the reasons the application for certification was denied.

(3) Upon receipt of a request for reconsideration, the commissioner or designee, shall:

(a) Review the request; and

(b) Render a written decision on the request for reconsideration within thirty (30) calendar days unless an extension is granted by the commissioner or designee:

1. Due to extenuating circumstances that prolong the review; and

2. With notice provided to the applicant for certification.

Section 9. **Incorporation by Reference.**

(1) The following material is incorporated by reference:

(a) "Kentucky Recovery Housing Assurances", 07/24;

(b) "Kentucky Recovery Housing Certification Application", 07/24;

(c) "Kentucky Recovery Housing Code of Ethics", 07/24; and

(d) "NARR Standard 3.0", 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the departments Web site at <https://www.chfs.ky.gov/agencies/dbhdid/Pages/default.aspx>.

(3) This material is also available at <https://narronline.org/affiliate-services/standards-and-certification-program/>.

FILED WITH LRC: April 9, 2024

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)

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 supported by the cabinet 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.

VOLUME 50, NUMBER 11– May 1, 2024

(2) If the cabinet determines that a family has not successfully mitigated the danger to the child associated with the removal or does not have[has] a plan supported by the cabinet 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) For children aged seventeen (17), approval is obtained from the commissioner or designee prior to the court determination required by subsection (3) of this section and 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:

VOLUME 50, NUMBER 11– May 1, 2024

- (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: April 9, 2024

FILED WITH LRC: April 10, 2024 at 2:10 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 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Laura Begin or 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. The

administrative regulation is being further amended in response to comments to provide clarification.

(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 of the 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

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)**

(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 standards or additional or different responsibilities or requirements.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, 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.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Cabinet for Health and Family Services, Department for Community Based Services.

(a) Estimate the following for the first year:

Expenditures: There will be no new or additional costs to the agency to implement this administrative regulation.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Not applicable.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Not applicable.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Not applicable.

(4) Identify additional regulated entities not listed in questions (2) or (3): This administrative regulation establishes the permanency options available for children in the cabinet's custody and their caregiver and the processes for obtaining permanency.

(a) Estimate the following for the first year:

Expenditures: There is no fiscal impact associated with this amendment.

Revenues: Not applicable.

Cost Savings: Not applicable.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no new or additional costs to the agency to implement this administrative regulation for subsequent years. Not applicable.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation establishes permanency options for children and their caregivers and the processes involved in obtaining permanency. The cabinet does pay an average of \$87.23 per day per child for children in the cabinet's custody and may continue paying for the care of children even after permanency is achieved through adoption subsidies or subsidized permanent custody. This is funded through federal and state funding.

(b) Methodology and resources used to determine the fiscal impact: The cabinet is already providing permanency services and is therefore aware of the fiscal impact.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) No, this administrative regulation will not have a negative or adverse economic impact.

(b) The methodology and resources used to reach this conclusion: The only cost to providing permanency services is to the cabinet, but the cabinet is providing for the cost of care of children in the cabinet's custody anyway.

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 **or youth** 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

VOLUME 50, NUMBER 11– May 1, 2024

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 or youth who meets the exception to the age of majority, if the child or youth is:

(a) Completing secondary education or a program leading to an equivalent credential;

(b) Enrolled in an institution that provides post-secondary or vocational education;

(c) Participating in a program or activity designed to promote or remove barriers to employment; or

(d) Employed for at least eighty (80) hours per month; 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 **within thirty (30) calendar days** 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) **Caregiver fails to provide documentation demonstrating financial responsibility and support after the cabinet has [repeatedly] requested the documentation [regarding financial responsibility] from the caregiver at least three (3) times.**

(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 **and provides to the cabinet documentation demonstrating financial responsibility and support.**

(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 **written** notice of **intended action** for 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 **written** notice of **intended action** 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: April 9, 2024

FILED WITH LRC: April 10, 2024 at 2:10 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 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Laura Begin or 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. The administrative regulation is being further amended in response to comments to include the criteria in which a caregiver can continue to receive supports for a youth over the age of 18 and to include a timeframe for notifying the cabinet of a change in the caregiver's circumstances.

(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

VOLUME 50, NUMBER 11– May 1, 2024

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

(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 IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.472, 605.100(1), 605.130(7), 605.150, 42 U.S.C. 673

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Cabinet for Health and Family Services, Department for Community Based Services.

(a) Estimate the following for the first year:

Expenditures: 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.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Not applicable. The cost is expected to increase over subsequent years as more caregivers become aware of the ongoing financial support they can receive through this new program. 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.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Relative or fictive kin caregivers of children in the cabinet's custody. There is no cost to them, only benefit.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Not applicable.

(4) Identify additional regulated entities not listed in questions (2) or (3): This administrative regulation establishes the permanency options available for children in the cabinet's custody and their caregiver and the processes for obtaining permanency.

(a) Estimate the following for the first year:

Expenditures: The cost of the program is to the cabinet.

Revenues: Not applicable.

Cost Savings: Not applicable.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no new or additional costs to the agency to implement this administrative regulation for subsequent years. Not applicable.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: 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) Methodology and resources used to determine the fiscal impact: The cabinet is paying per diems to these caregivers as foster homes currently, but the cabinet has estimated the fiscal impact of caregivers who may be eligible to pursue this permanency option.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) The fiscal impact is to the cabinet, and it is not an overall negative or adverse major economic impact to provide supports to caregivers and permanency to children.

(b) The methodology and resources used to reach this conclusion: The cost of this new program is to the cabinet, but the cabinet is paying per diems to caregivers approved as foster parents currently.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)

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,]42 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 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 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

VOLUME 50, NUMBER 11– May 1, 2024

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 be prepared adequately with the appropriate knowledge and skills to provide for the needs of the child, and that such preparation shall 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) **"Fictive kin" is defined by KRS 199.011(9) and 600.020(28).**

~~(6) ["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.~~

~~(7) [(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.~~

~~(8) [(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.~~

~~(9) [(9)] "Professional experience" means paid employment or volunteer work in a setting where there is supervision or periodic evaluation.~~

~~(10) [(10)] "Reasonable and prudent parent standard" is defined by 42 U.S.C. 675(10).~~

(11) "Relative" means an individual related to a child by blood, marriage, or adoption.

(12) "Relative or fictive kin foster home" means a foster home:

(a) In which the individual approved as a foster parent is a:

- 1. Relative; or**
- 2. Fictive kin; and**

(b) Approved by the cabinet in accordance with 922 KAR 1:350.

~~(13) [(13)] "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.~~

~~(14) [(14)] "Therapeutic foster care" is defined by KRS 158.135(1)(c).~~

~~(15) [(15)] "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 ~~a~~**the training curriculum provided or approved**~~(a minimum of fifteen (15) hours of)~~**curricula**~~required by the cabinet that includes,~~**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~~**necessitates** 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.

VOLUME 50, NUMBER 11– May 1, 2024

(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 curriculum provided or approved by the cabinet pursuant to Section 8 of this administrative regulation 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: April 9, 2024

FILED WITH LRC: April 10, 2024 at 2:10 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 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Laura Begin or 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. The administrative regulation is being further amended in response to comments received to include definitions consistent with other administrative regulations and to include that the required curriculum is to be provided or approved by the cabinet.

(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 contracts 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 Social Services Block Grant, restricted or agency funds, and state funds are the funding sources for training.

VOLUME 50, NUMBER 11– May 1, 2024

(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 IMPACT STATEMENT

(1) Identify each state statute, 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

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Cabinet for Health and Family Services, Department for Community Based Services.

(a) Estimate the following for the first year:

Expenditures: There will be no new or additional costs to the agency to implement this administrative regulation.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Not applicable.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Not applicable.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Not applicable.

(4) Identify additional regulated entities not listed in questions (2) or (3): This administrative regulation establishes the training requirements for foster parents, adoptive parents, and respite care providers for children in the custody of the cabinet.

(a) Estimate the following for the first year:

Expenditures: There is no fiscal impact associated with this amendment.

Revenues: Not applicable.

Cost Savings: Not applicable.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no new or additional costs to the agency to implement this administrative regulation for subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation establishes the training that is required of

foster or adoptive parents and respite care providers in order to be approved by the cabinet. There is no cost associated with taking the required trainings. The cabinet pays for the training with a mix of state and federal funds, but this amendment does not impact the cost.

(b) Methodology and resources used to determine the fiscal impact: The cabinet is already providing and requiring the included trainings and therefore is aware of the fiscal impact.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) No, this administrative regulation will not have a negative or adverse economic impact.

(b) The methodology and resources used to reach this conclusion: There is no cost to regulated entities associated with taking the required trainings established in this administrative regulation.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Amended After Comments)

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

VOLUME 50, NUMBER 11– May 1, 2024

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.

(11) "Relative or fictive kin foster home" means a foster home:

(a) In which the individual approved as a foster parent is a:

1. Relative; or

2. Fictive kin; and

(b) Approved by the cabinet in accordance with 922 KAR 1:350.

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 **relative or fictive kin foster home or adoptive home**~~[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

VOLUME 50, NUMBER 11– May 1, 2024

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. ~~[671 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: April 9, 2024

FILED WITH LRC: April 10, 2024 at 2:10 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 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Laura Begin or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This

VOLUME 50, NUMBER 11– May 1, 2024

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 IMPACT STATEMENT

(1) Identify each state statute, 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.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Cabinet for Health and Family Services, Department for Community Based Services.

(a) Estimate the following for the first year:

Expenditures: The cabinet estimates a cost of approximately \$1,605,450 to provide the relative or fictive kin placement support benefit payment each year. The cabinet will provide per diems to relative or fictive kin caregivers that choose to become foster parents for the child(ren) in their care and the caregivers may be eligible to receive ongoing financial assistance in caring for the child if they apply and are eligible for specific programs and supports provided by the cabinet.

Revenues: There is no revenue.

Cost Savings: There is no cost savings to the cabinet.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? They are not expected to differ substantially.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Not applicable.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Not applicable.

(4) Identify additional regulated entities not listed in questions

(2) or (3): This administrative regulation establishes supports and services for relative or fictive kin caregivers of children who have been removed from their homes.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: Caregivers may receive assistance or per diems from the cabinet.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? They are not expected to differ substantially.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The fiscal impact of this administrative regulation is to the cabinet for providing the services and supports established for caregivers. These supports are paid through a mix of state and federal funds.

(b) Methodology and resources used to determine the fiscal impact: The cabinet is already paying for these supports and therefore is aware of the fiscal impact.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) No, this administrative regulation does not have an overall negative or adverse economic impact.

(b) The methodology and resources used to reach this conclusion: The only financial impact is to the cabinet through payments to relative or fictive kin caregivers paid with state and federal funds. The services and supports contained in this administrative regulation provide financial and other assistance to relative or fictive kin caregivers caring for a child who has been removed from their home of origin.

PROPOSED AMENDMENTS

Public comment periods for ordinary, non-emergency regulations are at least two months long. For other regulations with open comment periods, please also see last month's [Administrative Register of Kentucky](#).

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student Financial Aid
(Amendment)

11 KAR 4:080. Student aid applications.

RELATES TO: KRS 164.518, 164.744(2), 164.748(4), (7), (8), 164.753(3), (4), (6), 164.7535, 164.769, 164.780, 164.785, 164.7890, 164.7894, 34 C.F.R. 654.1-654.5, 654.30-654.52, 20 U.S.C. 1070d-31 - 1070d-41

STATUTORY AUTHORITY: KRS 164.518(3), 164.746(6), 164.748(4), 164.753(3), (6), 164.7535, 164.769(5), (6)(f), 164.7894(6), 34 C.F.R. 654.30, 654.41, 20 U.S.C. 1070d-37, 1070d-38

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) ~~authorizes~~[requires] the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. KRS 164.7894(6) requires the Authority to promulgate administrative regulations as may be needed for the administration of the Kentucky Coal County College Completion Program. This administrative regulation designates and incorporates the applications to be utilized under the grant, scholarship, and work-study programs administered by KHEAA.

Section 1. Applications. To participate in a specified grant, scholarship, or work-study program administered by the Kentucky Higher Education Assistance Authority, the following application forms shall be completed for the appropriate academic year in which an award is sought in accordance with their instructions:

- (1) For the KHEAA Grant Program established in 11 KAR 5:130, the Free Application for Federal Student Aid (FAFSA);
- (2) For the KHEAA Work-Study Program established in 11 KAR 6:010, the KHEAA Work-Study Program Student Application;
- (3) For the Teacher Scholarship Program established in 11 KAR 8:030, the Teacher Scholarship Application;
- (4) For the Early Childhood Development Scholarship Program established in 11 KAR 16:010:
 - (a) The Free Application for Federal Student Aid (FAFSA); and
 - (b) The Early Childhood Development Scholarship Application;
- (5) For the Robert C. Byrd Honors Scholarship Program established in 11 KAR 18:010:
 - (a) For high school and home school students, the Robert C. Byrd Honors Scholarship Program; and
 - (b) For GED recipients, the Robert C. Byrd Honors Scholarship Program GED Recipients;
- (6) For the Go Higher Grant Program established in 11 KAR 5:200:
 - (a) The Free Application for Federal Student Aid (FAFSA); and
 - (b) The Go Higher Grant Program Application;
- (7) For the Coal County Scholarship Program for Pharmacy Students established in 11 KAR 19:010, the Coal County Scholarship Program for Pharmacy Students Application;
- (8) For the Kentucky Coal County College Completion Scholarship Program established in 11 KAR 20:020:
 - (a) The Free Application for Federal Student Aid (FAFSA); and
 - (b) The Kentucky Coal County College Completion Scholarship Application;
- (9) For the Optometry Scholarship Program established in KRS 164.7870, the Optometry Scholarship Application;
- (10) For the Dual Credit Scholarship Program established in KRS 164.786, the Dual Credit Scholarship Application; and
- (11) For the Work Ready Kentucky Scholarship Program established in KRS 164.787:
 - (a) The Free Application for Federal Student Aid (FAFSA); and

(b) The Work Ready Kentucky Scholarship Application.

Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) The "Free Application for Federal Student Aid July 1, 2024 - June 30, 2025" (FAFSA), December 2023["Free Application for Federal Student Aid July 1, 2023 - June 30, 2024" (FAFSA), October 2022];
- (b) The "Free Application for Federal Student Aid July 1, 2023 - June 20, 2024" (FAFSA), October 2022["Free Application for Federal Student Aid July 1, 2022 - June 30, 2023" (FAFSA), October 2021];
- (c) The "KHEAA Work-Study Program Student Application", July 2001;
- (d) The "Teacher Scholarship Application", June 2006;
- (e) The "Early Childhood Development Scholarship Application", April 2006;
- (f) The "Robert C. Byrd Honors Scholarship Program", June 2009;
- (g) The "Robert C. Byrd Honors Scholarship Program-GED Recipients", June 2009;
- (h) The "Go Higher Grant Program Application", January 2008;
- (i) The "Coal County Scholarship Program for Pharmacy Students Application", February 2011;
- (j) The "Kentucky Coal County College Completion Scholarship Application", October 2014;
- (k) The "Optometry Scholarship Application", January 2022;
- (l) The "Dual Credit Scholarship Application", July 2021; and
- (m) The "Work Ready Kentucky Scholarship Application", August 2019.

(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. The material may also be obtained at www.kheaa.com.

JOHN DOUGHERTY, JR., Chair

APPROVED BY AGENCY: March 7, 2024

FILED WITH LRC: March 21, 2024 at 2:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, June 25, 2024, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 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 the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Hon. Miles F. Justice, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7309, fax (502) 696-7293, email mjustice@kheaa.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rebecca Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative

regulation designates and incorporates the applications to be utilized under the grant, scholarship, and work-study programs administered by the Authority.

(b) The necessity of this administrative regulation: The Authority is required to promulgate administrative regulations pertaining to the administration of the College Access Program (CAP), Kentucky Tuition Grant (KTG) Program, KHEAA Work-Study Program, Teacher Scholarship Program, Early Childhood Development Scholarship Program, Go Higher Grant Program, Coal County Scholarship Program for Pharmacy Students, the Kentucky Coal County College Completion Scholarship Program, the Optometry Scholarship Program, the Dual Credit Scholarship Program, and the Work Ready Kentucky Scholarship Program pursuant to KRS 164.518(3), 164.744(2), 164.746(6), 164.748(4),(7)(8), 164.753(3),(4),(6), 164.7535, 164.769, 164.780, 165.785, 164.7890, 164.7894, 34 C.F.R. 654.1-654.5, 654.30-654.42, and 20 U.S.C. 1070d-31 - 1070d-41.

(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 prescribing the applications to be utilized under the grant, scholarship and work-study programs administered by the Authority.

(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 prescribing and incorporating the various application forms to be used by students to apply for the financial aid programs administered by the authority.

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

(a) How the amendment will change this existing administrative regulation: The amendment changes the existing regulation by incorporating the latest version of the Free Application for Federal Student Aid (FAFSA) for the 2024-2025 academic year that is to be completed by applicants for participation grant programs administered by the Authority.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary in order to require student recipients to complete the correct version of the FAFSA for the desired academic year for which grant aid is sought.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by specifying the version of the FAFSA application to be used when applying for an award under the student financial aid programs administered by the Authority.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the state student aid programs by requiring completion of the correct version of the FAFSA based on academic year for which an award is sought.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment to this administrative regulation will affect all those individuals who seek to apply for student financial aid programs administered by the Authority. (4) Provide an analysis of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:

(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: Those individuals who seek to participate in the various student financial aid programs administered by KHEAA will be required to complete the correct version of the FAFSA application as specified in this regulation in order to be considered for any award for a specific academic year.

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

this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, applicants will be considered for awards under the KHEAA-administered student aid programs. (5) Provide an estimate of how much it will cost to implement this administrative regulation:

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

(a) Initially: There is no cost to implement this administrative regulation.

(b) On a continuing basis: See 5(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding source is required in order to implement this administrative regulation since it merely specifies the required version of the FAFSA as well as other student assistance programs to be used by program participants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.518(3), 164.744(2), 164.746(6), 164.748(4),(7)(8),164.753(3),(4),(6),164.7535, 164.769, 164.780, 165.785, 164.7890, 164.7894, 34 C.F.R. 654.1-654.5, 654.30-654.42, and 20 U.S.C. 1070d-31 - 1070d-41.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority

(a) Estimate the following for the first year:

Expenditures: No additional expenditures will be required as a result of this amendment to the administrative regulation.

Revenues: No additional revenues will be generated through this amendment to the administrative regulation.

Cost Savings: No costs are associated with this administrative regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no impact on the expenditures, revenues, or cost savings during subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): The entities affected by the amendment to this administrative regulation consists of Kentucky students who seek to participate in the KHEAA-administered state financial aid programs.

(a) Estimate the following for the first year:

Expenditures: No expenditures will be required as a result of this amendment to the administrative regulation.

Revenues: No revenues will be generated through this amendment to the administrative regulation.

Cost Savings: No costs are associated with this administrative regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no impact on the expenditures, revenues, or cost savings during subsequent years.

- (4) Identify additional regulated entities not listed in questions (2) or (3): Not applicable
- (a) Estimate the following for the first year:
Expenditures: N/A
Revenues: N/A
Cost Savings: N/A
- (b) How will expenditures, revenues, or cost savings differ in subsequent years? N/A
- (5) Provide a narrative to explain the:
- (a) Fiscal impact of this administrative regulation: Since this administrative regulation merely prescribes the applications to be utilized by students in seeking to participate in the KHEAA-administered student financial aid programs, there is no fiscal impact.
- (b) Methodology and resources used to determine the fiscal impact: As noted, there is no fiscal impact on any of the affected entities as this regulation simply specifies the application forms to be used in applying for aid.
- (6) Explain:
- (a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will have no negative or adverse economic impact on the entities identified above.
- (b) The methodology and resources used to reach this conclusion: As discussed above, there is no fiscal impact from this administrative regulation.

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student Financial Aid
(Amendment)**

**11 KAR 15:090. Kentucky Educational Excellence
Scholarship (KEES) program.**

RELATES TO: KRS 154A.130(4), 156.010, 158.007(8), 164.002(1), (2), 164.7871,
STATUTORY AUTHORITY: KRS 164.7874(3), (16), 164.7877(3), 164.7879(1), (2), (3), 164.7881(4)(a), (c), (6)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7877(3) requires the Kentucky Higher Education Assistance Authority to administer the Kentucky Educational Excellence Scholarship (KEES) trust fund. KRS 164.7874(16) requires the authority to promulgate administrative regulations establishing the KEES curriculum's courses of study. KRS 164.7879(3)(e) requires the authority to promulgate administrative regulations to determine the eligibility of a noncertified, nonpublic high school graduate and of a GED recipient for a supplemental award. KRS 164.7874(3) requires the authority to establish score equivalents between the SAT and ACT. KRS 164.7881(4)(a) requires the authority to establish overall award levels for the program. KRS 164.7879(2)(c) requires the authority to promulgate administrative regulations determining eligibility for children of parents who are in the military and who claim Kentucky as their home of record. KRS 164.7881(4)(c) requires the authority to promulgate administrative regulations identifying equivalent undergraduate programs of study. This administrative regulation establishes those requirements relating to the Kentucky Educational Excellence Scholarship (KEES) Program.

Section 1. Definitions.

- (1) "Academic term":
(a) Means the fall or spring semester or their equivalence under a trimester or quarter system at a postsecondary education institution; and
(b) Does not mean summer sessions.
- (2) "Accredited out-of-state high school" means a high school that is:
(a) Located in a state other than Kentucky or in another country; and
(b) A member of an organization belonging to the Commission

on International and Trans-Regional Accreditation.

- (3) "ACT" means the test:
(a) Administered to a student for entrance to a Kentucky postsecondary education institution; and
(b) Owned by the ACT Corporation of Iowa City, Iowa.
- (4) "Advanced placement" or "AP" is defined by KRS 164.002(1).
- (5) "Cambridge Advanced International" or "CAI" is defined by KRS 164.002(2).
- (6) "Course" means the equivalent of one (1) credit as determined by the Kentucky Department of Education (KDE) in 704 KAR 3:305.
- (7) "Department of Defense school" means a school operated by the U.S. Department of Defense for the purpose of providing a high school education to a child whose custodial parent or guardian is in active military or diplomatic service in a state other than Kentucky or in another country.
- (8) "Dual credit" is defined by KRS 158.007(8).
- (9) "Enrolled" means the status of a student who has completed the registration requirements, except for the payment of tuition and fees, at a participating postsecondary education institution that the student is attending.
- (10) "Free and reduced price lunch" means the National School Lunch program established by the United States Department of Agriculture, Richard B. Russell National School Lunch Act, 42 U.S.C. 1751, et. seq., to provide subsidized meals to lower income students.
- (11) "GED" means a general educational development diploma awarded to a student.
- (12) "International Baccalaureate" or "IB" is defined by KRS 164.002(7).
- (13) "SAT" means the test:
(a) Administered to a student for entrance to a Kentucky postsecondary education institution; and
(b) Owned by the College Board.

Section 2. High School Grade Point Average Calculation and Reporting.

- (1) An eligible high school student's grade point average for an academic year shall be calculated using each letter grade awarded for all courses taken during an academic year. The grading scale cutoff scores used to determine the letter grade for each course shall be the same as those used to determine the letter grade for each course reported on the student's official high school transcript.
- (2)(a) Except as established in paragraphs (b) and (c) of this subsection, an eligible high school student's grade point average shall be calculated by:
1. Taking the number of units in a course multiplied by the course grade as expressed on a 4.0 point grading scale where 4.0 is an "A", 3.0 is a "B", 2.0 is a "C", 1.0 is a "D", and 0.0 is an "F";
 2. Adding the total number of points accumulated for an academic year; and
 3. Dividing the total number of points accumulated in subparagraph 2 of this paragraph by the total number of units for the academic year.
- (b) For an eligible high school student taking an AP, IB, or CAI course during the academic year, the course grade assigned shall be calculated using a 5.0 point scale where 5.0 is an "A", 4.0 is a "B", 3.0 is a "C", 2.0 is a "D", and 1.0 is an "F".
- (c) Beginning with the academic year 2015-2016, for an eligible high school student taking a dual credit course during the academic year, the course grade assigned by the college shall be used by the high school in calculating the KEES grade point average, and shall be included in the KEES calculation using a 5.0 point scale where 5.0 is an "A", 4.0 is a "B", 3.0 is a "C", 2.0 is a "D", and 1.0 is an "F". This weighted scale shall not be applicable to a remedial course.
- (3) The grade point average reported for an eligible high school student for each academic year shall include all information as set forth in KRS 164.7885(1) and be submitted to the authority in either an electronic or hard copy format.
- (4) A high school student who participated in an educational high school foreign exchange program or the Congressional Page School that was approved by the student's local high school shall have the

VOLUME 50, NUMBER 11– May 1, 2024

student's grade point average reported in accordance with KRS 164.7879(2)(b).

Section 3. High School Students of Custodial Parents or Guardians in Active Military Service.

(1)(a) For purpose of determining eligibility under the provisions of KRS 164.7879(2)(c), a high school student shall establish that the custodial parent or guardian meets the requirements of KRS 164.7879(2)(c)1.a. and b. and shall submit [the Home of Record Certification form] to the authority [documentation demonstrating:

1. That the custodial parent or guardian is in active service in the U.S. Armed Forces; and
2. That the custodial parent or guardian has been transferred by the U.S. Armed Forces from a Kentucky location to a non-Kentucky location.

(b) The authority annually shall notify the eligible high school student and the custodial parent or guardian of the student's eligibility.

(2)(a) A high school student, determined to be eligible for the KEES program under the terms of KRS 164.7879(2)(c) and subsection (1)(a) of this section, shall be responsible for requesting:

1. Grade and curriculum information from the local school; and
2. That the local school submit the information to the authority using the Curriculum Certification form and the Data Submission form.

(b) Upon receipt of curriculum and grade information from an accredited out-of-state high school or Department of Defense school for a student determined to be eligible for the KEES Program under this section, the authority shall:

1. Verify that the submitted curriculum meets the requirements of Section 4 of this administrative regulation;
2. Verify that the out-of-state high school or Department of Defense school is an accredited high school; and
3. Retain the Curriculum Certification form on file until the student's eligibility has expired.

Section 4. Postsecondary Student Eligibility and KEES Curriculum.

(1) A Kentucky postsecondary student shall be eligible to receive a base scholarship award if the student:

- (a) Has earned a base scholarship award in high school;
- (b) Has completed the KEES curriculum as set forth in subsection (2) of this section;
- (c) Has graduated from a Kentucky high school, except as established in Section 2(4) or 3 of this administrative regulation; and
- (d) Is enrolled in a participating institution in an eligible program.

(2) Except as established in subsection (4) of this section, the KEES curriculum shall consist of the curriculum standards established in 704 KAR 3:305.

(3) A student who graduates from high school at the end of the fall semester of his or her senior year and who meets the requirements of KRS 164.7874(7) shall be eligible to earn a KEES award for that year upon:

- (a) Completion of no fewer than three (3) courses of study; and
- (b) Satisfying the provisions of KRS 164.7879.

(4) Except as established in subsection (5) of this section, a high school may substitute an integrated, applied, interdisciplinary, or higher level course for a required course or required academic and career interest standards-based learning experience if the course:

- (a) Provides the same or greater academic rigor and the course covers or exceeds the minimum required content areas established in 703 KAR 4:060; or

(b) Is an honors course, cooperative education course, AP course, IB course, CAI course, dual credit course, or a course taken at a postsecondary education institution.

(5) Beginning with the 2018-2019 academic year, each cooperative education course taken during an academic year shall satisfy KEES curriculum requirements if the course has been approved by the Office of Career and Technical Education as a work-based learning experience in a career pathway pursuant to 705 KAR 4:123 and 705 KAR 4:041. For all other cooperative education coursework, only one (1) course per academic year shall count for purposes of satisfying KEES curriculum requirements.

(6) A high school annually shall provide written documentation to a student advising if the student's schedule of coursework meets the requirements of the KEES curriculum.

Section 5. Eligible Postsecondary Education Programs.

(1) An eligible program shall be a certificate or degree program offered by a participating institution and recognized by the authority pursuant to 11 KAR 15:010, Section 1(10).

(2) Except as established in subsection (4) of this section, an eligible program at an out-of-state participating institution shall be limited to those programs that qualify through the Academic Common Market administered by the Southern Regional Education Board.

(3) Pursuant to KRS 164.7881(4)(c)1, an academic program shall be designated as an equivalent undergraduate program of study if the student in the program of study:

- (a) Has not received eight (8) academic terms of a KEES award;
- (b) Is classified by an institution as a graduate or professional student and is enrolled in one (1) of the following academic programs:

1. Pharm. D;
2. A veterinary medicine program at an institution that participates in the Kentucky Contract Spaces Program; or
3. An optometric medicine program at an institution that participates in the Optometry Scholarship Program; and
- (c) Has not completed a baccalaureate degree.

Section 6. Postsecondary Grade Point Average Calculation and Reporting.

(1) Each participating institution shall report to the Authority the cumulative grade point average for each KEES recipient enrolled in that institution no later than June 30 after the completion of the award period.

(2) The cumulative grade point average shall be reported to the hundredths decimal place. Any cumulative grade point average which contains a number of five (5) or greater in the thousandths place shall be rounded up to the nearest hundredth. Any cumulative grade point average which contains a number less than five (5) in the thousandths place shall be rounded down to the nearest hundredth.

(3) If a KEES recipient had an incomplete grade when the cumulative grade point average was initially reported to the Authority and subsequently receives a final grade, the participating institution shall recalculate the recipient's cumulative grade point average as of the end of the appropriate award period and report the updated cumulative grade point average to the Authority.

Section 7. SAT Conversion Table.

(1) Pursuant to KRS 164.7874(3), the SAT to ACT Conversion Table included in this subsection shall be used to convert scores for SAT exams taken prior to the 2011-2012 academic year.

Table C-2 Concordance Between SAT I Recentered V+M Score and ACT Composite Score									
SAT IV+M	ACT Composite	SAT IV+M	ACT Composite	SAT IV+M	ACT Composite	SAT IV+M	ACT Composite	SAT IV+M	ACT Composite
1600	35-36	1370	31	1140	25	910	19	680	14
1590	35	1360	31	1130	25	900	19	670	14
1580	35	1350	30	1120	24	890	18	660	14
1570	35	1340	30	1110	24	880	18	650	13
1560	35	1330	30	1100	24	870	18	640	13
1550	34	1320	30	1090	24	860	18	630	13

VOLUME 50, NUMBER 11– May 1, 2024

1540	34	1310	29	1080	23	850	17	620	13
1530	34	1300	29	1070	23	840	17	610	13
1520	34	1290	29	1060	23	830	17	600	13
1510	34	1280	29	1050	22	820	17	590	13
1500	33	1270	28	1040	22	810	17	580	12
1490	33	1260	28	1030	22	800	16	570	12
1480	33	1250	28	1020	22	790	16	560	12
1470	33	1240	28	1010	21	780	16	550	12
1460	33	1230	27	1000	21	770	16	540	12
1450	32	1220	27	990	21	760	16	530	12
1440	32	1210	27	980	21	750	15	520	12
1430	32	1200	26	970	20	740	15	510	11
1420	32	1190	26	960	20	730	15	500	11
1410	32	1180	26	950	20	720	15		
1400	31	1170	26	940	20	710	15		
1390	31	1160	25	930	19	700	14		
1380	31	1150	25	920	19	690	14		

This table may be used to relate SAT I V+M scores to ACT Composite scores. The estimates are based on the test scores of 103,525 students from fourteen (14) universities and two (2) states who took both the ACT and the SAT I between October 1994 and December 1996. Because the ACT and the SAT I have different content, students' actual scores on the ACT could differ significantly from the concordance estimates in the table. Source: ACT, Inc. Questions about the concordance study may be directed to ACT's Research Division (319/337-1471). January, 1998

(2) Pursuant to KRS 164.7874(3), the SAT to ACT Conversion Table included in this subsection shall be used to convert scores for SAT exams taken during or after the 2011-2012 academic year, but prior to March 2016. Only the scores from the critical reasoning and mathematics sections of the SAT within a single exam administration shall be considered for KEES supplemental awards.

Table C-2 Concordance Between SAT I Recentered V+M Score and ACT Composite Score									
SAT CR+M	ACT Composite	SAT ICR+M	ACT Composite	SAT ICR+M	ACT Composite	SAT ICR+M	ACT Composite	SAT ICR+M	ACT Composite
1600	36	1370	31	1140	25	910	19	680	14
1590	35	1360	31	1130	25	900	19	670	14
1580	35	1350	30	1120	24	890	18	660	13
1570	35	1340	30	1110	24	880	18	650	13
1560	35	1330	30	1100	24	870	18	640	13
1550	35	1320	29	1090	24	860	18	630	13
1540	35	1310	29	1080	23	850	17	620	13
1530	34	1300	29	1070	23	840	17	610	12
1520	34	1290	29	1060	23	830	17	600	12
1510	34	1280	28	1050	23	820	17	590	12
1500	34	1270	28	1040	22	810	16	580	12
1490	34	1260	28	1030	22	800	16	570	12
1480	33	1250	28	1020	22	790	16	560	12
1470	33	1240	27	1010	21	780	16	550	11
1460	33	1230	27	1000	21	770	16	540	11
1450	33	1220	27	990	21	760	15	530	11
1440	33	1210	27	980	21	750	15	520	11
1430	32	1200	26	970	20	740	15	510	11
1420	32	1190	26	960	20	730	15		
1410	32	1180	26	950	20	720	15		
1400	32	1170	26	940	20	710	14		
1390	31	1160	25	930	19	700	14		
1380	31	1150	25	920	19	690	14		

This table may be used to relate SAT CR+M scores to ACT Composite scores. The estimates are based on the test scores of 300,437 students who took both the ACT and the SAT CR+M between September 2004 and June 2006. Because the ACT and the SAT CR+M have different content, students' actual scores on the ACT could differ significantly from the concordance estimates in the table. Source: ACT, Inc. Questions about the concordance study may be directed to ACT's Research Division (319/337-1471). June, 2008

(3) Pursuant to KRS 164.7874(3), the SAT and ACT Conversion Table included in this subsection shall be used to convert scores for SAT exams taken during or after the March 2016-2017 academic year, but prior to July 2018. Only the scores from the Evidence-Based Reading and Writing Sections (ERW+M) of the SAT within a single exam administration shall be considered for KEES supplemental awards.

Table C-2 Concordance Between SAT ERW+M Score and ACT Composite Score									
SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite
1600	36	1380	29	1160	24	940	18	720	13
1590	35	1370	29	1150	23	930	17	710	12
1580	35	1360	29	1140	23	920	17	700	12
1570	35	1350	29	1130	23	910	17	690	12
1560	35	1340	28	1120	22	900	17	680	12
1550	34	1330	28	1110	22	890	16	670	12
1540	34	1320	28	1100	22	880	16	660	12
1530	34	1310	28	1090	21	870	16	650	12
1520	34	1300	27	1080	21	860	16	640	12

VOLUME 50, NUMBER 11– May 1, 2024

1510	33	1290	27	1070	21	850	15	630	12
1500	33	1280	27	1060	21	840	15	620	11
1490	32	1270	26	1050	20	830	15	610	11
1480	32	1260	26	1040	20	820	15	600	11
1470	32	1250	26	1030	20	810	15	590	11
1460	32	1240	26	1020	20	800	14	580	11
1450	32	1230	25	1010	19	790	14	570	11
1440	31	1220	25	1000	19	780	14	560	11
1430	31	1210	25	990	19	770	14		
1420	31	1200	25	980	19	760	14		
1410	30	1190	24	970	18	750	13		
1400	30	1180	24	960	18	740	13		
1390	30	1170	24	950	18	730	13		

(4) Pursuant to KRS 164.7874(3), the SAT and ACT Conversion Table included in this subsection shall be used to convert scores for SAT exams taken during or after July 2018. Only the scores from the Evidence-Based Reading and Writing Sections (ERW+M) of the SAT within a single exam administration shall be considered for KEES supplemental awards.

SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite	SAT ERW+M	ACT Composite
1600	36	1400	31	1200	25	1000	19	800	14
1590	36	1390	31	1190	24	990	19	790	14
1580	36	1380	30	1180	24	980	18	780	14
1570	36	1370	30	1170	24	970	18	770	13
1560	35	1360	30	1160	24	960	18	760	13
1550	35	1350	29	1150	23	950	17	750	13
1540	35	1340	29	1140	23	940	17	740	13
1530	35	1330	29	1130	23	930	17	730	13
1520	34	1320	28	1120	22	920	17	720	12
1510	34	1310	28	1110	22	910	16	710	12
1500	34	1300	28	1100	22	900	16	700	12
1490	33	1290	27	1090	21	890	16	690	12
1480	33	1280	27	1080	22	880	16	680	11
1470	33	1270	27	1070	21	870	15	670	11
1460	33	1260	27	1060	21	860	15	660	11
1450	33	1250	26	1050	20	850	15	650	11
1440	32	1240	26	1040	20	840	15	640	10
1430	32	1230	26	1030	20	830	15	630	10
1420	32	1220	25	1020	19	820	14	620	10
1410	31	1210	25	1010	19	810	14	610	10

Section 8. Criteria for Supplemental Award to Noncertified, Nonpublic High School Students and to GED Students.

(1) A Kentucky resident who is a citizen, national, or permanent resident of the United States and who graduates from a nonpublic Kentucky high school not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:

- (a) The student is not a convicted felon;
- (b) The date of the student's graduation is May 1999 or thereafter;
- (c) The student takes the ACT or SAT and has at least a minimum score as established by KRS 164.7879(3); and
- (d) The student enrolls in a participating institution within five (5) years after graduation from high school.

(2) A Kentucky resident who is a citizen, national, or permanent resident of the United States and who has not graduated from any Kentucky or out-of-state public or nonpublic high school shall be eligible for a supplemental award if:

- (a) The student is not a convicted felon;
- (b) The student's 18th birthday occurs on or after January 1, 1999;
- (c) The student takes and receives a GED diploma in Kentucky:
 1. Prior to being admitted to a participating institution; and
 2. Within five (5) years after attaining eighteen (18) years of age;
- (d) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and
- (e) The student enrolls in a participating institution after July 1, 1999, and within five (5) years of receiving the GED diploma.

(3) A student who graduates from or attends an accredited out-of-state high school or Department of Defense school shall qualify for a supplemental award if:

- (a) The parents meet the provisions of KRS 164.7879(2)(c)1.a. and b.;

(b) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and

(c) The student enrolls in a participating institution within five (5) years of graduating from or attending the accredited out-of-state high school or Department of Defense school.

(4) A student requesting a supplemental award under this section shall notify the participating institution where the student has or intends to enroll.

(5) (a) Residency shall be determined by a participating institution in accordance with 13 KAR 2:045.

(b) A participating institution shall determine a student's eligibility for a supplemental award under this section and shall notify the authority of the student's eligibility.

Section 9. Supplemental Award. An eligible high school student who receives a supplemental award as a result of taking and receiving a GED within five (5) years of attaining eighteen (18) years of age shall have a maximum of five (5) years eligibility beyond the date the GED is received.

Section 10. Supplemental Award for Achievement on Examinations.

(1) Pursuant to KRS 164.7879(3)(c) and (d), a supplemental award shall be provided for achievement on AP, IB, or CAI examinations to an eligible high school student whose family was eligible for free and reduced price lunch during any year of high school.

(2)(a) An eligible high school shall report the status of each student as eligible or ineligible for free and reduced price lunch to the authority on an annual basis.

VOLUME 50, NUMBER 11– May 1, 2024

(b) In determining a high school student's free and reduced price lunch eligibility, the high school shall utilize the income eligibility guidelines published each year by the United States Department of Agriculture, Food and Nutrition Service, available at www.fns.usda.gov/school-meals/income-eligibility-guidelines.

Section 11. Administrative Responsibilities and Expenses of Program.

(1) The authority annually shall determine the level of funding for expenses associated with the program and shall allocate funds from the Wallace G. Wilkinson Kentucky Educational Excellence Scholarship Trust Fund established by KRS 164.7877(1) and (3).

(2) The authority annually shall adopt a budget proposal indicating the amount of funds available and a detailed listing of the expenditures necessary to operate the program.

(3) The authority shall develop an allotment schedule for the release of the administrative funds.

Section 12. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "Home of Record Certification", June 2005;
- (b) "Curriculum Certification", June 2005; and
- (c) "Data Submission", June 2005.

(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.

JOHN DOUGHERTY, JR., Chair

APPROVED BY AGENCY: March 7, 2024

FILED WITH LRC: March 21, 2024 at 2:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, June 25, 2024, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 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 the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Hon. Miles F. Justice, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7309, fax (502) 696-7293, email mjustice@kheaa.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rebecca Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the procedures for administering the Kentucky Educational Excellence Scholarship (KEES) Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements relating to the Kentucky Educational Excellence Scholarship (KEES) Program pursuant to the authorizing statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.7877(3) requires KHEAA to administer the funds appropriated to the trust fund for the program; KRS 164.7874(14) requires KHEAA to determine the KEES curriculum's courses of study; KRS 164.7879(3)(c) requires KHEAA to determine the eligibility of a noncertified, nonpublic high school graduate and for a GED recipient for a supplemental award; KRS 164.7874(3) requires KHEAA to establish a table to convert an SAT

score to an ACT standard; KRS 164.7881(6) requires KHEAA to establish a five (5) year postsecondary education program standard; KRS 164.7881(4)(a) requires KHEAA to establish overall award levels for the program; KRS 164.7879(2)(c) requires KHEAA to determine eligibility for children of parents who are in the military and who claim Kentucky as their home of record; and KRS 164.7535 and 164.7881 (4)(c) require KHEAA to identify equivalent undergraduate programs of study. This administrative regulation establishes these requirements related to the KEES program.

(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 program eligibility criteria for administration of the KEES program by the Authority.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing regulation by updating the type of documentation required to be produced to demonstrate that the custodial parent or guardian of a KEES recipient is active duty military and has been transferred outside of Kentucky.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is necessary to specify the current type of documentation required to be produced to demonstrate that the custodial parent or guardian of a KEES recipient is active duty military and has been transferred outside of Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require KHEAA to promulgate regulations for the administration of the KEES program including the eligibility of students who have earned KEES awards and who are no longer residing in Kentucky due to the military service of their custodial parents or guardians. This amendment conforms to the authorizing statutes by updating the type of documentation required to be produced to demonstrate this fact.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the administrative regulation will assist in the effective administration of the statutes by specifying the type of documentation required to be produced to demonstrate that the custodial parent or guardian of a KEES recipient is active duty military and has been transferred outside of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed amendment to this administrative regulation will affect those KEES earners whose custodial parent or guardian serves in the military and who has been officially transferred outside of Kentucky by their military branch and who seeks to utilize their earned KEES award. (4) Provide an analysis of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:

(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 actions will be required by award recipients in order to comply with the amendment to 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 will be no cost to award recipients in complying with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those KEES earners who comply with this amendment by providing the required documentation of military service and transfer will be eligible to utilize those awards provided they satisfy the other eligibility criteria. (5) Provide an estimate of how much it will cost to implement this administrative regulation:

(5) Provide an estimate of how much it will cost the

administrative body to implement this administrative regulation:

- (a) Initially: No cost.
- (b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KEES program is funded through net lottery revenues transferred in accordance with KRS 154A.130.

(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 expectation of any increase in funding as a result of the amendment as it merely changes the type of documentation that must be produced but does not expand eligibility.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor increase any existing fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.7874, 164.7877(3), 164.7879(1), (2), (3), 164.7881(4)(a), (c), (6)(2).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority

(a) Estimate the following for the first year:

Expenditures: The amendment to this administrative regulation will have no impact on the expenditures of the Authority.

Revenues: The amendment to this administrative regulation will generate no revenue for the Authority.

Cost Savings: There will be no cost savings for the Authority as a result of the amendment to this administrative regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no impact on the expenditures, revenues, or cost savings during subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): KEES earners whose custodial parents or guardians are active duty military and have been stationed outside Kentucky will be impacted by this amendment to the administrative regulation. Those students will remain eligible for their awards if they submit the documentation specified in the amendment in or to demonstrate eligibility.

(a) Estimate the following for the first year:

Expenditures: No expenditures will be required as a result of the amendment to this administrative regulation.

Revenues: No revenues will be generated as a result of the amendment to this administrative regulation.

Cost Savings: No cost savings will be realized as a result of this regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no impact on the expenditures, revenues, or cost savings during subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): Not applicable

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Not applicable.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: Since the amendment to this administrative regulation merely prescribes the documentation to be submitted by KEES earners whose custodial parents or guardians are active-duty military and stationed outside Kentucky in order to demonstrate their ongoing eligibility for the scholarship, there is no fiscal impact.

(b) Methodology and resources used to determine the fiscal impact: As noted, there is no fiscal impact on any of the affected entities as this regulation simply specifies the documentation to demonstrate ongoing eligibility for the scholarship program.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) There will be no overall negative or adverse major impact to the entities as a result of the amendment to this administrative regulation.

(b) The methodology and resources used to reach this conclusion: Since the regulation only prescribes documentation to be submitted to demonstrate ongoing eligibility for this scholarship, no additional awards will be made as a result of compliance. Accordingly, no fiscal impact exists due to this amendment.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY Division of Student Financial Aid (Amendment)

11 KAR 15:110. Scholarships for Registered Apprenticeship and Qualified Workforce Training programs.

RELATES TO: KRS 164.7871-164.7885

STATUTORY AUTHORITY: KRS 164.744(2), 164.748(4), 164.753(3), 164.7884, 164.7894

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7884(5) requires the authority to promulgate administrative regulations establishing the procedures for making awards to KEES-eligible students participating in a registered apprenticeship or qualified workforce training program.

Section 1. Eligibility.

(1) A student who has earned a KEES award and who is enrolled in a registered apprenticeship program shall be eligible to request reimbursement for approved post-secondary expenses beginning with the 2018-2019 academic year.

(2) A student who has earned a KEES award and who is enrolled in a qualified workforce training program shall be eligible to request reimbursement for approved post-secondary expenses for the academic year beginning July 1, 2020.

(3) A student who has earned a KEES award and who is enrolled in an approved workforce solution training program shall be eligible to request reimbursement for approved post-secondary expenses for the academic year beginning July 1, 2023.

(4) A student who has earned a KEES award and who is enrolled in a qualified proprietary school program shall be eligible to request reimbursement for approved post-secondary expenses for the academic year beginning July 1, 2023.

(5) A student who has earned a KEES award and who is enrolled in an eligible college of art and design shall be eligible to request reimbursement for approved post-secondary expenses for the academic year beginning July 1, 2023.

~~(6)({3})~~ Reimbursement shall be made only for approved expenses as provided in KRS 164.7884(3)(a).

Section 2. Election Process.

(1) By August 1 prior to the start of the academic year, a student enrolled in a registered apprenticeship, ~~or~~ qualified workforce training program, approved workforce solutions training program, qualified proprietary school program, or eligible college of art and design shall submit to KHEAA their funding pathway choice, either traditional or reimbursement, for postsecondary KEES use.

(2) If a student chooses the traditional KEES funding pathway, funds shall be paid to the student's ~~postsecondary~~ institution

VOLUME 50, NUMBER 11– May 1, 2024

pursuant to KRS 164.7874 to 164.7883 and KRS 164.7885 upon KHEAA's receipt of enrollment verification from the institution. Funds shall not be paid directly to the student by KHEAA.

(3) If a student chooses the ~~[registered apprenticeship or qualified workforce training]~~ reimbursement pathway, funds for approved expenses shall be paid directly to the student upon KHEAA's receipt of both a reimbursement request and proof of purchase by the student.

(4) Any student who fails to make an election by August 1 shall automatically be placed in the traditional KEES funding pathway.

Section 3. Reimbursement Process.

(1) Upon receipt of a student's election to participate in the ~~[registered apprenticeship or qualified workforce training]~~ reimbursement pathway, KHEAA shall provide written confirmation to the student detailing the reimbursement process.

(2) To be eligible for reimbursement, the student shall:

(a) Purchase items required for participation in the registered apprenticeship, ~~or~~ qualified workforce training program, approved workforce solutions training program, qualified proprietary school program, or eligible college of art and design;

(b) Complete and submit to KHEAA a reimbursement request; and

(c) Submit to KHEAA supporting documentation, including an itemized dated receipt.

(3) Upon receipt of the required documentation and approval of the reimbursement request, KHEAA shall provide reimbursement of the approved expenses directly to the student in the form of a paper check.

(4) In addition to reimbursable purchases, a student may request a travel allowance of up to \$250 per semester to cover commuting costs incurred during participation in the registered apprenticeship, ~~or~~ qualified workforce training program, approved workforce solutions training program, qualified proprietary school program, or eligible college of art and design.

(5) The total reimbursement amount per year shall not exceed the student's KEES award maximum.

(6) Eligibility for reimbursement ends the earlier of:

(a) Five (5) years following the student's date of high school graduation or GED receipt;

(b) The student's successful completion of a registered apprenticeship, ~~or~~ qualified workforce training program, approved workforce solutions training program, qualified proprietary school program, or eligible college of art and design program; or

(c) Receipt of reimbursement for four (4) academic years.

Section 4. Conversion of Funding Pathway. A student may elect to change their funding pathway one (1) time after making their initial election.

(1) The change request shall be submitted to KHEAA in writing.

(2) The change shall become effective at the beginning of the next academic year following KHEAA's receipt and approval of the request.

(3) The KEES award maximum for a student transitioning from the traditional KEES pathway to the reimbursement ~~[registered apprenticeship or qualified workforce training]~~ pathway shall be based on the student's postsecondary renewal amount for the last academic year completed in the traditional pathway.

JOHN DOUGHERTY, JR, Chair

APPROVED BY AGENCY: March 7, 2024

FILED WITH LRC: March 21, 2024 at 2:10 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, June 25, 2024, at 10:00 a.m. Eastern Time at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 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 the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Hon. Miles F. Justice, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7309, fax (502) 696-7293, email mjustice@kheaa.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rebecca Gilpatrick

(1) Provide a brief summary of:

(a) What this administrative regulation does: The Authority is required to promulgate administrative regulations pertaining to Kentucky Educational Excellence Scholarship (KEES) program, including establishing procedures for making awards for scholarships for students participating in registered apprenticeship programs. This regulation establishes those procedures.

(b) The necessity of this administrative regulation: The Authority is required to promulgate administrative regulations pertaining to Kentucky Educational Excellence Scholarship (KEES) program, including establishing procedures for making awards for scholarships to students participating in registered apprenticeship programs. This regulation is necessary to establish those procedures consistent with the statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by establishing procedures for KEES awards to students participating in registered apprenticeship programs required by the statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist with the effective administration of the statutes by establishing procedures applicable to the scholarship program for students participating in registered apprenticeship programs.

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by allowing students participating in an approved workforce solutions training program, a qualified proprietary school program, or while enrolled in an eligible college of art and design to request reimbursement for actual expenses incurred in these programs to the extent of their earned KEES awards.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation is necessary in order to bring the regulation into alignment with KRS 164.7884.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by ensuring that all post-secondary programs eligible for reimbursement under the KEES program statute are identified as eligible within the regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by ensuring that the list of KEES reimbursement-eligible programs included in the regulation is complete and accurate.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Students participating in an approved workforce solutions training program, a qualified proprietary school program, or while enrolled in an eligible college of art and design qualified workforce training program will be affected by this amendment to the administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this

VOLUME 50, NUMBER 11– May 1, 2024

administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In order to comply with this amendment, students will need to be enrolled in an approved workforce solutions training program, a qualified proprietary school program, or in an eligible college of art and design qualified workforce training program, have earned a KEES award, and elect reimbursement of expenses incurred while participating in the program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to students participating in an approved workforce solutions training program, a qualified proprietary school program, or in an eligible college of art and design qualified workforce training program in order to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this amendment, otherwise eligible students will receive reimbursement for expenses incurred while participating in an approved workforce solutions training program, a qualified proprietary school program, or in an eligible college of art and design qualified workforce training program to the extent of their earned KEES award.

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

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

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KEES program is funded through net lottery revenues transferred in accordance with KRS 154A.130.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

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

(9) TIERING: Is tiering applied? Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

a result of the amendment to this administrative regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no impact on the expenditures, revenues, or cost savings during subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): KEES earners who choose to enroll in an approved workforce solutions training program, qualified proprietary school program or eligible college of art and design will be able to utilize their awards by requesting reimbursement for expenses incurred during their participation in these programs.

(a) Estimate the following for the first year:

Expenditures: No expenditures will be required by the impacted individuals as a result of the amendment to this administrative regulation.

Revenues: No revenues will be generated as a result of the amendment to this administrative regulation.

Cost Savings: No cost savings will be realized as a result of this regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no impact on the expenditures, revenues, or cost savings during subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): Not applicable

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Not applicable.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: Although the amendment to this administrative regulation expands the list of eligible programs for reimbursement for expenses incurred in participating in non-traditional post-secondary programs, the KEES awards have already been earned by those students and funds earmarked for those awards. The amendment does not create new award eligibility. Thus, there will be no net fiscal impact to the Authority as a result of this amendment.

(b) Methodology and resources used to determine the fiscal impact: As noted, there is no fiscal impact on any of the affected entities as this regulation simply expands the list of acceptable programs for KEES awards that have already been earned by high school students.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) As set forth in 5(a) above, no additional expenditure beyond that already contemplated will be required as a result of this amendment to the administrative regulation. Accordingly, there will be no overall negative or adverse major economic impact to the identified entities.

(b) The methodology and resources used to reach this conclusion: Again, as discussed above, no new awards are being provided as a result of this amendment, so the new fiscal impact will be neutral.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.7874, 164.7877(3), 164.7879(1), (2), (3), 164.7881(4)(a), (c), (6)

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Finance and Administration Cabinet, Kentucky Higher Education Assistance Authority

(a) Estimate the following for the first year:

Expenditures: The amendment to this administrative regulation will have no impact on the expenditures of the Authority.

Revenues: The amendment to this administrative regulation will generate no revenue for the Authority.

Cost Savings: There will be no cost savings for the Authority as

STATE BOARD OF ELECTIONS (Amendment)

31 KAR 2:010. Preparation of ballots and voting systems prior to election day.

RELATES TO: KRS 116.025, 116.065, 117.075, 117.085(5), 117.125, 117.145, 117.155, 117.165, 117.175, 117.195, 117.205, 117.255, 117.275, 117.285, 117.375, 117.377, 117.379, 117.381, 117.383, 117.385, 117.387, 117.389, 117.391, 117.393, 118.015, 118.215(1), 118.770, 118A.010, 119.005, 424.290

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.383

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to administer the election laws

VOLUME 50, NUMBER 11– May 1, 2024

of the state. KRS 117.383[(4)] requires the State Board of Elections to promulgate rules and administrative regulations to achieve and maintain the maximum degree of correctness, impartiality, and efficiency of the procedures of voting. KRS 117.383(1)[(2)] requires the State Board of Elections to promulgate rules and administrative regulations to count, tabulate, and record votes. KRS 117.383(2)[(3)] requires the State Board of Elections to promulgate rules and administrative regulations to establish a method for placing items on any ballot~~[the electronic voting device]~~, which shall, as closely as possible, follow the requirements pertaining to ballots~~[ballot labels]~~. KRS 117.383(5)[(6)] requires the State Board of Elections to promulgate rules and administrative regulations to provide for checking the accuracy of the equipment. This administrative regulation establishes the procedures for the county clerk and the county board of elections to follow in preparing the ballots and the voting systems prior to each election.

Section 1. Definitions.

(1) "Accuracy Board" means the county board of elections, or at least two (2) individuals appointed by the county board of elections, assigned with the duty of overseeing the accuracy testing of the voting machines and the voting systems required by 31 KAR 2:020.

(2) "Accuracy test" means the procedures established by 31 KAR 2:020 for checking the accuracy of the voting equipment required by KRS 117.383(6), and the testing of the automatic tabulating equipment and voting systems required by KRS 117.389.

(3) "Ballot accountability statement" means a form created by the county clerk in accordance with Section 4 of this administrative regulation.

(4) "Ballot template" means a printout created by the program administrator of the voting systems that shows the results of the steps taken by the program administrator to place all candidates, races, and ballot questions on each ballot based on the information provided by the county clerk.

(5) "Certification" means the information provided by the county clerk to the program administrator that includes an accurate listing of all federal, state, county, and local candidates, offices and ballot questions to be placed on the ballot for each voting machine or voting system for each precinct within five (5) days of receiving the certification of candidates by the Secretary of State, pursuant to KRS 118.215(1), or immediately after receiving the Secretary of State's certification pursuant to KRS 118.770.

(6) "Program administrator" means the county clerk or authorized assistant designated to configure the voting machines and voting systems.

(7) "Scan voting system" means a tabulating device that reads paper ballots by electronically detecting voters' marks.

(8) "Voting machine" means hardware, which is a component of the voting system, used or relied upon by a voter in casting and recording his or her votes in a precinct in an election, which has been approved by the State Board of Elections for use in elections in the Commonwealth of Kentucky pursuant to KRS 117.379 and 117.381.

(9) "Voting system" means a system of components of hardware and software, including the voting machine, used by a voter to cast a ballot and by the election officials to tabulate the votes on election day, which has been approved by the State Board of Elections for use in elections in the Commonwealth of Kentucky pursuant to KRS 117.379 and 117.381.

(10) "Zero-file" means a computer-based electronic file type listing all electoral contests and questions, displaying precinct-by-precinct vote totals registering as zero, which includes all candidates, offices, and ballot questions in the order under which they have been certified pursuant to KRS 118.215(1) or KRS 118.770, for all mail-in absentee ballots, excused in-person absentee ballots, no-excuse in-person absentee ballots, and election day ballots.

Section 2. Preparation of Each Voting Machine and Voting System.

(1) The county clerk shall designate a program administrator to configure the voting machines and voting systems for each election.

(2)

(a) Within five (5) days of receiving the certification of candidates by the Secretary of State, pursuant to KRS 118.215(1), or immediately after receiving the Secretary of State's certification pursuant to KRS 118.770, the county clerk shall provide a certification to the program administrator that includes an accurate listing of all federal, state, county, and local candidates, offices, and ballot questions.

(b) The program administrator shall place the information in the certification in the ballot template for each voting system and precinct.

(3) The program administrator, if other than the county clerk, shall provide a ballot template for each ballot to the county clerk not less than three (3) days before the deadline for printing ballots established in KRS 117.085(5) and 117.145(1).

(4) The county clerk shall compare the prepared ballots and ballot screens, if applicable, for each voting system with the ballot template and the certification supplied by the county clerk to the program administrator to ascertain that all federal, state, county, and local candidates, offices and ballot questions shall be the same as listed on the certification and shall appear in the correct positions.

(5) Once the county clerk has ascertained that all federal, state, county, and local candidates, offices and ballot questions are the same as listed on the certification and appear in the correct position, the program administrator shall electronically transmit to the State Board of Elections a zero-file in a format designated by the State Board of Elections.

(6) The county clerk shall provide the ballot templates to the county board of elections or designated Accuracy Board prior to the conduct of the accuracy tests required by 31 KAR 2:020.

(7)[(6)] The county board of elections, or designated review board, shall review the ballot template and the certification supplied by the county clerk to the program administrator to ascertain that all federal, state, county, and local candidates, offices and ballot questions shall be the same as listed on the certification and shall appear in the correct positions prior to the conduct of the accuracy tests required by 31 KAR 2:020.

(8)[(7)] The county clerk shall review and verify the audio ballots to be placed on the accessible voting systems by listening to the audio ballot through a headset to ensure proper pronunciation of all candidate names and to confirm that all federal, state, county, and local candidates, offices and ballot questions shall be the same as listed on the certification and shall appear in the correct positions.

Section 3. Number of Ballots to be Printed. In addition to the requirements established in KRS 117.145, the county clerk shall provide a sufficient number of printed ballots for each precinct in a county that uses scan voting systems for each election. The number of ballots required to be printed and distributed to each precinct with scan voting systems shall be determined as follows:

(1) For a primary, the number of ballots shall be at least ten (10) percent more than the total number of votes cast in each party's primary and nonpartisan race in the most recent presidential primary election;

(2) For the general election, the number of ballots shall be at least ten (10) percent more than the total number of votes cast in the most recent general election in which votes were cast for the electors for the President of the United States; and

(3) For a special election, the number of ballots shall be a sufficient number as determined by the county clerk considering the number of registered voters in the precinct and the type of special election to be held.

Section 4. Preparation and Delivery of Ballots.

(1) The county clerk shall place into a container the paper ballots, if applicable, for each precinct.

(2) The container shall be secured with a seal and contain a certificate signed by the county clerk recording the total number of ballots in the container and that the ballots were counted and sealed by the county clerk.

(3) Ballots not issued to a precinct or assigned for absentee voting shall be secured and accounted for by the county clerk.

(4) The county clerk shall maintain a record of the number of

VOLUME 50, NUMBER 11– May 1, 2024

ballots and serial numbers of the voting systems issued to each precinct.

(5) If using paper ballots for a scan voting system, the county clerk shall create a ballot accountability statement to be provided along with the ballots to each precinct that includes the following:

(a) In a primary, an accounting of the total number of ballots for each party primary and nonpartisan race submitted to the precinct to be completed by the county clerk;

(b) In a general election, an accounting of the total number of each type of ballot submitted to the precinct to be completed by the county clerk;

(c) An oath for the county clerk to sign attesting to the accuracy of the information provided by the county clerk on the statement;

(d) An accounting of the total number of ballots used, unused, and spoiled on election day to be completed by the precinct election clerk and signed by all four (4) precinct election officers;

(e) An accounting of the total number of ballots returned to the county clerk at the end of the election day to be completed by the precinct election clerk;

(f) A section that allows for the precinct election clerk to explain any discrepancies; and

(g) An oath for the precinct election officers to sign attesting to the accuracy of the information provided on the statement.

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 12, 2024

FILED WITH LRC: April 15, 2024 at 10:56 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 28, 2024, at 10:00 a.m. ET, at the Office of the State Board of Elections. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 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: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the county clerk and the county board of elections to follow in preparing the ballots and the voting systems prior to each election.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to maintain the maximum degree of correctness, impartiality, and efficiency in the procedures of voting.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in maintaining the maximum degree of correctness, impartiality, and efficiency in the procedures of voting.

(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 defines the computer-based electronic file type listing all electoral contests and questions to be shared by program administrators with the State Board of Elections so that the

agency can accurately produce its Election Night Reporting website to provide the public with election results.

(b) The necessity of the amendment to this administrative regulation: Without a defined computer-based electronic file type, shared by program administrators and the State Board of Elections, county boards of election may not be able to efficiently upload election results, and the public's ability to access election-night results may be delayed, restricted, or otherwise blocked.

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

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in meeting the requirement of KRS 117.275(15) that a secure online connection be available for the transmission of unofficial election results from county boards of election to the State Board of Elections following the tallying of votes.

(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 voters of the Commonwealth, county boards of election, vendors serving as program administrators, and the State Board of Elections.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To comply with this administrative regulation, program administrators and the State Board of Elections will need to work together to successfully transfer the defined computer-based electronic file type; voters and county boards of election will not have to take any steps towards compliance 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): The State Board of Elections estimates that the implementation of this administrative regulation will have minimal costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit all in establishing what exactly is required to produce a secure online connection be available for the transmission of unofficial election results from county boards of election to the State Board of Elections following the tallying of votes, so that voters may see accurate election-night results.

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

(a) Initially: The cost of the implementation of this administrative regulation for the State Board of Elections will be minimal, as the agency already employs the Information Technology staff needed to implement the sharing of the defined computer-based electronic file type.

(b) On a continuing basis: The continuing costs of this administrative regulation for the State Board of Elections will be minimal, as the agency already employs the Information Technology staff needed to implement the sharing of the defined computer-based electronic file type.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not used in this

administrative regulation, as a desired result of the promulgation of this administrative regulation is uniform procedures for the administration of elections throughout all of the counties in the Commonwealth.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 117.015(1)(a) and 117.383 require and authorize the actions taken by this administrative regulation.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: This administrative regulation will affect the promulgating agency, the State Board of Elections.

(a) Estimate the following for the first year:

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

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation will not generate any specific cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This administrative regulation will affect county boards of election.

(a) Estimate the following for the first year:

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

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): This administrative regulation will affect voters of the Commonwealth and vendors serving as program administrators.

(a) Estimate the following for the first year:

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

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The State board of Elections expects that this administrative regulation will have little to no fiscal impact on the regulated entities, outside those expenditures already undertaken.

(b) Methodology and resources used to determine the fiscal impact: This determination of this administrative regulation's fiscal impact is made by the listed contact person and other agency staff based on their collective experience with the subject matter.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) The State Board of Elections does not expect that this administrative regulation

will result in a negative or adverse major economic impact to the entities identified in questions (2)-(4).

(b) The methodology and resources used to reach this conclusion: This conclusion is made by the listed contact person and other agency staff based on their collective experience with the subject matter.

STATE BOARD OF ELECTIONS
(Amendment)

31 KAR 5:026. Ballot standards and election security.

RELATES TO: KRS 117.001, 117.025, 117.085, 117.086, 117.0861, 117.087, 117.145, 117.225, 117.228, 117.295(1), 117.365

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.085, 117.086, 117.087(3)(d), 117.145, 117.228

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. Several Kentucky Revised Statutes in Chapter 117 require the State Board of Elections to promulgate administrative regulations that provide for measures that establish standards for the ballots used during elections, as well as, measures that ensure that votes cast during an election are done so in a free, fair, and secure manner. This administrative regulation provides for those measures.

Section 1. In addition to the requirements for printed ballots established in KRS 117.145, ballots caused to be printed by the county clerk of each county shall meet quality and size standards specific to the voting systems certified by both the State Board of Elections and the United States Election Assistance Commission.

Section 2. The outer envelope of all mail-in absentee ballots shall bear a barcode or other label that is unique to the individual voter and capable of being read by an electronic optical scanner. The unique barcode or label for each mail-in absentee ballot outer envelope shall be issued by the State Board of Elections. Upon the need to issue a voter a second mail-in absentee ballot pursuant to KRS 117.085(9), the outer envelope of the subsequent second mail-in absentee ballot shall bear a new unique barcode or label.

Section 3. (1) Upon the time of certification of each candidate and each question to be voted upon, all pre-printed paper ballots shall be secured by the county clerk of each county, under lock and key, in an area under the direct control of the county clerk and approved by the county board of elections.

(2) The possession of all pre-printed ballots shall be accounted for on SBE Form 76, Ballot Reconciliation Statement.

(3) If paper ballots need to be printed at a county clerk's office, an accounting of the printed ballots shall be made on either the SBE Form 76, Ballot Reconciliation Statement, or by the printing equipment.

(4) Upon the transfer of ballots from the area under the direct control of the county clerk to a polling location, the transfer shall be noted on the SBE Form 76, Ballot Reconciliation Statement.

(5) Beginning with the in-person casting of ballots during the period described in KRS 117.076, each voted in-person ballot shall remain in a locked and sealed receptacle, until the conclusion of the period described in KRS 117.295(1).

(6) At the conclusion of each day of voting, an accounting of the number of all voted, unvoted, and spoiled ballots shall be recorded on the SBE Form 76, Ballot Reconciliation Statement.

(7) All ballots and election materials not secured in an area under the direct control of the county clerk after the close of polls shall be secured at the voting location in a secure manner, based upon the advice and recommendations of the county board of elections and the sheriff from the time described in KRS 117.076 until the conclusion of voting on the day of an election.

(8) As mail-in absentee ballots are received by county clerks,

VOLUME 50, NUMBER 11– May 1, 2024

they shall have their unique barcode or label scanned.

(9) Upon each mail-in absentee ballot being processed, the unique barcode or label shall be scanned again.

(10) If a mail-in absentee ballot is found to be without the need for a signature cure, or a mail-in absentee ballot has been returned along with a completed SBE Form 77, Discrepant Mail-in Absentee Signature, the ballot shall be recorded into an optical scanner, to be deposited in a locked and sealed receptacle for the period described in KRS 117.295(1).

(11) Any completed SBE Form 76, Ballot Reconciliation Statement shall be turned over to the local Commonwealth's Attorney along with any other materials required under KRS 117.365.

Section 4. A voter who is disabled may request a mail-in absentee ballot via an online accessible ballot portal, which shall conform to web accessible design standards as established by the W3C Web Accessibility Initiative at <https://www.w3.org/WAI/>.

Section 5. (1) Upon receipt of a valid mail-in ballot request, through the online request portal or other valid request method, the request of the voter shall be noted in the Voter Registration System, and reflected in the electronic pollbooks used by precinct election officers.

(2) If a voter noted to have requested a mail-in absentee ballot appears at a polling location to vote in-person, the precinct election officer shall communicate with the county clerk, who shall make a determination as to whether the requested mail-in absentee ballot has been completed and returned as a cast ballot by the voter.

(3) If the mail-in absentee ballot is found to have been completed and returned as a cast ballot, the voter shall not be permitted to cast an in-person vote.

(4) If the mail-in absentee ballot is found not to have been completed and returned as a cast ballot and the ballot has been returned to the county clerk no later than seven (7) days prior to the date of the election as required by KRS 117.085(8), the county clerk shall immediately cancel the issued ballot in the Voter Registration System and allow the voter to cast an in-person ballot after the voter completes Form SBE 32, Oath of Voter, copies of which shall be forwarded to the Commonwealth's Attorney.

Section 6. (1) A voter, or an individual identified by KRS 117.0861(1), may deliver a mail-in absentee ballot to the office of the county clerk in the county where the voter is registered, to a secure ballot drop-box in the county where the voter is registered, or to a secure drop-off receptacle if one is maintained by the county clerk in the county where the voter is registered, rather than mailing the ballot via the United States Postal Service.

(2)(a) A county choosing to use a receptacle for ballot drop-off other than a drop-box provided by the State Board of Elections, shall formally seek the State Board of Elections' approval of the receptacle before any ballot is allowed to be deposited inside.

(b) A county choosing to utilize a drop-off receptacle shall provide information about the receptacle to the State Board of Elections as required by KRS 117.086(2)(b).

(3) A drop-box or receptacle located outside a County Clerk's Office shall be located, secured, and identified as required by KRS 117.086(2)(c).

(4) A drop-box or receptacle located inside shall be under direct supervision as required by KRS 117.086(2)(d) and shall be clearly marked as for use by voters in the election, so as to differentiate the drop-box or receptacle from any other that may be in use in the area.

(5) Any other non-elections related drop-box in use by a county clerk for any other official business shall clearly indicate that the other drop-box is not for the return of election material.

(6)(a) The county clerk shall empty the drop box and any receptacle used each business day as required by KRS 117.086(2)(e) and secure the absentee ballots therein in a manner consistent with KRS 117.086(3).

(b) Upon each emptying of a drop-box or receptacle, the individuals collecting absentee ballots pursuant to KRS 117.086(2)(e) shall complete Form SBE 78, Daily Absentee Drop-

Box Verification Sheet.

Section 7. (1) After the receipt of a mail-in absentee ballot by the county clerk, the signature shall be examined in accordance with KRS 117.087(3)(c)2 and 5.

(2) If a signature match cannot be made, notice shall be provided to the voter as required by KRS 117.087(3)(c)5, which shall, at minimum, include the mailing of Form SBE 77, Discrepant Mail-in Absentee Signature.

(3) Upon the county board of elections, central counting board, or the county clerk determining the need for a signature cure, the ballot shall be noted in the Voter Registration System and the county clerk shall, on that same day, input the voter's address and any other required data into the SBE 77 and mail the form to the voter.

Section 8. ~~[(1)] [A voter unable to provide proof of identification as required under KRS 117.225, and as defined under KRS 117.004(15), shall:]~~

~~[(a)] [Meet the requirements of KRS 117.228(1)(c) by executing SBE Form 74, Voter Affirmation Form; and]~~

~~[(b)] [Provide alternative proof of identification as required by KRS 117.228(2);]~~

~~[(2)] [A voter personally known to an election officer may cast a ballot in accordance with KRS 117.228(4) upon the election officer executing SBE Form 72, Election Officer Affirmation Form.]~~

~~[(3)] [Both the SBE 74 and SBE 72 shall be forwarded to the local Commonwealth's Attorney following the election.]~~

~~[Section 9.]~~ A voter may make application to cast an excused in-person absentee ballot pursuant to KRS 117.076(2) by completing SBE Form 44E, Excused In-Person Absentee Ballot Application.

~~Section 9.~~ ~~[Section 10.]~~ The status of the tamper-resistant seal and the number on the public counter shall be recorded as required by KRS 117.076(12) before and after each day of in-person absentee voting, on SBE Form 79, Daily Voting Machine Verification Sheet, which cumulatively shall be collected by the County Clerk.

~~Section 10.~~ ~~[Section 11.]~~ Incorporated by Reference.

(1) The following material is incorporated by reference:

- (a) "Oath of Voter", Form SBE 32, 04/2022;
- (b) "Ballot Reconciliation Statement", Form SBE 76, 04/2022;
- (c) "Discrepant Mail-in Absentee Signature", Form SBE 77, 08/2022;

~~[(d)] ["Voter Affirmation Form", Form SBE 74, 04/2022;]~~

~~[(e)] ["Election Officer Affirmation Form", Form SBE 72, 04/2022;]~~

~~[(f)] ["Excused In-Person Absentee Ballot Application", Form SBE 44E, 04/2022;~~

~~[(g)] ["Daily Voting Machine Verification Sheet", Form SBE 79, 04/2022; and~~

~~[(h)] ["Daily Absentee Drop-Box Verification Sheet", Form SBE 78, 04/2022.~~

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

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

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 12, 2024

FILED WITH LRC: April 15, 2024 at 10:56 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 28, 2024, at 10:00 a.m. ET, at the Office of the State Board of Elections. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If

VOLUME 50, NUMBER 11– May 1, 2024

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 June 30, 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: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for the ballots used during elections, as well as, measures that ensure that votes cast during an election are done so in a free, fair, and secure manner.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that the mail-in request and delivery process has the highest degree of security possible.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the free and fair administration of elections in the Commonwealth as applied throughout KRS Chapter 117.

(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 guarantees that two mail-in absentee ballots cannot be issued at the same time with the same barcode or unique label should a voter request a second mail-in absentee ballot under KRS 117.085(9).

(b) The necessity of the amendment to this administrative regulation: Without clear definition, county clerks have been left unclear on how to handle subsequent mail-in absentee requests under KRS 117.085(9).

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

(d) How the amendment will assist in the effective administration of the statutes: This amendment will offer clear guidance to county clerks on how to handle subsequent mail-in absentee requests under KRS 117.085(9).

(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 voters of the Commonwealth, county clerks, and the State Board of Elections.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To comply with this administrative regulation, voters may need to complete a form or follow absentee ballot delivery instructions, while county clerks and the State Board of Elections will need to take steps to ensure the security of their elections.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will have minimal costs.

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

entities identified in question (3): Compliance with this new administrative regulation will benefit all in ensuring that all elections conducted in the Commonwealth are done so in a free, fair, and secure manner.

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

(a) Initially: The cost of the implementation of this administrative regulation for the State Board of Elections will be minimal as it will require only the creation of the new Forms incorporated by reference.

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

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

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

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

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

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 117.015(1)(a) and 117.085(9) require and authorize the actions taken by this administrative regulation.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: This administrative regulation will affect the promulgating agency, the State Board of Elections.

(a) Estimate the following for the first year:

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

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation will not generate any specific cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This administrative regulation will affect county clerks.

(a) Estimate the following for the first year:

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

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): This administrative regulation will affect voters desiring to

vote by mail-in absentee ballot.

(a) Estimate the following for the first year:

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

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The State board of Elections expects that this administrative regulation will have little to no fiscal impact on the regulated entities, outside those expenditures already undertaken.

(b) Methodology and resources used to determine the fiscal impact: This determination of this administrative regulation's fiscal impact is made by the listed contact person and other agency staff based on their collective experience with the subject matter.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) The State Board of Elections does not expect that this administrative regulation will result in a negative or adverse major economic impact to the entities identified in questions (2)-(4).

(b) The methodology and resources used to reach this conclusion: This conclusion is made by the listed contact person and other agency staff based on their collective experience with the subject matter.

**GENERAL GOVERNMENT CABINET
Personnel Board
(Amendment)**

101 KAR 1:335. Employee actions.

RELATES TO: KRS 18A.075(1)

STATUTORY AUTHORITY: KRS 18A.075, 18A.0751(1), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075(1) requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 through 18A.200. KRS 18A.0751(1) and (4) require the Personnel Board to promulgate administrative regulations for the classified service governing demotion, transfer, reinstatement, and discipline. This administrative regulation establishes the method for determining an employee's work station, the requirements governing a demotion, transfer, or reinstatement of an employee, and requirements relating to written reprimands.

Section 1. Work Station.

(1) The street address of the primary work station assigned by the appointing authority shall be an employee's official work station. ~~[The official work station of an employee assigned to an office shall be the street address where the office is located.]~~

~~[(2)] [The official work station of a field employee shall be that address to which the employee is assigned at the time of appointment to the employee's current position.]~~

~~[(2)]~~~~[(3)]~~ Except as provided by Sections 2, 3, and 4 of this administrative regulation, an appointing authority may assign an employee to work at a site other than his or her current work station if the:

- (a) Site is within the employee's county of employment; and
- (b) Assignment is not a transfer, demotion, or reinstatement.

Section 2. Demotion.

(1) A demotion for cause shall be intra-agency.

(2) Voluntary demotion.

(a) A voluntary demotion shall be made if an employee with status requests a voluntary demotion on the Voluntary Transfer/ Demotion/ Promotion Employee Agreement Form incorporated by reference by the Personnel Cabinet in 101 KAR 2:034.

(b) The form shall include:

- 1. The effective date of the demotion;
- 2. The position from which the employee requests demotion;
- 3. The position to which the employee will be demoted;
- 4. The pay grade, salary, and work week for the position to which the employee will be demoted; and
- 5. A statement that the employee waives the right to appeal the demotion.

(c) The agency shall forward a copy of the form to the Personnel Cabinet Secretary.

(3) A voluntary demotion shall be interagency or intra-agency.

Section 3. Transfers.

(1) The transfer of an employee with status shall conform to the requirements established in this section.

(2)

(a) A transfer shall be on a voluntary or involuntary basis.

(b) An appointing authority shall establish cause for selecting an employee for involuntary transfer.

(c) If an employee has not requested a transfer in writing, a transfer shall be deemed involuntary.

(3) Involuntary transfer, same county.

(a) Prior to the effective date of an involuntary transfer to a position with a work station in the same county, an employee shall receive a written notice of involuntary transfer.

(b) The notice shall:

- 1. Indicate that the employee:
 - a. Has been selected for transfer; and
 - b. Is required to report to the new work station; and
- 2. State the:

- a. New work station;
- b. Reason for the transfer;
- c. Effective date of the transfer; and
- d. Right of the employee to appeal the transfer to the board within ~~thirty (30)~~~~[sixty (60)]~~ calendar days of receipt of the notice of involuntary transfer, excluding the date the notice is received.

(c) A copy of the notice shall be forwarded to the Personnel Cabinet Secretary.

(d) An employee shall report to the new work station upon the date stated in the notice.

(4) Involuntary transfer, out of county. If an involuntary transfer is to a position with a work station in a different county:

(a) An employee shall be entitled to travel expenses as provided by 200 KAR 2:006;

(b) An employee shall receive a written notice of involuntary transfer at least thirty (30) calendar days prior to the effective date of the transfer; and

(c) The notice shall contain:

- 1. The information established in subsection (3)(b) of this section; and
- 2. A statement that the employee is entitled to reimbursement of travel expenses incurred thirty (30) calendar days following the effective date of the transfer.

(5) An involuntary transfer shall be intra-agency.

(6) Voluntary transfer.

(a) Prior to a voluntary transfer, an employee with status shall request a voluntary transfer on the Voluntary Transfer/ Demotion/ Promotion Employee Agreement Form incorporated by reference by the Personnel Cabinet in 101 KAR 2:034.

(b) The form shall include:

- 1. The effective date of the transfer;
- 2. The position number and job classification from which the employee requests a transfer;
- 3. The position number and job classification to which the employee requests a transfer;
- 4. The pay grade, salary, and work week for the position to which the employee will be transferred; and
- 5. A statement that the employee waives the right to appeal the

VOLUME 50, NUMBER 11– May 1, 2024

transfer.

(c) The agency shall forward a copy of the form to the Personnel Cabinet Secretary.

(7) A voluntary transfer shall be interagency or intra-agency.

Section 4. Reinstatement.

(1) A request for reinstatement shall be submitted by the appointing authority to the Personnel Cabinet Secretary.

(2) The request shall include a finding that the candidate for reinstatement:

(a) Meets the current qualifications for the job classification to which the employee is being reinstated; and

(b) Has previously held status at that grade level or higher.

(3) If an employee previously held status in a job classification where a pay grade change subsequently occurred, the employee shall be deemed as having held status in the highest pay grade for that job classification.

(4) If the reinstatement is to a job classification outside of the job classification where the employee has previously held status, the candidate shall pass the appropriate examination, if applicable, prior to reinstatement.

(5) [(4)] The request for reinstatement shall contain a copy of the board's order ordering reinstatement, if applicable.

Section 5. Written Reprimand.

(1) An employee or former employee may petition the Personnel Cabinet Secretary for removal of a written reprimand and all related documentation from the employee's official personnel file after a period of three (3) years from the date of the written reprimand.

(a) An employee's request shall not be granted if the employee has received any disciplinary action or written reprimand in the three (3) years prior to the request for removal.

(b) A petition for removal shall:

1. Be made by the employee and be dated and signed; and

2. Include:

a. The employee's current position number, job classification, agency, work phone number, and work address;

b. The employee's immediate supervisor at the time of the petition for removal;

c. The date the written reprimand was issued;

d. A statement by the employee that the employee has not received any disciplinary actions or written reprimands in the three (3) years prior to the petition; and

e. A statement that the information contained in the petition is correct and complete to the best of the employee's knowledge, and that the employee has provided notification of the petition to the employee's current appointing authority.

(c) The petition for removal shall be mailed by first-class mail, hand-delivered to the office of the Personnel Cabinet Secretary, or submitted electronically as permitted by the Personnel Cabinet Secretary.

(2) A petition for removal of a written reprimand shall be approved by the Personnel Cabinet Secretary before the reprimand removal.

(a) The Personnel Cabinet Secretary shall approve or deny the petition for removal within thirty (30) calendar days of receipt of the petition.

(b) If the petition is denied, the Personnel Cabinet Secretary shall notify the employee in writing and provide justification for denial. The decision by the secretary with respect to the petition shall be final and not appealable to the Personnel Board.

(c) If the petition is approved, the Personnel Cabinet Secretary shall notify the employee and the appointing authority of the employee's agency in writing of the approval.

(3) Upon removal from an employee's official personnel file maintained by the Personnel Cabinet, a written reprimand shall be handled as established in this subsection.

(a) The written reprimand shall be delivered to the Office of Legal Services and remain in the custody and care of the Office of Legal Services.

(b) The Office of Legal Services shall maintain the written reprimand as confidential work-product materials for the availability or use in any future legal proceeding.

(c) If no legal proceeding involving the employee's personnel file has been filed within five (5) years of receipt, the written reprimand shall be permanently destroyed.

(d) Upon removal from the official personnel file, but prior to destruction, a written reprimand shall not be considered as part of any personnel action.

(e) The employing agency shall be notified by the Personnel Cabinet of the removal of a written reprimand from an employee's official personnel file.

GORDON A. ROWE, Jr., Executive Director

APPROVED BY AGENCY: April 15, 2024

FILED WITH LRC: April 15, 2024 at 9:40 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 28, 2024, at 9:30 a.m., ET., at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Gordon A. Rowe, Jr., Executive Director, Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 695-5799, email personnelboard@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gordon A. Rowe, Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the method for determining an employee's work station, the requirements governing a demotion, transfer, or reinstatement of an employee, and requirements relating to written reprimands.

(b) The necessity of this administrative regulation: This regulation is necessary to adopt requirements and procedures of any actions taken or requested involving classified employees work station, demotion, transfer, reinstatement and written reprimands.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.078(1) and (4) requires the Board to promulgate administrative regulations for the classified service governing employee actions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will continue to provide effective administration of the statutes by its requirements to process classified employee actions.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies that the time an employee has to appeal a transfer is thirty (30) calendar days and corrects various syntax and other errors.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide uniform employee actions across all state agencies.

(c) How the amendment conforms to the content of the authorizing statutes: The board is required by KRS 18A.075 to administer regulations for the classified service employees governing demotion, transfer, reinstatement, and discipline.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides clarity and consistency for effective administration of the procedures governing employee actions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all state

government agencies with classified employees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will not be any new actions required of the entities identified in question (3) to comply with the amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Continued compliance of this regulation will provide uniformity to the classified employee actions.

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

(a) Initially: There will be no cost to implement this amendment.

(b) On a continuing basis: There will be no ongoing cost to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no need for a source of funding to implement and enforce this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be an increase in fees or a necessity in funding to implement this amendment. (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

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

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted employees the same.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.075, 18A.075(1)(4) and 18A.005 through 18A.200.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Personnel Board and all State Government Agencies

(a) Estimate the following for the first year:

Expenditures: No expenditures will be spent because there is no cost associated with the regulation.

Revenues: No revenue will be generated because there are no fees associated with this regulation.

Cost Savings: There are no estimated costs for the following year to administer the amendments to this regulation because there are no beginning costs.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No revenue will be generated because local entities are not associated with this regulation.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): There are no local entities that are associated with this regulation.

(a) Estimate the following for the first year:

Expenditures: No revenue will be generated because the regulation doesn't affect local entities.

Revenues: No revenue will be generated because the regulation doesn't affect local entities.

Cost Savings: There are no estimated costs for the following year to administer the amendments to this regulation because local entities are not affected by this regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No revenue will be generated in the future because there is no revenue to begin with.

(4) Identify additional regulated entities not listed in questions

(2) or (3): There are no other regulated entities associated with this regulation.

(a) Estimate the following for the first year:

Expenditures: No revenue will be generated because no other regulated entities are associated with this regulation.

Revenues: No revenue will be generated because no other regulated entities are associated with this regulation because no other regulated entities are associated with this regulation.

Cost Savings: There are no estimated costs for the following year to administer the amendments to this regulation because no other regulated entities are associated with this regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There will be no fiscal impact by this amendment to the regulation because there are no costs or fees associated.

(b) Methodology and resources used to determine the fiscal impact: Facts, history and data reports.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) There have never been a negative or adverse economic impact to any entity from this regulation.

(b) The methodology and resources used to reach this conclusion: Facts, history and data reports.

GENERAL GOVERNMENT CABINET
Personnel Board
(Amendment)

101 KAR 1:345. Disciplinary actions.

RELATES TO: KRS 18A.020, 18A.075, 18A.0751, 18A.095[~~29 U.S.C.-201~~]

STATUTORY AUTHORITY: KRS 18A.075(1), 18A.0751

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies that the Personnel Board promulgate comprehensive administrative regulations for the classified service governing dismissals, suspensions, fines, and other disciplinary measures. This administrative regulation establishes conditions for instituting disciplinary measures and the manner of notification.

Section 1. General Provision. Appointing authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties.

Section 2. Dismissal.

(1) The notice required by KRS 18A.095(6) and (7) may be combined if all requirements of this administrative ~~regulation~~[regulations] are satisfied.

(2) When the employee is notified, copies of the notice of intent to dismiss and the notice of dismissal [~~or other penalization~~] shall be forwarded to the Personnel Cabinet Secretary.

Section 3. Demotion. When the employee is notified, copies of the notice of demotion shall be forwarded to the Personnel Cabinet Secretary.

Section 4. Suspension.

(1) A suspension shall not exceed thirty (30) working days.

(2) An employee on initial probation may also be suspended for a period not to exceed thirty (30) days and shall be entitled to the same provisions of notice contained in KRS 18A.095(8) with the exception of the right of appeal.

(3) When the employee is notified, copies of the notice of

VOLUME 50, NUMBER 11– May 1, 2024

suspension shall be forwarded to the Personnel Cabinet Secretary.

[Section 5.] [Disciplinary Fine.]

~~[(1)] [A disciplinary fine shall not exceed ten (10) days' pay. The fine shall be computed on the basis of the employee's current salary. The fine shall not conflict with requirements of the Fair Labor Standards Act of 1938, 29 U.S.C. 201, or other minimum wage requirements established by legislative or executive authority.]~~

~~[(2)] [Prior to imposition of a disciplinary fine, the employee shall be notified in writing of the amount of the fine by the appointing authority.]~~

~~[(3)] [An employee on initial probation may also be fined for a period not to exceed ten (10) days and shall be entitled to the same provisions of notice contained in KRS 18A.095(8) with the exception of the right of appeal.]~~

~~[(4)] [When the employee is notified, copies of the notice of disciplinary fine shall be forwarded to the Personnel Cabinet Secretary.]~~

GORDON A. ROWE, Jr., Executive Director

APPROVED BY AGENCY: April 15, 2024

FILED WITH LRC: April 15, 2024 at 9:40 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 28, 2024, at 9:30 a.m., ET., at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Gordon A. Rowe, Jr., Executive Director, Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 695-5799, email personnelboard@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gordon A. Rowe, Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation defines conditions for instituting disciplinary measures and the manner of notification.

(b) The necessity of this administrative regulation: This regulation is necessary to set the requirements of processing disciplinary actions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 18A.075, 18A.005 to 18A.200 specifies that the Board adopt a regulation describing conditions for properly instituting disciplinary measures and notification to the employee.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will continue to provide effective administration of the statutes by its requirements to process disciplinary actions.

(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 Chapter 13A from the Statutory Authority and adds 29 U.S.C. 201 as it relates to this regulation regarding a disciplinary fine.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide uniformity with the requirements of the Fair Labor Standards Act.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment verifies conformity with KRS 18A.075 and KRS 18A.0751 by fully describing the procedures for instituting a disciplinary action.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides clarity and consistently required for effectively processing disciplinary actions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all state government agencies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will not be any new actions required of the entities identified in question (3) to comply with the amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Continued compliance of this regulation will provide uniformity among all entities identified in question 3.

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

(a) Initially: There will be no cost to implement this amendment.

(b) On a continuing basis: There will be no ongoing cost to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no need for a source of funding to implement and enforce this regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted employees the same.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.075 and 18A.0751.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Personnel Board, Personnel Cabinet, and all other State Government Agencies required to administer disciplinary actions.

(a) Estimate the following for the first year:

Expenditures: No expenditures will be generated because there is no cost to implementing this regulation.

Revenues: No revenue will be generated because there will be no revenue as a result of this regulation.

Cost Savings: No cost savings will be generated because there will be no expenditures there will be no cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will not be expenditures, revenues, or cost savings in subsequent years as the regulation is written.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): There are no local entities affected by this regulation because it doesn't regard them.

(a) Estimate the following for the first year:

Expenditures: No expenditures will be generated because the regulation doesn't affect them.

Revenues: No revenue will be generated because the regulation doesn't affect them.

VOLUME 50, NUMBER 11– May 1, 2024

Cost Savings: No cost savings will be generated, because the regulation doesn't affect them.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

(4) Identify additional regulated entities not listed in questions (2) or (3): There are no other regulated entities affected by this regulation.

(a) Estimate the following for the first year:

Expenditures: No expenditures will be generated because the regulation doesn't affect any other entities.

Revenues: No revenue will be generated because the regulation doesn't affect any other entities.

Cost Savings: No cost savings will be generated because the regulation doesn't affect any other entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be none because there is no expenditures, revenues, or cost savings now as the regulation is written.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There will be no fiscal impact to administer the amendments to this regulation because no disciplinary fines have been collected in decades. There is no need for disciplinary fines.

(b) Methodology and resources used to determine the fiscal impact: Facts, History of this regulation and data reports proved that the idea of disciplinary fines was not reality. They were inconsistent across state government. There could be an appeal filed. Since the action of disciplinary fines are removed from KRS Chapter 18A by the passage of SB 153, there will never be fines assessed.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) No negative or adverse economic impact will result because fines have not been issued in many years.

(b) The methodology and resources used to reach this conclusion: Facts, history, and data reports.

GENERAL GOVERNMENT CABINET
Personnel Board
(Amendment)

101 KAR 1:375. Employee grievances and complaints.

RELATES TO: KRS 18A.075, 18A.0751, 18A.095
STATUTORY AUTHORITY: KRS 18A.075, 18A.0751

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075 and 18A.0751 requires the Personnel Board to adopt comprehensive administrative regulations consistent with the provisions of KRS 18A.005 through 18A.200. KRS 18A.0751(1)(i) requires the Personnel Board to promulgate an administrative regulation governing employee grievances and complaints. This administrative regulation establishes the requirements governing employee grievances and complaints.

Section 1. Definition. "Grievance" means a complaint filed by an employee that concerns some aspect of the employee's conditions of employment:

- (1) Over which the cabinet or agency has control; and
- (2) That has occurred, or of which the employee has become aware through the exercise of due diligence, within thirty (30) calendar days prior to filing.

Section 2. General Provisions.

(1) An employee in the classified service who believes that they have been subjected to unfair or unjust treatment concerning the employee's conditions of employment may file a grievance. A grievance shall be in accordance with this administrative regulation.

(2) A grievance concerning an action that is appealable directly to the board pursuant to KRS 18A.095 may also be filed with the cabinet or agency. The filing of a grievance with the cabinet or agency shall not:

(a) Prohibit the employee from also filing an appeal with the board; or

(b) Extend the statutory appeal period.

(3) An employee utilizing the procedure established in this administrative regulation shall be entitled to file a grievance without interference, coercion, discrimination, or reprisal.

(4) An appointing authority shall inform its employees of the provisions of this administrative regulation or any modifications in the levels of review that have been approved by the Personnel Board for the employee's cabinet or agency pursuant to Section 4(3) of this administrative regulation.

Section 3. Procedures.

(1) A grievance shall be filed on a Grievance Form with an employee's immediate supervisor within thirty (30) calendar days following occurrence or the employee becoming aware, through the exercise of due diligence, of the action that is the subject of the grievance. If the action or conduct of the first line supervisor is the basis of an employee's grievance, the grievance may be filed with the second line supervisor.

(2) An employee shall state in writing the basis of the employee's grievance or complaint together with the corrective action desired. If an employee wishes to submit additional information or documentation, the employee may attach it to the Grievance Form.

(3) If a grievance is filed that alleges discrimination on the basis of race, color, religion, national origin, sex, disability, or age forty (40) or over, the recipient of this grievance shall immediately notify the cabinet or agency EEO coordinator to comply with the affirmative action plan.

(4) Interviews to evaluate or investigate the grievance outside of normal work hours with the grievant or other employees shall entitle employee participants to compensatory time.

(5) Interviews to evaluate or investigate the grievance held with the grievant or other employees shall not require the use of leave time.

(6) Parties may have a representative present at each step of the grievance procedure.

Section 4. Grievance Levels.

(1) Except as provided by Section 3(1) of this administrative regulation, the immediate supervisor shall, upon investigation, issue findings and a decision in writing to the employee within ten (10) work days after receipt of the grievance. If the responding supervisor is unable to resolve the complaint to the satisfaction of the employee, the employee may request review of the grievance, which shall be requested within five (5) work days of receipt of the decision by the next appropriate level.

(2) The next line supervisors shall each have five (5) work days to respond to the grievance. The employee shall have five (5) work days after each intermediate supervisory review to decide to appeal the grievance to the next level.

(3) If the line supervisors are unable to resolve the grievance to the satisfaction of the employee, the employee may request review of the grievance, which shall be requested within five (5) work days of receipt of the decision of the final line supervisor by the appointing authority for a final determination. The appointing authority, upon investigation, shall issue findings and a final determination in writing to the employee within twenty (20) work days.

(4) Unless the time limits have been extended by agreement of the parties, failure of supervisory or management personnel to respond within the established time limits shall automatically advance the grievance to the next review level.

(5) An intermediate grievance level may be waived. Waiver shall be by written agreement of the parties.

Section 5. Incorporation by Reference.

(1) "Grievance Form", April 2024, [October 2014-] is incorporated by reference.

(2) This material may be found on the Personnel Board's Web site, <https://personnelboard.ky.gov>, and may be inspected, copied, or obtained, subject to applicable copyright law, from the Web site and at the Personnel Board's physical address [Board], 1025 Capital Center Drive, [Driver,] Suite 105, Frankfort, Kentucky 40601,

VOLUME 50, NUMBER 11– May 1, 2024

Monday through Friday, 8 a.m. to 4:30 p.m.

GORDON A. ROWE, Jr., Executive Director

APPROVED BY AGENCY: April 15, 2024

FILED WITH LRC: April 15, 2024 at 9:40 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 28, 2024, at 9:30 a.m., ET., at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Gordon A. Rowe, Jr., Executive Director, Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 695-5799, email personnelboard@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gordon A. Rowe, Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation defines conditions for instituting disciplinary measures and the manner of notification.

(b) The necessity of this administrative regulation: This regulation is necessary to set the requirements of processing disciplinary actions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 18A.075, 18A.005 to 18A.200 specifies that the Board adopt a regulation describing conditions for properly instituting disciplinary measures and notification to the employee.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will continue to provide effective administration of the statutes by its requirements to process disciplinary actions.

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

(a) How the amendment will change this existing administrative regulation: This amendment incorporates by reference the revised Grievance Form.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide uniformity with the requirements of KRS Chapter 18A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment verifies conformity with KRS 18A.075 and KRS 18A.0751 by fully describing the procedures for instituting a disciplinary action and providing the Grievance Form.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides clarity and consistently required for effectively processing disciplinary actions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all state government agencies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will not be any new actions required of the entities identified in question (3) to comply with the amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Continued compliance of this regulation will provide uniformity among all entities identified in question 3.

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

(a) Initially: There will be a minimal one-time cost to implement this amendment by revising the Grievance Form.

(b) On a continuing basis: There will be no ongoing cost to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no need for a source of funding to implement and enforce this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be an increase in fees or a necessity in funding to implement this amendment. It will be a minimal one-time cost.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted employees the same.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.075 and 18A.0751.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Personnel Board, Personnel Cabinet, and all other State Government Agencies required to administer disciplinary actions.

(a) Estimate the following for the first year:
Expenditures: No expenditures will be generated.
Revenues: No revenue will be generated.
Cost Savings: No cost savings will be generated.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? N/A

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): N/A

(a) Estimate the following for the first year:
Expenditures: No expenditures will be generated.
Revenues: No revenue will be generated.
Cost Savings: No cost savings will be generated.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

(4) Identify additional regulated entities not listed in questions (2) or (3): N/A

(a) Estimate the following for the first year:
Expenditures: No expenditures will be generated.
Revenues: No revenue will be generated.
Cost Savings: No cost savings will be generated.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? N/A

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There will be a minimal one-time revision/printing cost resulting in a fiscal impact to administer the incorporation by reference of the amended Grievance Form to this regulation.

(b) Methodology and resources used to determine the fiscal impact:

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) No negative or adverse economic impact will result.

(b) The methodology and resources used to reach this conclusion:

FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
(Amendment)

105 KAR 1:001. Definitions for 105 KAR Chapter 1.

RELATES TO: KRS 16.505-16.652, 61.510-61.705, 78.510-78.852

STATUTORY AUTHORITY: KRS 61.505(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pension Authority on behalf of the Kentucky Retirement Systems and the County Employees Retirement System to promulgate administrative regulations that are consistent with the provisions of KRS 16.505 to 16.652, 61.505, 61.510 to 61.705, and 78.510 to 78.852. This administrative regulation establishes definitions for 105 KAR Chapter 1.

Section 1. Definitions. The following definitions shall apply to 105 KAR Chapter 1 unless otherwise required by context or otherwise defined in a specific administrative regulation:

(1) "AAC" means:

(a) Prior to April 1, 2021, the Administrative Appeals Committee of the Board of Trustees of the Kentucky Retirement Systems.

(b) Beginning April 1, 2021, the separate or joint Administrative Appeals Committees of the Board of Trustees of the Kentucky Retirement Systems and the Board of Trustees of the County Employees Retirement System in accordance with KRS 61.645(16) and 78.782(16).

(2) "Accumulated account balance" is defined by KRS 16.505(40), 61.510(41), and 78.510(38).

(3) "Accumulated contributions" is defined by KRS 16.505(7), 61.510(12), and 78.510(12).

(4) "Accumulated employer credit" is defined by KRS 16.505(39), 61.510(40), and 78.510(37).

(5) "Act in line of duty" or "in line of duty" is defined by KRS 16.505(19) and 78.510(48).

(6) "Active member" means a member who is participating in the systems.

(7) "Actuarial equivalent" is defined by KRS 16.505(13), 61.510(17), and 78.510(17).

(8) "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.

(9) "Agency reporting official" is defined by KRS 78.510(20).

(10) "Alternate payee" is defined by KRS 16.505(38), 61.510(39), and 78.510(36).

(11) "Authorized leave of absence" is defined by KRS 16.505(14).

(12) "Beneficiary" is defined by KRS 16.505(25), 61.510(26), and 78.510(25).

(13) "Boards" means the Board of Trustees of the Kentucky Retirement Systems and the Board of Trustees of the County Employees Retirement System.

(14) "Bona fide promotion or career advancement" is defined by KRS 61.598(1) and 78.545(22).

(15) "Career threshold" is defined by KRS 61.702(4)(e).9.a. and 78.5536(4)(e)9.a.

(16) "County" is defined by KRS 78.510(3).

(17) "Creditable compensation" is defined by KRS 16.505(8), 61.510(13), and 78.510(13).

(18) "Current rate of pay" is defined by KRS 16.505(24), 61.510(25), and 78.510(24).

(19) "Current service" is defined by KRS 16.505(4), 61.510(10), and 78.510(10).

(20) "DAC" means:

(a) Prior to April 1, 2021, the Disability Appeals Committee of the Board of Trustees of the Kentucky Retirement Systems.

(b) Beginning April 1, 2021, the separate or joint Disability Appeals Committees of the Board of Trustees of the Kentucky Retirement Systems and the Board of Trustees of the County Employees Retirement System in accordance with KRS 61.665(4) and 78.545(11).

(21) "Department" is defined by KRS 61.510(3).

(22) "Dependent child" is defined by KRS 16.505(17) and 78.510(49).

(23) "Disability retirement date" is defined by KRS 16.505(16), 61.590(5)(b), and 78.510(51).

(24) "Duty-related injury" is defined by KRS 61.621(2) and 78.545(20).

(25) "Early retirement date" is defined by KRS 16.505(20), 61.590(5)(c), and 78.545(4).

(26) "Employee" is defined by KRS 61.510(5) and 78.510(6).

(27) "Employer" is defined by KRS 16.505(3), 61.510(6), and 78.510(7).

(28) "Employer's effective cessation date" is defined by KRS 61.522(1)(c) and 78.535(1)(c).

(29) "End of day" means:

(a) 11:59 p.m. Eastern Time, on the date referenced; and

(b) If the date referenced 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, notice, or other requested or required information is filed or submitted no later than 11:59 p.m. Eastern Time on the next business day following the weekend, holiday, or date of closure.

(30) "Examiner" means the medical examiners as provided in KRS 61.665 and 78.545(11).

(31) "File" means a form or document has been received at the retirement office by mail, fax, secure email, in-person delivery, or via Self Service on the Web site maintained by the agency (if available).

(32) "Final compensation" is defined by KRS 16.505(9), 61.510(14), and 78.510(14).

(33) "Final rate of pay" is defined by KRS 16.505(10), 61.510(15), and 78.510(15).

(34) "Fiscal year" is defined by KRS 16.505(32), 61.510(19), and 78.510(19).

(35) "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.

(36) ~~(35)~~ "Gainful employment" means work in any capacity that is, or may be, performed with regularity and is, or may be, usually done for pay, whether or not pay is received, including seasonal, volunteer, part-time, and on-call work.

(37) ~~(36)~~ "Grandfathered service" is defined by KRS 61.552(9)(b) and 78.545(7).

(38) ~~(37)~~ "Hazardous disability" is defined by KRS 16.505(23) and 78.510(47).

(39) ~~(38)~~ "Hazardous position" means a regular full-time officer as defined by 16.505(22), or a "hazardous position" as defined by 61.592(1)(a), 78.510(42), and 78.5520(1).

(40) "Hazardous service" means the number of years and months of employment as an employee in a hazardous position.

(41) ~~(39)~~ "Hospital and medical insurance plan" is defined by KRS 61.702(1)(a) and 78.5536(1)(a).

(42) ~~(40)~~ "In line of duty" or "act in line of duty" is defined by KRS 16.505(19) and 78.510(48).

(43) ~~(44)~~ "Inactive member" means a member who is not participating in the system.

(44) ~~(42)~~ "Increment" is defined by KRS 61.510(29) and

VOLUME 50, NUMBER 11– May 1, 2024

78.510(44).

~~(45)~~~~(43)~~ "Instructional staff" is defined by KRS 61.510(48).

~~(46)~~~~(44)~~ "Invalid," if used in reference to a form, means that the form does not meet the requirements to be valid, and shall not be processed by the agency.

~~(47)~~~~(45)~~ "Last day of paid employment" is defined by KRS 16.505(30), 61.510(32), and 78.510(45).

~~(48)~~~~(46)~~ "Level percentage of payroll amortization method" is defined by KRS 61.510(28) and 78.510(43).

~~(49)~~~~(47)~~ "Medical information" as used in KRS 61.610, 61.615, 61.665, 78.5526 and 78.5528:

(a) Means reports of examinations or treatments; medical signs that are anatomical, physiological, or psychological abnormalities that can be observed; psychiatric signs that are medically demonstrable phenomena indicating specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality; or laboratory findings that are anatomical, physiological, or psychological phenomena that can be shown by medically acceptable laboratory diagnostic techniques, including chemical tests, electrocardiograms, electroencephalograms, X-rays, and psychological tests; and

(b) Does not mean written statements from medical providers alone unless accompanied by supporting contemporaneous records as established in paragraph (a) of this subsection.

~~(50)~~~~(48)~~ "Member" is defined by KRS 16.505(21), 61.510(8), and 78.510(8).

~~(51)~~~~(49)~~ "Membership date" is defined by KRS 16.505(35), 61.510(36), and 78.510(33).

~~(52)~~~~(50)~~ "Month" is defined by KRS 16.505(34), 61.510(35), and 78.510(32).

~~(53)~~~~(51)~~ "Monthly average pay" is defined by KRS 16.505(41), 61.510(45), and 78.510(52).

~~(54)~~~~(52)~~ "Monthly contribution rate" means the maximum contribution the systems will pay toward the premium of a retired member based on:

(a) The amount determined by the boards as provided in KRS 61.702(1)(b), 61.702(4)(b)-(d), 78.5536(1)(b), and 78.5536(4)(b)-(d) for a retired member who began participating in the systems on or before June 30, 2003; or

(b) The amount per month earned by the retired member based on years of service as provided in KRS 61.702(4)(e) and 78.5536(4)(e) for a retired member who began participating in the systems on or after July 1, 2003. [is defined by KRS 61.702(1)(b) and 78.5536(1)(b)].

~~(55)~~~~(53)~~ "Nominal fee" is defined by KRS 61.510(43) and 78.510(40).

~~(56)~~~~(54)~~ "Non-core services independent contractor" is defined by KRS 61.5991(9).

~~(57)~~~~(55)~~ "Nonhazardous position" is defined by KRS 61.510(44) and 78.510(41).

~~(58)~~ "Nonparticipating position" means any position of employment with a participating employer other than a regular full-time position or a regular full-time officer position.

~~(59)~~~~(56)~~ "Normal retirement age" means the age at which the member meets the requirements for his or her normal retirement date.

~~(60)~~~~(57)~~ "Normal retirement date" is defined by KRS 16.505(15), 61.510(18), 61.590(5)(a), and 78.510(18).

~~(61)~~~~(58)~~ "Objective medical evidence" is defined by KRS 16.505(31), 61.510(33), and 78.510(46).

~~(62)~~~~(59)~~ "Officers and employees of the General Assembly" is defined by KRS 61.510(20).

~~(63)~~~~(60)~~ "Optional allowance" is defined by KRS 16.505(18).

~~(64)~~~~(61)~~ "Participant" is defined by KRS 16.505(36), 61.510(37), and 78.510(34).

~~(65)~~~~(62)~~ "Participating" is defined by KRS 16.505(33), 61.510(34), and 78.510(31).

~~(66)~~~~(63)~~ "Participating employer" means any employer that participates in one (1) of the systems operated by the agency.

~~(67)~~ "Participating position" means a regular full-time position, a regular full-time officer position, or other positions that meet the requirements of KRS 61.680(6)(a) and 78.545.

~~(68)~~~~(64)~~ "Participation date" means the earlier of "membership date" as defined in this section or the date on which the member began participating in another state-administered retirement system

if the member has not retired or taken a refund from the other state-administered retirement system.

~~(69)~~~~(65)~~ "Past service" is defined by KRS 61.552(5)(a) and 78.545(7).

~~(70)~~~~(66)~~ "Person" means a natural person.

~~(71)~~~~(67)~~ "Premium" means the monthly dollar cost required to provide hospital and medical insurance plan coverage for a recipient, a recipient's spouse, or a disabled or dependent child.

~~(72)~~~~(68)~~ "Prior service" is defined by KRS 16.505(5), 61.510(11), and 78.510(11).

~~(73)~~~~(69)~~ "Provide," if used in reference to a form or other document, means the agency makes a form or document available on its Web site (if appropriate) or by mail, fax, secure email, or via Self Service on the Web site maintained by the agency (if available).

~~(74)~~~~(70)~~ "Qualified domestic relations order" is defined by KRS 16.505(37), 61.510(38), and 78.510(35).

~~(75)~~~~(71)~~ "Recipient" is defined by KRS 16.505(26), 61.510(27), and 78.510(26).

~~(76)~~~~(72)~~ "Reemployment" means the retired member's first date of employment with a participating employer following his or her most recent retirement date.

~~(77)~~~~(73)~~ "Regular full-time officers" is defined by KRS 16.505(22).

~~(78)~~~~(74)~~ "Regular full-time position" is defined by KRS 61.510(21) and 78.510(21).

~~(79)~~~~(75)~~ "Retired member" is defined by KRS 16.505(11), 61.510(24), and 78.510(23).

~~(80)~~~~(76)~~ "Retirement allowance" is defined by KRS 16.505(12), 61.510(16), and 78.510(16).

~~(81)~~ "Retirement date" means a member's effective retirement date as described in KRS 61.590(5) and 78.545(4).

~~(82)~~~~(77)~~ "Retirement office" is defined by KRS 16.505(28), 61.510(31), and 78.510(29).

~~(83)~~~~(78)~~ "School board" is defined by KRS 78.510(4).

~~(84)~~~~(79)~~ "School term or year" is defined by KRS 78.510(28).

~~(85)~~ "Self-Service Web site" means the secure Member Self-Service or Retiree Self-Service agency Web site.

~~(86)~~~~(80)~~ "Service" is defined by KRS 16.505(6), 61.510(9), and 78.510(9).

~~(87)~~~~(81)~~ "State" means the Commonwealth of Kentucky.

~~(88)~~ "State-administered retirement system" means the retirement systems with reciprocity as described in KRS 61.680.

~~(89)~~ "Submit" means the required form, documentation, report, or payment has been received by the retirement office via mail, fax, electronic mail, the Self-Service Web site, the Employer Self-Service Web site, or other mode specifically detailed in an administrative regulation.

~~(90)~~~~(82)~~ "Systems" means the State Police Retirement System (KRS 16.505 to 16.652), the Kentucky Employees Retirement System (KRS 61.510 to 61.705), and the County Employees Retirement System (KRS 78.510 to 78.852).

~~(91)~~~~(83)~~ "Total and permanent disability" is defined by KRS 16.582(1)(a) and 78.5524(1)(a)1.

~~(92)~~~~(84)~~ "Valid," if used in reference to a form, means that all required sections of a form are filled out, the form has been fully executed by the required person or the person's legal representative, and all supporting documentation required by the form is included with the form.

~~(93)~~~~(85)~~ "Volunteer" is defined by KRS 61.510(42) and 78.510(39).

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: March 21, 2024

FILED WITH LRC: March 25, 2024 at 11:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing to allow for public comment on this administrative regulation shall be held on Tuesday, June 25, 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

VOLUME 50, NUMBER 11– May 1, 2024

the public hearing will not be made unless a written request for a transcript is made.

CONTACT PERSON: Jessica Beaubien, Policy Specialist, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8570, fax (502) 696-8615, email Legal.Non-Advocacy@kyret.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jessica Beaubien

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for Title 105 of the Kentucky Administrative Regulations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the definitions for Title 105 of the Kentucky Administrative Regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute by establishing definitions for Title 105 of the Kentucky Administrative Regulations, which contains administrative regulations for the Kentucky Public Pensions Authority and the systems for which it provides operations.

(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 definitions for the administrative regulations in Title 105 of the Kentucky Administrative Regulations.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds several new definitions.

(b) The necessity of the amendment to this administrative regulation: These additional definitions are needed to assist in the effective administration of statutes by establishing them as definitions for the administrative regulations in Title 105 of the Kentucky Administrative Regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statute by adding definitions for Title 105 of the Kentucky Administrative Regulations, which contains administrative regulations for the Kentucky Public Pensions Authority and the systems for which it provides operations.

(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 adding definitions for the administrative regulations in Title 105 of the Kentucky Administrative Regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation may affect over 420,000 members of the systems for which the Kentucky Public Pensions Authority provides operations as well as their spouses, dependent children, and beneficiaries. Additionally, this administrative regulation may affect 1,452 employers that participate in the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System. Finally, this administrative regulation will affect the Kentucky Public Pensions Authority and the three (3) systems for which it provides operations, the State Police Retirement System, the Kentucky Employees Retirement System, 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: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation will 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 will assist all entities identified in question (3) with understanding the administrative regulations in Title 105 of the Kentucky Administrative Regulations. (5) Provide an estimate of how much it will cost to implement this administrative regulation:

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no funding needed.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: 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 entities have the same requirements.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.505(1)(g)

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Public Pensions Authority (KPPA) is the promulgating agency. The other affected state units are the employers that participate in the State Police Retirement System or the Kentucky Employees Retirement System.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? None.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): The employers that participate in the County Employees Retirement System may be impacted by this administrative regulation.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? None.

(4) Identify additional regulated entities not listed in questions (2) or (3): None.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? None.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no fiscal impact for this administrative regulation.

(b) Methodology and resources used to determine the fiscal impact: There is no fiscal impact for this administrative regulation.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have a "major economic impact".

(b) The methodology and resources used to reach this conclusion: There is no major economic impact for this administrative regulation.

FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
County Employees Retirement System
(Amendment)

105 KAR 1:120. Participation of County Employees Retirement System employers[agencies].

RELATES TO: KRS 78.510–78.990[78.510(3), 78.530, 78.532, 78.535, 78.780], 26 U.S.C. 414(d), 29 U.S.C. 1002(32)

STATUTORY AUTHORITY: KRS [61.645(9)(e),]78.510(3), 78.782[78.780]

NECESSITY, FUNCTION, AND CONFORMITY: KRS [61.645(9)(g) authorizes the Board of Trustees of Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852. KRS]78.510(3) authorizes the Board of Trustees of the County Employees Retirement System[board] to determine the eligibility of a prospective employer[an agency] to participate in the County Employees Retirement System (CERS); ~~or CERS~~. KRS 78.782[78.780] authorizes the Board of Trustees of the County Employees Retirement System to promulgate administrative regulations not inconsistent with the provisions of KRS 78.510 to 78.852 that are necessary or proper to carry out the provisions of KRS 78.510 to 78.852. [board to govern and control CERS in the same manner in which it administers the Kentucky Employee Retirement System.] This administrative regulation establishes the procedures and requirements for employer participation in CERS.

Section 1. Definitions.

(1) [~~"Alternate plan" means the plan under which an employer purchases service credit for its employees by paying an actuarial cost of the service in a lump sum or by annual installments.~~]

[(2)] "Board" is defined by KRS 78.510(2).

(2) "Inactive employer" means a participating employer that ceases to have any employees in a regular full-time position participating in the system.

(3) "Merged employer" means one (1) or more participating employers that have merged with one or more participating or non-participating employers into a new single entity or operating under the name of one (1) of the participating or non-participating employers that are part of the merger.

(4) "New or separate employer" means:

(a) A participating employer that forms, becomes, or is bought out by a non-participating employer; or

(b) A participating employer that dissolves or becomes an inactive employer, and another distinct entity is formed and assumes responsibility for a portion or all of the business.

(5) "Non-participating employer" means:

(a) An entity that does not participate in the system; or

(b) An entity that applied for participation in the system and:

1. Is pending a determination of participation;

2. Withdrew its application; or

3. Was denied or failed to complete the requirements to be approved for participation.

(6) "Split or separated employer" means a participating employer that divides into two (2) or more distinct entities.

[(7)] [(3)] "System" ["CERS" or "system"] is defined by KRS 78.510(1).

Section 2. Participation in the System. For a prospective employer to participate in the system, the prospective employer shall:

(1) Meet[An agency may participate in CERS if the board determines that the agency:]

[(a)] [Meets] the definition of county in KRS 78.510(3);

[(2)] [(b)] Be[is] qualified to establish and maintain a governmental plan as defined in 26 U.S.C. 414(d) and 29 U.S.C. 1002(32);

[(3)] [(c)] Have an irrevocable contract with the Kentucky Personnel Cabinet for health insurance coverage for its employees in accordance with KRS 78.530(1)(b); [Satisfactorily completes the

trial period established in subsection (2) of this section;]

[(d)] [Submits all forms and documents necessary for participation in CERS by day fifteen (15) of the month prior to the effective date of participation; and]

[(4)] [(e)] Comply[Complies] with:

[(a)] [4.] KRS 78.510 through 78.852[78.990]; and

[(b)] [2.] KAR Title 105:[105-KAR 1:020 through 105-KAR 1:360.]

[(5)] Complete the requirements of Sections 3–5 of this administrative regulation; and

[(6)] Receive board approval in accordance with Section 6 of this administrative regulation.

Section 3. Determining Prospective Employer's Qualification to Participate.

(1) A prospective employer shall submit a resolution or ordinance by its controlling board authorizing participation in the system as provided by KRS 78.530(1) within twelve (12) months of the date the resolution or ordinance was passed.

(2) No later than the end-of-day ninety (90) calendar days from the date the resolution or ordinance indicated in subsection (1) of this section is submitted, the prospective employer shall submit:

(a) Its Articles of Incorporation, bylaws, ordinance, or other document establishing or creating the prospective employer;

(b) Its current fiscal year budget;

(c) Its health insurance contract as described in Section 2(1)(c) of this administrative regulation;

(d) A valid Form 2010, Election or Rejection of Participation, completed by all current employees;

(e) A valid Form 7075, Employer Contact Information;

(f) A valid Form 7250, Verification of Payments Outside Regular Wages;

(g) A valid Form 7280, Employer Certification of Installment Purchase of Service;

(h) A valid Form 7851, Data Use Agreement;

(i) A valid Form 7071, Employer Self Service Employer Administrator Account Creation Request; and

(j) If requested by the agency, a letter from the U.S. Internal Revenue Service or U.S. Department of Labor that states the entity sufficiently meets the governmental requirements to participate in a qualified governmental retirement plan.

(3)

(a) Once the requirements of subsections (1)–(2) of this section are received by the agency, the agency shall review the documentation and determine if the prospective employer meets the requirements for participation in the system.

(b) If a prospective employer meets the requirements for participation in the system, the agency shall initiate a trial period of participation for the prospective employer in accordance with Section 4 of this administrative regulation.

Section 4. Trial Period.

[(1)] [(2)] The prospective employer [Prior to board approval of an agency that has elected to participate in CERS, the agency] shall serve a three (3) month trial period which shall begin on the first day of the month following the completion to the requirements as provided in Sections 2-3 of this administrative regulation.

(2) During the trial period, the prospective employer[, during which it] shall:

(a) Submit all reports required by KRS 78.625 in accordance with 105 KAR 1:140;

(b) Remit applicable employer, employee, and health insurance contributions in accordance with 105 KAR 1:140; and

(c) Require employee participation in accordance with KRS 78.530, 78.531, 78.535, and 78.540.

[(a)] [Report contributions; and]

[(b)] [Comply with the provisions of applicable statutes and administrative regulations governing:]

[1.] [Employee participation; and]

[2.] [Reporting of contributions.]

Section 5. Submission to the Board. Once the requirements of Sections 2-4 of this administrative regulation are complete, the

agency shall provide the board the prospective employer's:

- (1) Trial period results;
- (2) Current fiscal year's budget; and
- (3) Resolution or ordinance authorizing participation in the system.

Section 6. Board Review.

(1) The prospective employer shall obtain authorization to participate from the board as provided by KRS 78.510(3).

(2)(3) The board may deny participation if it determines that a prospective employer[.]

(a) [An agency] has failed to comply with the provisions of Sections 2-4 of this administrative regulation, [subsection (1) of this section:] or if the prospective employer's

(b) [Its] participation will have:

(a) [1-] An adverse impact on the tax qualification of the system [CERS], pursuant to 26 U.S.C. 414(d) or any other applicable federal law and administrative regulation; or

(b) [2-] A significant adverse impact on the actuarial soundness of the system [CERS].

(3)

(a) [(4)] If the board denies a prospective employer's [an agency's] request to participate in the system, [CERS,] it shall refund to the prospective employer [agency] and its employees the contributions paid by them to the system [CERS] during the prospective employer's [agency's] trial period.

(b) If the board approves the prospective employer's request to participate in the system, the

[Section 3-] [The] effective date of participation shall be the first day of the trial period as indicated in Section 4 of this administrative regulation. [.]

[(1)] [The month during which the order required by KRS 78.530(1) is adopted; or]

[(2)] [Any month subsequent to the month during which the order required by KRS 78.530(1) was adopted.]

Section 7. [Section 4-] Alternate Participation Plan.

(1) If a prospective employer [an agency] wishes to participate under the alternate participation plan pursuant to KRS 78.530(3), it shall request the board [Kentucky Retirement Systems] to conduct an actuarial study to determine the cost of purchasing past service for eligible employees prior to adoption of a resolution or ordinance by its controlling board authorizing participation in the system [an order to participate].

(2) [Section 5-] [An agency shall designate a person to be responsible for compliance with applicable statutes and the reporting requirements established in:]

[(1)] [405 KAR 1:130;]

[(2)] [405 KAR 1:140;]

[(3)] [405 KAR 1:150;]

[(4)] [405 KAR 1:160;]

[(5)] [405 KAR 1:170;]

[(6)] [405 KAR 1:210; and]

[(7)] [405 KAR 1:250.]

[Section 6-] The annual installment to amortize the cost of the employees' service under the alternate participation plan shall not be less than ten (10) percent of the total annual payroll for nonhazardous employees and fifteen (15) percent of the total annual payroll for hazardous employees included in the alternate participation plan. The payment shall be due each year on the first day of the month in which participation began.

Section 8. Continued Participation. Pursuant to KRS 78.530(2), once an employer begins participating in the system, the employer shall continue to participate as long as it remains qualified unless:

(1) The board requires the employer to involuntarily cease participation in accordance with KRS 78.535(2)(b); or

(2) A voluntary cessation is allowed pursuant to KRS 78.535(2)(a).

Section 9. Split, Separated, or New Entity.

(1) Prior to beginning the formal process and not less than six (6) months prior to the effective date of splitting, separating, or becoming a new entity, a participating employer shall submit a written notification of its intended split, separation, or formation of a new entity. The written notification shall be submitted on the participating employer's official letterhead.

(2) Once the agency is notified of the split, separation, or formation of a new entity, or becomes aware through any means, the agency shall determine whether:

(a) A new or separate employer has been created; or

(b) Split or separated employers have been created.

(3)

(a) A split, separated, or new employer shall participate in the system if, by the end of day fifteen (15) calendar days from the date of the split, separation, or formation of a new entity, all the requirements prescribed in Section 3(2) of this administrative regulation are submitted.

(b) The participation date shall be:

1. The first day of the month following the date all the required documentation was received, if received by the 15th day of the month; or

2. The first day of the month following the month after the date all the required documentation was received, if received after the 15th day of the month.

(c) The split, separated, or new employer shall comply with KRS 78.510 through 78.852 and KAR Title 105 as of the participation date.

(d) If the split, separated, or new employer fails to complete the requirements of paragraph (a) of this subsection, then the split, separated, or new employer shall only participate if it takes all steps to participate in the system in accordance with KRS 78.530 and this administrative regulation.

(4) If there is a lapse in participation between the date the employer split, separated, or became a new entity and when it began participating, an employee who worked during the lapsed time may purchase service credit for that time by paying a delayed contribution payment if he or she elected to participate on a valid Form 2010, Election or Rejection of Participation, at the time the split, separated, or new entity began participating. The service shall not be included:

(a) In the member's total service for purposes of determining benefits under KRS 78.5536; or

(b) Toward retirement eligibility for members with a participation date on or after August 1, 2004, in accordance with KRS 61.552(10)(c), and 78.545.

Section 10. Merged Employer.

(1) Prior to beginning the formal process and not less than six (6) months prior to the effective date of merging, a participating employer shall submit a written notification of its intended merger. The written notification shall be submitted on the participating employer's official letterhead.

(2) Once the agency is notified of the merger, or becomes aware by other means, the agency shall determine whether two (2) or more participating employers, or one (1) or more participating employer and one (1) or more non-participating employer have become a merged employer.

(3) Once the merger is complete, the merged employer shall comply with KRS 78.510 through 78.852 and KAR Title 105.

Section 11. Inactive Employers.

(1)(a)1. If an employer becomes an inactive employer, the employer shall submit a written notification on its official letterhead stating that the employer is an inactive employer.

2. Each year by the end of day on the last day of the month of the fiscal year, an inactive employer shall submit a written notification on its official letterhead stating that it remains an inactive employer, or stating that the employer is no longer an inactive employer as applicable.

(b) If an employer ceases to become an inactive employer, the employer shall:

1. Submit a written notification on its official letterhead stating

VOLUME 50, NUMBER 11– May 1, 2024

that the employer is no longer an inactive employer by the end of day thirty (30) calendar days from having a participating employee; and

2. Begin reporting a participating employee the month after he or she becomes a participating employee.

(c) The agency shall determine whether a participating employer is an inactive employer.

(2) Employers shall comply with KRS 78.510 through 78.852 and KAR Title 105, regardless of the employer's status as an inactive employer.

(3) The agency shall periodically audit inactive employers to determine if they remain inactive employers.

Section 12. Incorporation by Reference.

(1) The following forms are incorporated by reference:

(a) Form 2010, "Election or Rejection of Participation", updated March 2024;

(b) Form 7071, "Employer Self Service Employer Administrator Account Creation Request", updated March 2024;

(c) Form 7075, "Employer Contact Information", updated March 2024;

(d) Form 7250, "Verification of Payments Outside Regular Wages", updated March 2024;

(e) Form 7280, "Employer Certification of Installment Purchase of Service", updated March 2024; and

(f) Form 7851, "Data Use Agreement", updated January 2024.

(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 a.m. to 4:30 p.m. This material is also available on the Kentucky Public Pensions Authority's Web site at kyret.ky.gov.

ED OWENS, CEO

APPROVED BY AGENCY: April 12, 2024

FILED WITH LRC: April 12, 2024 at 2:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing to allow for public comment on this administrative regulation shall be held on Tuesday, June 25, 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 June 30, 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, phone (502) 696-8800 ext. 8570, fax (502) 696-8615, email Legal.Non-Advocacy@kyret.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jessica Beaubien

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements for employer participation in CERS.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to allow the Kentucky Public

Pensions Authority to effectively administer KRS 78.510 to 78.852.

(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 all administrative regulations on behalf of the County Employees Retirement System that are consistent with KRS 78.510 to 78.852. KRS 78.510(3) authorizes the Board of Trustees of the County Employees Retirement System to determine the eligibility of an employer to participate in the County Employees Retirement System (CERS). KRS 78.782 authorizes the Board of Trustees of the County Employees Retirement System necessary or proper in order to carry out the provisions of 78.510 to 78.852.

(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 the procedures and requirements for employer participation in CERS.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds details of the employer procedures and requirements for participation in CERS.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to effectively determine the eligibility of an employer to participate in the County Employees Retirement System (CERS) and to ensure the employer is fully aware of the procedures and requirements to participate.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate all administrative regulations on behalf of the County Employees Retirement System that are consistent with KRS 78.510 to 78.852. KRS 78.510(3) authorizes the Board of Trustees of the County Employees Retirement System to determine the eligibility of an employer to participate in the County Employees Retirement System (CERS). KRS 78.782 authorizes the Board of Trustees of the County Employees Retirement System necessary or proper in order to carry out the provisions of 78.510 to 78.852.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists with the effective administration of the statutes by adding needed details about the procedures and requirements for participation in CERS.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: One (1) entity that provides day-to-day operations for the County Employees Retirement System: Kentucky Public Pensions Authority. It is unknown how many new employers will go through the process to participate in 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: The Kentucky Public Pensions Authority must administer the process and approval of employees to participate in the County Employees Retirement System. The Board of Trustees for the County Employees Retirement System must approve employer participation in the County Employees Retirement System. Potential employers seeking to participate in the County Employees Retirement System must comply with the steps outlines in this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of compliance with this administrative regulation for the Kentucky Public Pensions Authority, the County Employees Retirement System and the Board of Trustees for the County Employees Retirement System should be negligible, as this administrative regulation is already being administered as written.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits for the entities identified should be negligible, as this administrative regulation is

already being administered as written. (5) Provide an estimate of how much it will cost to implement this administrative regulation:

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

(a) Initially: The costs associated with the implementation of this amendment should be negligible.

(b) On a continuing basis: The continuing costs associated with this amendment 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 entities are subject to the same processes and procedures.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.505(1)(g), 78.510(3), and 78.782.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The promulgating agency for this administrative regulation is the Kentucky Public Pensions Authority. There are no other state entities affected by this administrative regulation.

(a) Estimate the following for the first year:

Expenditures: Negligible.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures related to this administrative regulation will be negligible in subsequent years because this administrative regulation is already being administered as written. There is no revenue or cost saving for this administrative regulation.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): The County Employees Retirement System. It may also impact local government employers seeking to participate in the County Employees Retirement System.

(a) Estimate the following for the first year:

Expenditures: Negligible.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures related to this administrative regulation will be negligible in subsequent years because this administrative regulation is already being administered as written. There is no revenue or cost saving for this administrative regulation.

(4) Identify additional regulated entities not listed in questions (2) or (3): None.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? None.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The fiscal impact of this administrative regulation should be negligible because this administrative regulation is already being administered as written.

(b) Methodology and resources used to determine the fiscal impact: This administrative regulation is already being administered as written.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have a "major economic impact" because this administrative regulation is already being administered as written.

(b) The methodology and resources used to reach this conclusion: This administrative regulation is already being administered as written.

FINANCE AND ADMINISTRATION CABINET Kentucky Public Pensions Authority (Amendment)

105 KAR 1:190. Qualified domestic relations orders.

RELATES TO: KRS ~~16.505(36), (37), (38)~~, 16.576, 16.645(5), ~~16.568, 16.577, 16.578, 16.582, 16.583, 61.505, 61.510(61-510(37), (38), (39))~~, ~~61.542, 61.559, 61.580, 61.583, 61.590, 61.595, 61.597, 61.600, 61.605, 61.610, 61.615, 61.621, 61.625, 61.635, 61.637, 61.640, 61.661, 61.663, 61.690, 61.691, 78.510(78.510(34), (35), (36))~~, ~~78.545(78.545(26))~~, 78.640, 78.652, 78.5510, 78.5512, 78.5514, 78.5516, 78.5518, 78.5522, 78.5524, 78.5526, 78.5528, 78.5532, 78.5540, 205.712, 26 U.S.C. 414(p)

STATUTORY AUTHORITY: KRS ~~16.645, 61.505(1)(g)(61.645(9)(e))~~, 61.690, 78.545

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, 61.510 to 61.705, and 78.510 to 78.852. KRS 16.645, 61.690(3)(b), and 78.545 require the Kentucky Retirement Systems and the County Employees Retirement System[61.690 requires the retirement systems] to promulgate an administrative regulation establishing the requirements, procedures, and forms necessary to administer qualified domestic relations orders (QDROs). This administrative regulation establishes the requirements, procedures, and forms necessary to administer QDROs.

Section 1. Definitions.

(1) "Basic retirement allowance" means the basic payment option as defined by KRS 61.542(5)(f) and 78.545. ["Alternate payee" is defined by KRS 16.505(38), 61.510(39), and 78.510(36).]

(2) "Benefit" means the retirement allowance as defined by KRS 16.505(12), 61.510(16), and 78.510(16). ["Qualified domestic relations order" is defined by KRS 16.505(37), 61.510(38), and 78.510(35).]

(3) "Date of divorce" means the date the decree of dissolution of marriage is entered by a court of competent jurisdiction. ["Participant" is defined by KRS 16.505(36), 61.510(37), and 78.510(34).]

(4) "Effective retirement date" means the first date upon which a member's early, normal, or disability retirement benefits began or will begin.

(5) "Marital Service" means the amount of service earned and purchased during the marriage.

(6) "Unreduced retirement benefit" means the full retirement allowance for which a participant is entitled in accordance with KRS 16.576, 16.577, 16.583, 61.559, 61.595, 61.597, 78.5510, 78.5512, 78.5514, and 78.5516.

Section 2. Information Requests.

(1) If information is necessary for the Court to calculate the amount due to the alternate payee for the purposes of a QDRO, the participant shall complete, sign, and file a valid Form 6433, Authorization for Release of Information and Request for Information for Qualified Domestic Relations Order, to obtain the needed information.

(2) In response to a filed valid Form 6433, if the participant has not yet retired, the agency shall provide as of the date of the divorce

indicated on the QDRO, or if the date of divorce is not provided the last date contributions were reported, the participant's:

(a) Accumulated account balance during the marriage in each of the systems in which the participant has marital service;

(b) Total number of months of service credit earned and purchased in each of the systems in which the participant has service;

(c) The number of months of service credit earned and purchased during the marriage in each of the systems in which the participant has marital service;

(d) The hypothetical monthly retirement allowance pursuant to KRS 16.576, 16.577, 16.583, 61.559, 61.595, 61.597, 78.5510, 78.5512, 78.5514, and 78.5516 the participant would receive beginning on the date the participant is eligible for an unreduced retirement benefit, and broken down by each of the systems in which the participant has marital service. The hypothetical monthly retirement allowance shall be based on:

1. The participant's final compensation and service credit; or
2. The participant's accumulated account balance;

(e) The hypothetical partial lump sum payment option without survivor rights with a one (1) time lump-sum payment equal to twelve (12) monthly retirement allowances and the reduced ongoing monthly retirement allowance pursuant to KRS 61.635(12) and 78.545 that the participant would receive beginning on the date the participant is eligible for an unreduced retirement benefit, and broken down by each of the systems in which the participant has marital service. The hypothetical partial lump sum payment option and reduced ongoing monthly retirement allowance shall be based on:

1. The participant's final compensation and service credit; or
2. The participant's accumulate account balance; and

(f) The hypothetical actuarial equivalent refund payment or accumulated account balance refund payment the participant would receive, broken down by each of the systems in which the participant has marital service, when the participant is eligible for an unreduced retirement benefit based on:

1. The final compensation and service credit; or
2. The participant's accumulated account balance.

(3) In response to a filed valid Form 6433, if the participant retired prior to the effective date of the divorce indicated on the QDRO, the agency shall provide the participant's:

(a) Current monthly retirement benefit in each of the systems from which the participant is receiving a monthly retirement benefit;

(b) Total number of months of service credit earned and purchased during the marriage in each of the systems from which the participant is receiving a monthly retirement benefit; and

(c) Total number of months of service credit in each of the systems from which the participant is receiving a monthly retirement benefit.

(4)

(a) The alternate payee may request and obtain the information necessary for the court to calculate the amount due to the alternate payee for purposes of the QDRO by completing and filing a valid Form 6433, Authorization for Release of Information and Request for Information for Qualified Domestic Relations Orders, and an attached court issued subpoena or order compelling the release of the requested information.

(b) The agency shall respond to a valid Form 6433 filed in accordance with this subsection in the same manner as indicated in subsections (2) or (3) of this section as applicable.

(5)

(a) If information other than the information supplied by the agency in accordance with subsections (2) through (3) of this section is required:

1. The participant shall file an additional signed request for information in writing;

2. The alternate payee shall file an additional signed request for information in writing, and an attached court issued subpoena or order compelling the release of the requested information; or

3. Legal counsel shall file an additional signed request for information in writing, and documentation that he or she represents the participant or alternate payee, as applicable. An alternate payee's legal counsel shall also file a court issued subpoena or order

compelling the release of the requested information.

(b) Requests for information other than the information supplied by the agency in accordance with subsections (2) through (4) of this section shall be answered pursuant to KRS 61.661 and 78.545.

Section 3. QDROs prior to July 14, 2000. The provisions of this section shall only apply to QDROs that were approved[by the retirement systems] for enforcement by the agency prior to July 14, 2000. After the participant notifies the agency[retirement system] of his or her[the participant's] requested effective retirement date, the agency[retirement systems] shall administer a valid QDRO approved by the agency that was entered prior to the participant's effective retirement date as follows:

(1) The agency[retirement systems] shall provide[send] the participant and the alternate payee information regarding the amount of the benefits payable pursuant to the QDRO.

(2) The amount of the benefits payable pursuant to a valid QDRO[approved for enforcement by the retirement systems prior to July 14, 2000,] shall be determined[calculated] as follows:

(a) The percentage of benefit due to the alternate payee shall be computed based on the following table:

$$\begin{array}{l} \% \text{ allocated to Alternate} \\ \text{Payee pursuant to QDRO} \end{array} \times \frac{\text{marital service per QDRO}}{\text{Participant's total service credit}} = \begin{array}{l} \text{Percentage of} \\ \text{benefit due to the} \\ \text{alternate payee} \end{array}$$

[The alternate payee shall receive the amount computed by multiplying the basic option amount due the participant by the percentage allocated to the alternate payee by the terms of the QDRO multiplied by a fraction, the numerator of which shall be the period of service specified in the QDRO and the denominator of which shall be the participant's total service credit. The participant shall be paid all amounts in excess of the amounts paid to the alternate payee.]

(b) If a lump sum payment equal to the balance of the participant's accumulated account balance is to be made, the percentage due to the alternate payee as calculated by paragraph(a) of this subsection[determined by this calculation] shall be multiplied by the[balance of the] participant's accumulated account balance and the result paid to the alternate payee. The participant shall be paid all amounts in excess of the amounts paid the alternate payee.

(c) If a monthly payment is to be made[benefit is paid], the percentage due to the alternate payee, as calculated by paragraph(a) of this subsection,[options made available to the alternate payee] shall be multiplied by the participant's basic retirement allowance and the result shall be paid monthly to the alternate payee[derived from the participant's basic option]. The participant shall be paid all amounts in excess of the amounts paid to the alternate payee.

(d) Service credit added for disability retirement benefits under KRS 16.582, 61.600, 61.605, 78.5522, or 78.5524[16.582] shall not be included in determining the amount payable to the alternate payee. Service credit purchased during the period of marriage shall be included in the calculation under this paragraph.

(e) The payment options offered to the alternate payee:[]

1. Shall be based on the alternate payee's life expectancy;[-]

2. Shall include only[The alternate payee shall be offered] the payment options described in KRS 61.635 and 78.545, which do not provide lifetime benefits to a beneficiary; and[.]

3. If the participant is eligible, shall include the ten (10) year certain option as provided by KRS 16.576(4).

(f) [If the alternate payee predeceases the participant after the participant's retirement, a lump sum, determined actuarially, of the payments remaining to the alternate payee, if any, shall be paid to the alternate payee's estate.]

[(g)] The alternate payee of a QDRO approved for enforcement by the agency[retirement systems] prior to July 14, 2000, shall receive increases given recipients under KRS 61.691 and 78.5518.

(3)

(a) If the participant dies prior to his or her effective retirement date and prior to the death of the alternate payee, the participant's account shall be divided in accordance with the QDRO between the alternate payee and the participant's beneficiary.

1.[-(4)] If the death benefit is a refund of the participant's

VOLUME 50, NUMBER 11– May 1, 2024

accumulated account balance~~[contributions and interest]~~, the alternate payee shall only be offered a lump sum payment representing a portion of the participant's accumulated account balance calculated in accordance with subsection (2)(b) of this section.

2. ~~[(5)]~~ If the death benefit is calculated under KRS 16.578, ~~[-or] 61.640, or 78.5532~~, the alternate payee shall be allowed to choose a lifetime annuity, a sixty (60) month certain payment, a 120 month payment, or an actuarial equivalent refund~~[lump sum payment]~~.

(b)

1. ~~[(6)]~~ If a participant with a pre-retirement QDRO dies after his or her effective retirement date and prior to the death of the alternate payee, there shall be no change to the alternate payee's benefits.

2. If a participant with a post-retirement QDRO dies prior to the death of the alternate payee, the QDRO on file shall be void and no further payment shall be made to the alternate payee.

(4)

(a) If the alternate payee predeceases the participant after the participant's effective retirement date, a lump sum, determined actuarially, of the payments remaining to the alternate payee, if any, shall be paid to the alternate payee's estate.

(b) If the alternate payee predeceases the participant prior to the participant's effective ~~[dies prior to the participant's death,]~~ retirement date~~],~~ or withdrawal of account, the QDRO on file shall be void and payment shall not be made to the alternate payee or his or her estate.

5. ~~[(7)]~~ When benefits become payable to the alternate payee, the agency~~[retirement system]~~ shall establish a separate account for the alternate payee, which shall consist of the alternate payee's pro rata share determined pursuant to subsection (2) of this section~~[of the participant's contributions, service, and benefit]~~. Once the alternate payee's account has been established, the alternate payee shall not be entitled to further benefits acquired by the participant.

Section 4. ~~[Section 3-]~~ QDROs On or After July 15, 2010.

(1) Section 4 through Section 20~~[All sections]~~ of this administrative regulation~~[-, except for Section 2-]~~ shall only apply to QDROs approved for enforcement by the agency~~[retirement systems]~~ on or after July 15, 2010.

(2) A QDRO may apply to any of the ~~[retirement]~~ systems~~[administered by the Kentucky Retirement Systems as established by KRS Chapters 16, 61, and 78]~~ in which the participant has marital service~~[is a member during the period of the marriage]~~ that is the subject of the QDRO and from which the participant will receive retirement benefits, except for the excess benefit plans~~[retirement systems]~~ established by KRS 16.568, 61.663, and 78.652.

(3) A valid QDRO shall be complete and contain all~~[the following]~~ information~~[-]~~:

[(a)] ~~[The participant's name;]~~

[(b)] ~~[The participant's mailing address;]~~

[(c)] ~~[The participant's Kentucky Retirement Systems member identification number or the participant's Social Security number;]~~

[(d)] ~~[The alternate payee's name;]~~

[(e)] ~~[The alternate payee's mailing address;]~~

[(f)] ~~[The system or systems to which the QDRO applies;]~~

[(g)] ~~[The amount or percentage to be paid to the alternate payee;]~~

[(h)] ~~[When payments under the QDRO are to end;]~~

[(i)] ~~[How the cost of living increase provided in KRS 61.691 is to be administered, if administration is not otherwise provided for by KRS 61.690; and]~~

[(j)] ~~[All information]~~ required on the form that applies to the subject matter of the order:

[a][1-] Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, for a QDRO concerning the division of marital property that is completed pre-retirement;

[b][2-] Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, for a QDRO concerning the division of marital property that is completed post-retirement;

[c][3-] Form 6436, Qualified Domestic Relations Order for Child Support, for a QDRO concerning the order of child support;

[d][4-] Form 6437, Qualified Domestic Relations Order for Child

Support by an Administrative Agency, for a QDRO concerning child support when completed by an Administrative Agency with the statutory authority to complete it; or

[e][5-] Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance, for a QDRO concerning alimony or maintenance.

[Section 4-]

[(1)] ~~[The participant shall sign and submit a Form 6433, Authorization for Release of Information and Request for Information for Qualified Domestic Relations Order to obtain the information necessary for the Court to calculate the amount due to the alternate payee for purposes of the QDRO. The participant shall provide the retirement systems with the following information:]~~

[(a)] ~~[The participant's and the alternate payee's Social Security numbers;]~~

[(b)] ~~[The participant's and the alternate payee's dates of birth;]~~

[(c)] ~~[Date of marriage;]~~

[(d)] ~~[Date of divorce;]~~

[(e)] ~~[The participant's and the alternate payee's mailing addresses; and]~~

[(f)] ~~[The addresses of the participant's and the alternate payee's legal counsel, if any.]~~

[(2)] ~~[If the participant has not yet retired, the retirement systems shall provide as of the date of the divorce, the participant's:]~~

[(a)] ~~[Accumulated contributions and interest contributed and earned during the marriage in each system in which the participant has marital service;]~~

[(b)] ~~[Total number of months of service credit earned and purchased as of the effective date of the divorce or upon the request in each system in which the participant has service;]~~

[(c)] ~~[The number of months of service credit earned and purchased during the marriage in each system in which the participant has marital service;]~~

[(d)] ~~[The hypothetical monthly retirement benefit pursuant to KRS 61.595 the participant would receive when the participant is eligible for an unreduced retirement benefit based on the final compensation and service credit as of the effective date of the divorce or upon the request in each system in which the participant has marital service; and]~~

[(e)] ~~[The hypothetical actuarial refund payment option or lump-sum refund payment the participant would receive when the participant is eligible for an unreduced benefit based on the final compensation and service credit as of the effective date of the divorce or upon the request in each system in which the participant has marital service.]~~

[(3)] ~~[The retirement systems shall use the participant's final compensation as of the date of the divorce or upon the request and the service credit accrued by the participant during the marriage or upon the request when calculating the participant's projected basic monthly retirement allowance and the projected actuarial refund or lump-sum refund payment.]~~

[(4)] ~~[If the participant retired prior to the effective date of the divorce, the retirement systems shall provide the participant's:]~~

[(a)] ~~[Current monthly retirement benefit in each system from which the participant is receiving a monthly retirement benefit;]~~

[(b)] ~~[Total number of months of service credit earned and purchased during the marriage in each system from which the participant is receiving a monthly retirement benefit; and]~~

[(c)] ~~[Total number of months of service credit in each system from which the participant is receiving a monthly retirement benefit.]~~

[(5)] ~~[The alternate payee may request and obtain the information necessary for the court to calculate the amount due to the alternate payee for purposes of the QDRO by submitting a Form 6433, Authorization for Release of Information and Request for Information for Qualified Domestic Relations Orders, and an attached court issued subpoena or order compelling the release of the requested information:]~~

[(6)] ~~[If information other than the information supplied by the retirement systems in accordance with subsections (2) through (4) of this section is required:]~~

[(a)] ~~[The participant shall submit to the systems an additional signed request for information in writing; or]~~

VOLUME 50, NUMBER 11– May 1, 2024

~~[(b)] [The alternate payee shall submit to the systems an additional request and an attached court issued subpoena or order compelling the release of the requested information.]~~

~~[(c)] [Requests for information other than the information supplied by the retirement systems in accordance with subsections (2) through (4) of this section shall be answered pursuant to KRS 61.661.]~~

Section 5. Pre-retirement QDROs for the Division of Marital Property.

(1) Only a QDRO for the purpose of the division of marital property shall be filed prior to a participant's effective retirement date.

(2) A QDRO issued for purpose of the division of the participant's retirement account, pursuant to a divorce entered prior to the participant's effective retirement date, shall be filed prior to retirement on a valid Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property. A Form 6434 entered or initially filed after the participant's retirement date shall be in compliance with Section 6 of this administrative regulation.

(3) The effective date of the Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, shall be the participant's effective retirement date as provided in KRS 61.590 and 78.545, or if the Form 6434 is approved following the participant's effective retirement date, the month following the month the Form 6434 was approved for enforcement by the agency.

(a) If the participant receives a lump-sum payment representing monthly retirement benefits paid retroactively to the participant's effective retirement date, the alternate payee shall receive a portion of the lump sum payment as provided on the Form 6434.

(b) If the participant is not receiving a retirement benefit, then the alternate payee shall not receive a retirement benefit.

(4)

(a) A Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, filed on or after July 1, 2024 shall specify the amount to be paid to the alternate payee. The court shall use one (1) of the following methods to calculate the amount to be paid to the alternate payee:

1. A dollar amount;
2. A percentage of the participant's marital service; or
3. An alternative percentage of the participant's retirement payment option or accumulated account balance refund.

(b) If the court specifies a dollar amount to be paid to the alternate payee, then the court shall complete all fields to indicate:

1. A monthly dollar amount if the participant elects a monthly retirement allowance;
2. A one (1) time lump-sum dollar amount if the participant elects the actuarial equivalent refund payment option pursuant to KRS 61.635(11) and 78.545;
3. A lump-sum dollar amount from participant's refund of his or her accumulated account balance if the participant elects to terminate his membership pursuant to KRS 61.625 and 78.545; and
4. A one (1) time lump-sum payment and a monthly dollar amount if the participant elects a partial lump-sum payment option pursuant to KRS 61.635(12) and 78.545.

(c)

1. If the court specifies that a percentage of the participant's marital service be paid to the alternate payee, the percentage shall be determined based on the following table:

Months of marital service in which participant was a contributing member of the system affected by the QDRO	$\times 100 \div 2 =$	Percentage of benefit due to the alternate payee
Participant's total service credit used to calculate the retirement payment option		

2. The agency shall determine the marital service based on the marital period as provided by the court in the QDRO;

3. The participant's total service credit shall be determined by the agency prior to the participant's filing of a request for a refund of the accumulated account balance, and shall be the total number of months of service credit used to calculate the participant's retirement payment options or the total number of months of service credit the

participant had at the time of the request for refund of the accumulated account balance; and

4. To determine the amount due to the alternate payee, the above percentage shall be applied to the following as appropriate:

a. The participant's basic monthly retirement allowance pursuant to KRS 16.576, 16.577, 16.583, 61.559, 61.595, 61.597, 78.5510, 78.5512, 78.5514, and 78.5516;

b. The participant's actuarial equivalent refund;

c. The participant's refund of his or her accumulated account balance; or

d. The one (1) time lump-sum payment, and to either the reduced monthly retirement allowance payment with no survivor rights option elected by the participant pursuant to KRS 61.635(12)(a) and 78.545, or if the participant elected a payment option with survivor rights pursuant to KRS 61.635(12)(b) and 78.545, the correlating reduced monthly retirement allowance payment without survivor rights.

(d)

1. If the court specifies that an alternative percentage of the participant's retirement payment option or accumulated account balance refund be paid to the alternate payee, the payment to the alternate payee shall not exceed the participant's:

a. Retirement allowance amount elected at retirement;

b. Actuarial equivalent refund pursuant to KRS 61.635(11) and 78.545; or

c. Refund of his or her accumulated account balance pursuant KRS 61.625 and 78.545.

2. To determine the amount due to the alternate payee, the percentage indicated on the QDRO shall be applied to the following as appropriate:

a. The participant's basic monthly retirement allowance pursuant to KRS 16.576, 16.577, 16.583, 61.559, 61.595, 61.597, 78.5510, 78.5512, 78.5514, and 78.5516;

b. The participant's actuarial equivalent refund;

c. The participant's refund of his or her accumulated account balance; or

d. The one (1) time lump-sum payment, and to either the reduced monthly retirement allowance payment with no survivor rights option elected by the participant pursuant to KRS 61.635(12)(a) and 78.545, or if the participant elected a payment option with survivor rights pursuant to KRS 61.635(12)(b) and 78.545, the correlating reduced monthly retirement allowance payment without survivor rights.

(5)

(a) If a Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, is filed prior to July 1, 2024 and the participant elects to receive a partial lump sum payment option pursuant to KRS 61.635(12) and 78.545, the alternate payee:

1. Shall receive a dollar amount or percentage applied to the participant's basic monthly retirement allowance; and

2. Shall not receive a portion of the partial lump-sum payable to the participant.

(b) A Form 6434 filed prior to July 1, 2024 shall specify the amount to be paid to the alternate payee. The court shall use one (1) of the following methods to calculate the amount to be paid to the alternate payee:

1. A dollar amount;

2. A percentage of the participant's marital service; or

3. An alternative percentage of the participant's retirement payment option or accumulated account balance refund.

(c) If the court specifies a dollar amount to be paid to the alternate payee, then the court shall complete all fields to indicate:

1. A monthly dollar amount if the participant elects a monthly retirement allowance, including the reduced monthly retirement allowance payable under a partial lump-sum option pursuant to KRS 61.635(12) and 78.545;

2. A one (1) time lump-sum dollar amount if the participant elects the actuarial equivalent refund payment option pursuant to KRS 61.635(11) and 78.545; and

3. A lump-sum dollar amount from participant's refund of his or her accumulated account balance if the participant elects to terminate his membership pursuant to KRS 61.625 and 78.545.

(d)1. If the court specifies that a percentage of the participant's

marital service be paid to the alternate payee, the percentage shall be determined based on the following table:

<p>Months of marital service in which participant was a contributing member of the system affected by the QDRO</p> <p>Participant's total service credit used to calculate the retirement payment option</p>	$\times 100 \div 2 =$	<p>Percentage of benefit due to the alternate payee</p>
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2. The agency shall determine the marital service based on the marital period as provided by the court in the QDRO;

3. The participant's total service credit shall be determined by the agency prior to the participant's filing of a request for a refund of the accumulated account balance, and shall be the total number of months of service credit used to calculate the participant's retirement payment options or the total number of months of service credit the participant had at the time of the request for refund of the accumulated account balance; and

4. To determine the amount due to the alternate payee, the above percentage shall be applied to the following as appropriate:

a. The participant's basic monthly retirement allowance pursuant to KRS 16.576, 16.577, 16.583, 61.559, 61.595, 61.597, 78.5510, 78.5512, 78.5514, and 78.5516;

b. The participant's actuarial equivalent refund; or

c. The participant's refund of his or her accumulated account balance.

(e)1. If the court specifies that an alternative percentage of the participant's retirement payment option or accumulated account balance refund be paid to the alternate payee, the payment to the alternate payee shall not exceed the participant's:

a. Retirement allowance amount elected at retirement;

b. Actuarial equivalent refund pursuant to KRS 61.635(11) and 78.545; or

c. Refund of his or her accumulated account balance pursuant to KRS 61.625 and 78.545.

2. To determine the amount due to the alternate payee, the percentage indicated on the QDRO shall be applied to the following as appropriate:

a. The participant's basic monthly retirement allowance pursuant to KRS 16.576, 16.577, 16.583, 61.559, 61.595, 61.597, 78.5510, 78.5512, 78.5514, and 78.5516;

b. The participant's actuarial equivalent refund; or

c. The participant's refund of his or her accumulated account balance.

Section 6. Post Retirement QDRO for the Division of Marital Property.

(1) A QDRO issued for purposes of division of the participant's retirement account pursuant to a divorce decree entered after the participant's effective retirement date, or initially filed following the participant's effective retirement date, shall be filed on a valid Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property.

(2) The Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, shall specify the amount to be paid to the alternate payee. The court shall use one (1) of the following methods to calculate the amount to be paid to the alternate payee:

(a) A monthly dollar amount;

(b)

1. A percentage of the participant's selected monthly retirement benefit attributable to the marital service, which shall be determined based on the following table:

<p>Months of marital service in which participant was a contributing member of the system affected by the QDRO</p> <p>Participant's total service credit used to calculate the retirement payment option</p>	$\times 100 \div 2 =$	<p>Percentage of benefit due to the alternate payee</p>
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2. The agency shall determine the marital service based on the marital period as provided by the court in the QDRO; or

(c) An alternative percentage of the participant's selected monthly retirement benefit in the system or systems affected by the QDRO.

Section 7. Child Support QDROs.

(1) A QDRO issued for purposes of payment of child support shall be filed on:

(a) A valid Form 6436, Qualified Domestic Relations Order for Child Support entered by a court of competent jurisdiction; or

(b) A valid Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, completed by an administrative agency with statutory authority to issue an order for child support in accordance with the laws governing child support.

(2) The QDRO shall specify the monthly dollar amount of child support to be paid.

(3) The agency shall remit the payment for child support to the centralized registry established pursuant to KRS 205.712 and defined in 921 KAR 1:001, Section 1(5).

(a) The payment for child support shall be made payable to "Kentucky Child Support Enforcement".

(b) The participant's name and Social Security number shall be noted on the payment.

(4) The agency shall only accept a Form 6436, Qualified Domestic Relations Order for Child Support, or a Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, if the participant is retired and is receiving a monthly retirement benefit.

Section 8. Alimony or Maintenance QDROs.

(1) A QDRO issued for purposes of payment of alimony or maintenance pursuant to KRS 403.200 shall be filed on a valid Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance completed by a court of competent jurisdiction in accordance with the laws governing alimony or maintenance.

(2) The QDRO shall specify the monthly dollar amount or percentage of the participant's monthly retirement allowance to be paid to the alternate payee for alimony or maintenance.

(3) The agency shall only accept a Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance if the participant is retired and is receiving a monthly retirement allowance.

Section 9. Filing a QDRO.

(1) A QDRO shall be on the form incorporated by reference in this administrative regulation that applies to the subject matter of the order.

(a)[(2)] A QDRO shall be signed by the judge of a court with jurisdiction over the case, and entered and certified by the Clerk of the Court, except as provided in paragraph (b) of this subsection.

(b) The Form 6437, Qualified Domestic Relations Order for Payment of Child Support by an Administrative Agency, shall be signed[er] by the head of the administrative agency, or his or her[their] designee, with statutory authority to issue a QDRO.

(2) A valid copy of the QDRO that meets the requirements of subsection (1) of this section shall be filed.

(3)

(a) No one shall file[A QDRO shall be entered and certified by the Clerk of the Court or by the head of the administrative agency, or their designee, with statutory authority to issue a QDRO.]

[(4)] [The participant, alternate payee, or their legal counsel shall submit a copy of the entered and certified QDRO to the retirement systems.]

[(5)]

[(a)] [The participant, alternate payee, or their legal counsel shall not submit] a QDRO that is before an appellate court and is not final.

(b) The agency[retirement systems] shall not have responsibility or liability for payments made pursuant to a QDRO filed[submitted] in violation of this subsection that was altered or dissolved by an order of an appellate court of competent jurisdiction.

[(4)][(6)] A fee of fifty (50) dollars shall be submitted by[The participant, alternate payee, or their legal counsel shall submit a] certified check or money order in the amount of fifty (50) dollars made payable to the Kentucky State Treasurer as a nonrefundable processing fee with a filed[the] QDRO, except as provided in paragraph (b) or (c) of this subsection. The agency[retirement systems] shall not review the QDRO to approve for enforcement unless the fee is submitted with the QDRO.

VOLUME 50, NUMBER 11– May 1, 2024

(a) ~~[A QDRO shall provide who shall pay the fee, including if the fee is to be divided between the participant and the alternate payee.]~~ Only one (1) certified check or money order shall be submitted in payment of the fee.

(b) There shall not be a fee required for ~~[submission of]~~ a Form 6436, Qualified Domestic Relations Order for Child Support, or a Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency.

(c) If the dissolution of marriage action was filed in forma pauperis, then the ~~agency[retirement systems]~~ shall waive the filing fee. A copy of the order allowing the dissolution of marriage action to be filed in forma pauperis shall be ~~filed[submitted to the retirement systems]~~ with the valid entered and certified QDRO.

~~(5)(a)(7)~~ If the ~~agency[retirement systems]~~ determines that the QDRO does not comply with KRS ~~16.645, 61.690, 78.545, 26 U.S.C. 414(p)~~, or this administrative regulation, the participant, alternate payee, or their legal counsel shall have until the end of day ninety (90) calendar days from the date the ~~agency's[retirement systems]~~ notification of the deficiency was ~~provided[mailed]~~, as ~~detailed[provided]~~ in ~~Section 11(4)[Section 6(4)]~~ of this administrative regulation, to ~~file[submit]~~ a corrected QDRO without an additional fee.

(b) If a corrected valid QDRO is not ~~filed[submitted]~~ by the end of ~~day[within]~~ ninety (90) calendar days from ~~of]~~ the date of notification, then ~~[the participant, alternate payee, or their legal counsel shall be required to submit]~~ an additional nonrefundable fifty (50) dollar fee with any new or corrected ~~[a]~~ QDRO ~~filed[submitted]~~ after the ninety (90) calendar days shall be required.

(c) If the participant requests and receives a refund of his or her accumulated account balance during the ninety (90) calendar day period described in this subsection, and a corrected QDRO is filed after the participant has received a refund of his or her accumulated account balance, then the QDRO shall not be valid and enforceable by the agency.

Section 10. Deposit of Fees. All fees collected pursuant to this administrative regulation shall be deposited in the Retirement Allowance Account established in KRS 61.580 and 78.640.

Section 11.[Section 6.] Determining if a QDRO is Approved for Enforcement.

(1) The ~~agency[retirement systems]~~ shall determine if the QDRO is complete and qualifies as a valid QDRO pursuant to KRS ~~16.645, 61.690, 78.545, 26 U.S.C. 414(p)~~, and this administrative regulation.

(a) A QDRO shall not be effective until the ~~agency[retirement systems]~~ has determined that it complies with KRS ~~16.645, 61.690, 78.545, 26 U.S.C. 414(p)~~, and this administrative regulation, and ~~approves[has approved]~~ the QDRO for enforcement.

(b) ~~[The retirement systems shall provide notification of its determination within ninety (90) days of the submission of the QDRO during the time period from July 15, 2010 until July 14, 2011.]~~

~~[(e)]~~ The ~~agency[retirement systems]~~ shall provide notification of its determination by the end of day[within] forty-five (45) calendar days from the ~~date[of the submission of]~~ the QDRO is filed on or after July 15, 2011.

(2) The ~~agency[retirement systems]~~ shall provide notification to[notify] the participant; the participant's legal counsel, if known; the alternate payee; and alternate payee's legal counsel, if known, that the QDRO has been approved for enforcement.

(a) If the participant has not yet retired, the ~~agency[retirement systems]~~ shall place an otherwise valid and approved ~~[the]~~ QDRO on file until the participant files a notification of retirement or an application for a refund of his or her accumulated account balance.

(b) If the participant has retired, the ~~agency[retirement systems]~~ shall begin to enforce the QDRO the month after it is approved for enforcement by the ~~agency[retirement systems]~~.

(3)(a) Except as provided in paragraph (c) of this subsection, the ~~[The]~~ alternate payee shall complete and file a valid ~~[submit a completed]~~ Form 6130, Authorization for Deposit of Retirement Payment, or if he or she does not have an account with a financial institution, a valid Form 6135, Payment of Retirement Payment by Check, prior to receiving payment under a QDRO.

(b) If the alternate payee has not filed a valid ~~[submitted a completed]~~ Form 6130, ~~[Authorization for Deposit of Retirement Payment,]~~ or a valid Form 6135, ~~[Payment of Retirement Payment by Check,]~~ by the last day of the month before the first payment under the QDRO is due to be paid to the alternate payee, the ~~agency[retirement systems]~~ shall segregate ~~[-]~~

~~[(a)]~~ ~~[Segregate]~~ and hold the alternate payee's payments~~[-]~~

~~[(b)]~~ ~~[Hold the segregated amount]~~ for a period of no more than eighteen (18) calendar months, with the period beginning on the first day of the month following the date the first payment was required by the QDRO approved for enforcement by the ~~agency[retirement systems]~~. The agency shall:

1. [(e)] Pay the segregated amount to the alternate payee, if a valid Form 6130, ~~[Authorization for Deposit of Retirement Payment,]~~ or a valid Form 6135, ~~[Payment of Retirement Payment by Check,]~~ is ~~filed[submitted]~~ within the eighteen (18) calendar month hold period;

2. [(d)] Pay the segregated amount to the participant, if a valid Form 6130, ~~[Authorization for Deposit of Retirement Payment,]~~ or a valid Form 6135, ~~[Payment of Retirement Payment by Check,]~~ is not ~~filed[submitted]~~ within the eighteen (18) calendar month hold period; or

3. [(e)] Apply the QDRO prospectively only, if after the eighteen (18) calendar month hold period expires a valid Form 6130, ~~[Authorization for Deposit of Retirement Payment,]~~ or a valid Form 6135, ~~[Payment of Retirement Payment by Check,]~~ is ~~filed[submitted]~~.

(c) An alternate payee listed on a valid Form 6436, Qualified Domestic Relations Order for Child Support, or a valid Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency shall not file a Form 6130 or a Form 6135.

(4)

(a) If the ~~agency[retirement systems]~~ determines that the QDRO does not comply with KRS ~~16.645, 61.690, 78.545, 26 U.S.C. 414(p)~~, or this administrative regulation, the ~~agency[retirement systems]~~ shall provide written notification to[notify] the participant, the participant's legal counsel, if known, the alternate payee, and alternate payee's legal counsel, if known, detailing ~~[that]:~~

1. [(a)] The ~~agency[retirement systems]~~ has determined the QDRO does not comply with KRS ~~16.645, 61.690, 78.545, 26 U.S.C. 414(p)~~, or this administrative regulation;

2. [(b)] The reason for the determination that the QDRO does not comply with KRS ~~16.645, 61.690, 78.545, 26 U.S.C. 414(p)~~, or this administrative regulation; and

3. [(e)] The changes necessary to make the QDRO in compliance with KRS ~~16.645, 61.690, 78.545, 26 U.S.C. 414(p)~~, and this administrative regulation.

(b) If the sole deficiency is that the QDRO is not entered or certified, the agency shall segregate and hold any payments due the alternate payee pursuant to the QDRO for up to eighteen (18) calendar months, with the period beginning the first day of the month after the date the QDRO was found to be noncompliant in accordance with this subsection.

1. If within the eighteen (18) calendar month hold period, the entered and certified QDRO is filed, the agency shall pay the segregated amount to the alternate payee; or

2. When the eighteen (18) calendar month hold period ends, if the entered and certified QDRO is not on file, the agency shall pay the segregated amount to the participant.

3. If an entered and certified QDRO is filed after the eighteen (18) calendar month hold period expires, the QDRO shall only be applied prospectively.

Section 12. Multiple QDROs.

(1) If there are multiple QDROs on file for a participant's account, the QDROs shall be administered in the following order:

(a) QDROs for the Division of Marital Property;

(b) QDROs for Child Support;

(c) QDROs for Alimony/Maintenance.

(2) If multiple QDROs for the Division of Marital Property are on file, they shall be administered in the order of approval by the agency.

(3) If multiple QDROs for Child Support are on file, they shall be

administered in the order of approval by the agency.

(4) If multiple QDROs for Alimony/Maintenance are on file, they shall be administered in the order of approval by the agency.

(5) The agency shall not administer a QDRO if enforcement of the QDRO would result in the total amount of payments due to the alternate payees to exceed the participant's monthly retirement benefit under the multiple QDROs approved for enforcement by the agency. The agency shall notify the participant and alternate payees if a QDRO cannot be administered due to the exhaustion of the participant's monthly retirement benefit.

Section 13. Multiple Retirement Accounts. For participants who retired and subsequently reemployed with an employer in a regular full-time position prior to September 1, 2008, new QDROs affecting the participant's retirement account shall be administered as follows:

(1) A valid Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, that is filed and approved for enforcement by the agency shall be applied to any retirement account of the participant from which the participant has not retired.

(2) Any of the following valid QDROs that are filed and approved for enforcement by the agency shall be applied to any retirement account of the participant from which the participant has retired:

(a) Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property;

(b) Form 6436 Qualified Domestic Relations Order for Child Support;

(c) Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency; or

(d) Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance.

Section 14.[Section 7.] Amending or terminating QDRO's.

(1) If a QDRO approved for enforcement by the agency[and on file at the retirement systems] is amended or terminated, the participant, alternate payee, or their legal counsel shall file[submit]

(a) The[the] amended entered and certified valid QDRO as provided in Section 9 of this administrative regulation; or

(b) The[an] entered and certified order from a court of competent jurisdiction terminating the QDRO[to the retirement systems as provided in Section 5 of this administrative regulation].

(2) Except as provided in paragraph (a) or (b) of this subsection, a fee[The participant, alternate payee, or their legal counsel shall submit a certified check or money order in the amount] of twenty-five (25) dollars shall be submitted by certified check or money order made payable to the Kentucky State Treasurer as a nonrefundable processing fee for the amended QDRO or order terminating the QDRO. The agency[retirement systems] shall not review the amended QDRO or order terminating the QDRO unless the fee is submitted with the amended QDRO or order terminating the QDRO.

(a) If the dissolution of marriage action was filed in forma pauperis, then the agency[retirement systems] shall waive the filing fee. A copy of the order allowing the dissolution of marriage action to be filed in forma pauperis shall be filed[submitted to the retirement systems] with the entered and certified valid QDRO.

(b) There shall not be a fee required for[submission of] a Form 6436, Qualified Domestic Relations Order for Child Support, or a Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency.

(3) The agency[retirement systems] shall review the amended QDRO using the same procedures found in Section 11[Section 6] of this administrative regulation.

(4) If the agency[retirement systems] determines that the amended QDRO does not comply with KRS 16.645, 61.690, 78.545, 26 U.S.C. 414(p), and this administrative regulation, or that the order terminating the QDRO is insufficient, the participant, alternate payee, or their legal counsel shall have until the end of day ninety (90) calendar days from the date of the agency's[retirement systems] notification of the deficiency, as prescribed in Section 11(4) of this administrative regulation, was provided[mailed as provided in Section 6(4) of this administrative regulation] to file[submit] a corrected amended valid QDRO or a corrected order

terminating the QDRO. If a corrected amended valid QDRO or a corrected order terminating the QDRO is not filed by the end of day[submitted within] ninety (90) calendar days from[of] the date of notification, then[the participant, alternate payee, or their legal counsel shall be required to submit] an additional nonrefundable twenty-five (25) dollar fee shall be submitted with an amended valid QDRO or order terminating the QDRO that is filed[submitted] after the ninety (90) calendar day period[days].

(5) An amended valid QDRO or an order terminating a QDRO approved by the agency[retirement systems] shall only be administered prospectively.

[Section 8.] [All fees collected pursuant to this administrative regulation shall be deposited in the Retirement Allowance Account established in KRS 61.580.]

[Section 9.] [(1)] [A QDRO issued for purposes of division of the participant's retirement account pursuant to a divorce entered prior to the participant's effective retirement date shall be submitted on the Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, unless the QDRO is initially submitted following the participant's retirement date.]

[(2)] [The effective date of the Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, shall be the participant's effective retirement date as provided in KRS 61.590 or, if the Form 6434 is approved following the participant's effective retirement date, the month following the month the Form 6434 was approved for enforcement by the retirement systems. If the participant receives a lump sum payment representing monthly retirement benefits paid retroactively to the participant's effective retirement date, the alternate payee shall receive a portion of the lump sum payment as provided in the Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property. If the participant is not receiving a retirement benefit, then the alternate payee shall not receive a retirement benefit.]

[Section 10.] [The Form 6434, Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property, shall specify the amount to be paid to the alternate payee. The court shall use one (1) of the following methods to calculate the amount to be paid to the alternate payee:]

[(1)] [A monthly dollar amount if the participant elects a monthly retirement benefit or a one (1) time lump sum dollar amount if the participant selects the actuarial refund payment option pursuant to KRS 61.635(11) at the participant's retirement, or a lump sum dollar amount from participant's refund of contributions and interest if the participant elects to terminate his membership pursuant to KRS 61.625;]

[(2)] [A percentage equal to one-half of the participant's basic monthly retirement benefit attributable to any service credit earned or purchased during the marriage pursuant to KRS 61.595 or 16.576, actuarial refund pursuant to KRS 61.635(11), or lump sum payment pursuant to KRS 61.625, which shall be determined as follows:]

[(a)] [The numerator of the fraction shall be the number of months during which the participant was both a contributing member of the retirement systems affected by the QDRO and married to the alternate payee, including service purchased during the marriage. The retirement systems shall utilize the marital period as provided by the court in the QDRO;]

[(b)] [The denominator of the fraction, which shall be determined by the retirement system as of the participant's effective retirement date or the participant's termination date prior to the participant's filing of a request for a refund of contributions and interest, shall be the total number of months of service credit used to calculate the participant's retirement payment options or the total number of months of service credit the participant had at the time of the request for refund of contributions and interest; and]

[(c)] [The resulting fraction shall be converted to a percentage, which shall be divided by two (2) to determine the percentage of the benefit due to the alternate payee; or]

VOLUME 50, NUMBER 11– May 1, 2024

~~[(3)] [An alternative percentage of the participant's basic monthly retirement benefit pursuant to KRS 61.595 or 16.576, actuarial refund pursuant to KRS 61.635(11), or lump-sum payment pursuant to KRS 61.625, in the system or systems affected by the QDRO.]~~

Section 15.[Section 14.] Disability retirement benefits for members participating prior to August 1, 2004.

(1) The provisions of this section shall only apply to participants who were participating prior to August 1, 2004.

(2) If a participant ~~with~~who was participating prior to August 1, 2004, and who has a QDRO on file ~~at the retirement systems~~ is awarded disability retirement benefits pursuant to KRS 16.582, 61.600, ~~or~~ 61.621, 78.545, 78.5522, or 78.5524, the alternate payee's portion of the participant's disability retirement benefit shall be calculated as follows:

(a) If the QDRO ordered that the alternate payee be paid a specific dollar amount from the participant's retirement benefit as provided in Section 5(5)(a), Section 7, or Section 8[Section 4(4)] of this administrative regulation, the agency[retirement system] shall pay the specific dollar amount regardless of any enhancement of the participant's retirement benefit; or

(b) If the QDRO ordered that the alternate payee be paid a percentage of the participant's retirement benefit as provided in Section 5(5)(b)-(c) or Section 8[Section 4(2) and (3)] of this administrative regulation, the agency[retirement systems] shall not use the service credit added to the participant's account pursuant to KRS 16.582(5)(a), ~~or~~ 61.605(1), 78.5522(6), or 78.5524(5) when calculating the amount the alternate payee is due under the QDRO on file at the agency[retirement systems].

~~[(2)][(a)]~~ If the participant's disability retirement benefits are discontinued pursuant to KRS 61.610, ~~and~~ 61.615, 78.5526, and 78.5528, then:

~~(a) If~~ and the participant does not begin receiving~~is not eligible to receive~~ early retirement benefits, the alternate payee's payment shall be discontinued.

~~(b) If~~ ~~the participant's disability retirement benefits are discontinued pursuant to KRS 61.610 and 61.615 and~~ the participant's benefit is changed to the participant's early retirement benefit, the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO.

(c) If the participant's disability retirement benefits are reinstated pursuant to KRS 61.615 and 78.5528, the alternate payee's payment shall be reinstated.

~~(d) If the participant later begins receiving early retirement benefits~~ while his disability retirement benefits are discontinued, the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO.

(e) If the participant later begins receiving retirement benefits at normal retirement age, the alternate payee shall receive payment pursuant to subsection (2)(a)-(b) of this section.

Section 16.[Section 12.] Disability retirement benefits for members participating on or after August 1, 2004.

(1) The provisions of this section shall only apply to participants whose participation began on or after August 1, 2004.

(2) If a participant ~~whose participation began on or after August 1, 2004, and~~ who has a QDRO on file ~~at the retirement systems~~ is awarded disability retirement benefits pursuant to KRS 16.582, 61.600, ~~or~~ 61.621, 78.545, 78.5522, or 78.5524 the alternate payee's portion of the participant's disability retirement benefit shall be calculated as follows:

(a) If the QDRO ordered that the alternate payee be paid a specific dollar amount from the participant's retirement benefit as provided in Section 5(5)(a), Section 7, or Section 8[Section 4(4)] of this administrative regulation, the agency[retirement system] shall pay the specific dollar amount regardless of any enhancement of the participant's retirement benefit; or

(b) If the QDRO ordered that the alternate payee be paid a percentage of the participant's retirement benefit as provided in Section 5(5)(b)-(c) or Section 8[Section 4(2) and (3)] of this administrative regulation, the agency[retirement systems] shall use the participant's benefit pursuant to KRS 16.582(5)(b) and (c).~~or~~

61.605(2), 78.5522(6)(b) and (c), or 78.5524(5)(b) and (c) when calculating the amount the alternate payee is due under the QDRO on file ~~at the retirement systems~~.

~~[(3)][(a)]~~ If the participant's disability retirement benefits are discontinued pursuant to KRS 61.610, ~~and~~ 61.615, 78.5526, and 78.5528, then:

~~(a) If~~ and the participant does not begin receiving~~is not eligible to receive~~ early retirement benefits, the alternate payee's payment shall be discontinued.

~~(b) If~~ ~~the participant's disability retirement benefits are discontinued pursuant to KRS 61.610 and 61.615 and~~ the participant's benefit is changed to the participant's early retirement benefit, the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO.

(c) If the participant's disability retirement benefits are reinstated pursuant to KRS 61.615 and 78.5528, the alternate payee's payment shall be reinstated.

~~(d) If the participant later begins receiving early retirement benefits~~ while his disability retirement benefits are discontinued, the alternate payee shall receive payment from the early retirement benefit pursuant to the QDRO.

(e) If the participant later begins receiving retirement benefits at normal retirement age, the alternate payee shall receive payment pursuant to subsection (2)(a)-(b) of this section.

~~[Section 13.] [A QDRO issued for purposes of division of the participant's retirement account pursuant to a divorce decree entered after the participant's effective retirement date, or initially submitted to the retirement system following the participant's effective retirement date, shall be submitted on the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property.]~~

~~[Section 14.] [(4)] [The Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, shall specify the amount to be paid to the alternate payee.]~~

~~[(2)] [The court shall use one (1) of the following methods to calculate the amount to be paid to the alternate payee:]~~

~~[(a)] [As a monthly dollar amount:]~~

~~[(b)] [As a percentage of the participant's selected monthly retirement benefit, which shall be determined as follows:]~~

~~[1.] [The numerator of the fraction shall be the number of months during which the participant was both a contributing member of the retirement systems affected by the QDRO and married to the alternate payee, including service purchased during the marriage. The retirement systems shall utilize the marital period as provided by the court in the QDRO:]~~

~~[2.] [The denominator of the fraction, shall be the total number of months of service credit used to calculate the participant's retirement payment option; and]~~

~~[3.] [The resulting fraction shall be converted to a percentage, which shall be divided by two (2) to determine the percentage of the benefit due to the alternate payee; or]~~

~~[(c)] [An alternative percentage of the participant's selected monthly retirement benefit in the system or systems affected by the QDRO:]~~

~~[Section 15.] [(1)] [If the retirement systems determines that the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, does not comply with KRS 61.690, 26 U.S.C. 414(p), or this administrative regulation, the retirement systems shall:]~~

~~[(a)] [Segregate and hold the amount that would have been payable to the alternate payee if the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, had been in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation:]~~

~~[(b)] [Hold the segregated amount for a period of no more than the eighteen (18) month hold period. The eighteen (18) month hold period begins on the date the first payment would be required by the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, that the retirement systems determined~~

was not in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation;]

~~[(c)] [If a Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, is submitted and determined to be in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation within the eighteen (18) month hold period, pay the segregated amount to the alternate payee;]~~

~~[(d)] [If no subsequent Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, is submitted and determined to be in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation within the eighteen (18) month hold period, pay the segregated amount to the participant; or]~~

~~[(e)] [If after the eighteen (18) month hold period a subsequent Form 6435, Post-Retirement Qualified Domestic Relations Order, is submitted and determined to be in compliance with KRS 61.690, 26 U.S.C. 414(p), and this administrative regulation, the Form 6435, Post-Retirement Qualified Domestic Relations Order shall only be applied prospectively.]~~

~~[(2)] [The effective date of the first payment to the alternate payee shall be the month following the month the Form 6435, Post-Retirement Qualified Domestic Relations Order for Division of Marital Property, is approved for enforcement by the retirement systems.]~~

[Section 16.] [(1)] [A QDRO issued for purposes of payment of child support shall be submitted on the Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency.]

[(2)] [The monthly dollar amount of child support to be paid by the participant shall be determined by a court of competent jurisdiction or an administrative agency with statutory authority to issue an order for child support in accordance with the laws governing child support.]

[(3)] [The retirement systems shall remit the payment for child support to the centralized registry established pursuant to KRS 205.712 and defined in 921 KAR 1:001, Section 1(5).]

[(a)] [The payment for child support shall be made payable to "Kentucky Child Support Enforcement".]

[(b)] [The participant's name and Social Security number shall be noted on the payment.]

~~[(4)] [An alternate payee listed on the Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency shall not be required to submit a Form 6130, Authorization for Deposit of Retirement Payment or a Form 6135, Payment of Retirement Payment by Check.]~~

~~[(5)] [The retirement systems shall not accept a Form 6436, Qualified Domestic Relations Order for Child Support, or a Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, if the participant has not retired and is not receiving a monthly retirement benefit.]~~

[Section 17.] [(1)] [A QDRO issued for purposes of payment of alimony or maintenance pursuant to KRS 403.200 shall be submitted on the Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance.]

[(2)] [The amount of alimony or maintenance to be paid by the participant shall be determined by a court of competent jurisdiction in accordance with the laws governing alimony or maintenance.]

[(3)] [The retirement systems shall not accept a Form 6438, Qualified Domestic Relations Order for Alimony/Maintenance if the participant has not retired and is not receiving a monthly retirement benefit.]

Section 17. [Section 18.] Events That End or Amend a QDRO for Division of Marital Property, Alimony, or Maintenance.

(1) The participant, the alternate payee, or legal counsel for either party shall be responsible for notifying the agency[retirement systems in writing] of an event that causes payments to the alternate payee under a QDRO for Division of Marital Property or a QDRO for

Alimony/Maintenance to end in accordance with KRS 16.645, 61.690(7), and 78.545.

(2) In the event of the participant or alternate payees' death, the QDRO on file shall be void and payment shall not be made to the alternate payee or his or her estate.

(3)[(2)] The agency[retirement systems] shall segregate and hold any payments due the alternate payee[pending submission of proof of the event that causes payments to the alternate payee to end is provided by the participant] beginning the month after the agency's[retirement systems] receipt of the[participant's written] notification until one (1) of the following occurs:[-]

(a)[(3)] The participant, alternate payee, or either party's legal counsel files[-] shall submit a copy of the alternate payee's marriage certificate, the alternate payee's death certificate, or other reliable documentation as] proof of the event that causes payments to the alternate payee[the participant's alimony or maintenance] to end; or[-]

(b) The agency independently verifies the event that causes payments to the alternate payee to end.

(4) As applicable, the[The] participant, alternate payee, or either party's legal counsel shall file[submit] a copy of the alternate payee's marriage certificate, the alternate payee's or participant's death certificate, or other reliable documentation as determined by the agency as proof of the event that causes payment to the alternate payee[the participant's payments pursuant to the division of marital property] to end.

(5) If a[The] participant shall not be required to submit written notification if the] QDRO specifies the number of months of payments, payment to the alternate payee shall cease after the designated number of months expire, and a notice of the exhaustion of payments shall not be required.

(6) If proof is not filed or obtained by the end of day[submitted within] ninety (90) calendar days from[of] the[written] notification to the agency[retirement systems], the payments being held shall be released to the alternate payee.

(7) The agency[retirement systems] shall not be liable for any payments made to the alternate payee if the participant failed to provide proper notification and documentation of the event that causes payments to the alternate payee to end.

Section 18. [Section 19.] Event That Ends or Amends a QDRO for Child Support.

(1) The participant shall be responsible for notifying the agency[retirement systems in writing] of an event that causes payments to the alternate payee under a QDRO for Child Support to be amended or to end.

(2)

(a) [If an alternate payee is being paid child support pursuant to a Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, the participant shall submit an entered and certified order from a court of competent jurisdiction or an administrative agency with statutory authority to order child support providing that payments under the Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency, shall end or be amended.]

[(b)][4-] The agency[retirement systems] shall segregate and hold the payments due to the alternate payee under a valid QDRO for child support[Form 6436, Qualified Domestic Relations Order for Child Support, or the Form 6437, Qualified Domestic Relations Order for Child Support by an Administrative Agency,] if one (1) of the following is filed:

1. An[the participant submits an] order changing the custody of the child to someone other than the alternate payee;[-]

2. A[a] copy of the child's marriage certificate;[-]

3. A[a] letter from the child's high school indicating the child's graduation date, if the child is age of eighteen (18) or older;[-]

4. The[the] child's birth certificate indicating the child is age eighteen (18) or older;[-]

5. An[an] order of emancipation of the minor child;[-] or

6. The[the] child's death certificate.

[(b)][2-] If the QDRO for child support is for the support of more

VOLUME 50, NUMBER 11– May 1, 2024

than one (1) child, the ~~agency[retirement systems]~~ shall not segregate or hold payments due to the alternate payee.

(c) If the participant does not ~~file documentation to amend or terminate[submit an entered and certified order amending or terminating]~~ the QDRO for child support in accordance with Section 14 of this administrative regulation by the ~~end-of-day[from a court of competent jurisdiction or an administrative agency with statutory authority to order child support within]~~ ninety (90) calendar days from ~~[of]~~ the participant's submission as provided in paragraph ~~(a)[(b)]~~ of this subsection, the payments being held shall be released to the alternate payee.

(3) The ~~agency[retirement systems]~~ shall not be liable for any payments made to the alternate payee if the participant failed to provide proper notification, documentation of the event, ~~the amended QDRO~~, or the court order that causes payments to the alternate payee to end or be amended.

~~[Section 20:] [(1)] [If there are multiple QDROs on file for a participant's account, the QDROs shall be administered in the following order:]~~

~~[(a)] [QDROs for the Division of Marital Property;]~~

~~[(b)] [QDROs for Child Support;]~~

~~[(c)] [QDROs for Alimony/Maintenance.]~~

~~[(2)] [If multiple QDROs for the Division of Marital Property are on file, they shall be administered in the order of approval by the retirement systems.]~~

~~[(3)] [If multiple QDROs for Child Support are on file, they shall be administered in the order of approval by the retirement systems.]~~

~~[(4)] [If multiple QDROs for Alimony/Maintenance are on file, they shall be administered in the order of approval by the retirement systems.]~~

~~[(5)] [If a QDRO for Child Support is submitted subsequent to the participant's retirement and subsequent to the administration of the QDROs on file at the time of the participant's retirement it shall be given priority over any QDROs for Alimony/Maintenance being administered.]~~

~~[(6)]~~

~~[(a)] [The retirement systems shall not administer a QDRO if enforcement of the QDRO would result in the total amount of payments due to the alternate payees to exceed the participant's monthly retirement benefit under the multiple QDROs approved for enforcement by the retirement systems. The retirement systems shall notify the participant and alternate payees if a QDRO cannot be administered due to the exhaustion of the participant's monthly retirement benefit.]~~

~~[(b)] [The retirement systems shall recalculate the amounts due under the QDROs being administered by the retirement systems on a participant's account after the effective date of any cost-of-living increase provided pursuant to KRS 61.694.]~~

~~[Section 21:] [The alternate payee shall be responsible for notifying the retirement systems in writing of any change in mailing address. The retirement systems shall contact the alternate payee at the last known mailing address on file to notify the alternate payee when a benefit subject to the QDRO becomes payable. The retirement systems shall not have a duty or obligation to search for or locate an alternate payee.]~~

~~[Section 22:] [A QDRO shall not provide that the alternate payee be eligible to enroll in the health insurance plan administered by the retirement systems.]~~

Section 19.[Section 23.] Correction/change to Retirement Benefits.

(1) If the participant's retirement benefit is corrected pursuant to KRS 61.685 and 78.545, the alternate payee's payment shall also be corrected.

~~(a)[(2)]~~ If the alternate payee was overpaid because of the error that is being corrected pursuant to KRS 61.685 and 78.545, the ~~agency[retirement systems]~~ shall withhold the amount of the overpayment from the alternate payee's payment.

~~(b)[(3)]~~ If the alternate payee was underpaid because of the

error that is being corrected pursuant to KRS 61.685 and 78.545, the ~~agency[retirement systems]~~ shall pay the alternate payee a lump sum payment of the additional funds due from the participant's payment.

~~(2) After the effective date of any cost-of-living increase provided pursuant to KRS 61.691 and 78.5518, the agency shall recalculate the amounts due under a QDRO being administered by the agency.~~

~~(3) Payment to the alternate payee shall not change as a result of a change in the participant's retirement benefits as provided in KRS 61.542(5)(b) and 78.545.~~

Section 20. Alternate Payee's Contact Information. The alternate payee shall be responsible for notifying the agency in writing of any change in mailing address. The agency shall contact the alternate payee at the last known mailing address on file to notify the alternate payee when a benefit subject to the QDRO becomes payable. The agency shall not have a duty or obligation to search for or locate an alternate payee.

Section 21. Hospital and Medical Insurance. A QDRO shall not provide that the alternate payee be eligible to enroll in the hospital and medical insurance plan administered by the agency.

Section 22.[Section 24.] Agency Subpoena or As a Party to a Domestic Relations Action.

(1) Any person or party who attempts to make the ~~agency[retirement systems]~~ a party to a domestic relations action regarding a QDRO, or who requests a subpoena be issued for the personal appearance of a representative of the ~~agency[retirement systems]~~ to appear at a deposition or in a court or administrative proceeding regarding a QDRO, shall reimburse the ~~agency[retirement systems]~~ for the travel expenses and services of the ~~agency's[retirement systems']~~ representative, or representatives, and the ~~agency's[retirement systems']~~ legal counsel, as an administrative fee including:

(a) The Internal Revenue Service standard mileage rate;

(b) Parking and tolls;

(c) Meals if the ~~agency's[retirement systems']~~ personnel are required to travel and be away from the retirement office from 6:30 a.m. to 9 a.m., 11 a.m. to 2 p.m., or 5 p.m. to 9 p.m.;

(d) The wages earned by the ~~agency's[retirement systems']~~ employees during the time period they are away from the retirement office calculated by multiplying the hourly rate of each employee by the number of hours each employee was away from the office;

(e) The ~~agency's[retirement systems]~~ costs and legal fees; and

(f) Lodging expenses, if necessary.

(2) The ~~agency[retirement systems]~~ shall send an estimated amount owed for expenses to the person or party requesting the subpoena.

(a) The person or party shall remit payment via a certified check or money order for the estimated expenses made payable to the Kentucky State Treasurer before the date of appearance ordered in the subpoena.

(b) The ~~agency[retirement systems]~~ shall send an invoice for any additional expenses owed by the party or issue a refund for any amount over the cost of the expenses.

Section 23.[Section 25.] Agency Liability. Neither the agency[retirement systems] nor its trustees nor its employees shall have any liability for making or withholding payments in accordance with the provisions of this administrative regulation.

Section 24.[Section 26.] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) [Form 6015, "Estimate of a Monthly Retirement Allowance", April 2024;]

(b) Form 6434, "Pre-Retirement Qualified Domestic Relations Order for Division of Marital Property", March 2024[April 2024];

(c) Form 6435, "Post-Retirement Qualified Domestic Relations Order for Division of Marital Property", March 2024[April 2024];

VOLUME 50, NUMBER 11– May 1, 2024

(c)[(d)] Form 6436, "Qualified Domestic Relations Order for Child Support", March 2024[~~April 2024~~];

(d)[(e)] Form 6437, "Qualified Domestic Relations Order for Child Support by an Administrative Agency", March 2024[~~April 2024~~];

(e)[(f)] Form 6438, "Qualified Domestic Relations Order for Alimony/Maintenance", March 2024[~~April 2024~~];

(f)[(g)] Form 6130, "Authorization for Deposit of Retirement Payment", June 2023[~~April 2024~~];

(g)[(h)] Form 6135, "Payment of Retirement Payment by Check", June 2023[~~April 2024~~]; and

(h)[(i)] Form 6433, "Authorization for Release of Information and Request for Information for Qualified Domestic Relations Orders", March 2024[~~April 2024~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority[~~Kentucky Retirement Systems, Perimeter Park West~~], 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 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: March 21, 2024

FILED WITH LRC: March 25, 2024 at 11:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing to allow for public comment on this administrative regulation shall be held on Tuesday, June 25, 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 June 30, 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, phone (502) 696-8800 ext. 8570, fax (502) 696-8615, email Legal.Non-Advocacy@kyret.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jessica Beaubien

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements, procedures, and forms necessary for the Kentucky Public Pensions Authority to administer qualified domestic relations orders (QDROs).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to allow the Kentucky Public Pensions Authority to effectively administer QDROs.

(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, 61.510 to 61.705, and 78.510 to 78.852. Additionally, KRS 16.645, 61.690(3)(b), and 78.545 require the promulgation of an administrative regulation establishing the requirements, procedures, and forms necessary to administer QDROs.

(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 providing the requirements, procedures, and forms necessary to administer QDROs.

(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 language used throughout to be consistent with 105 KAR 1:001. Additionally, the amendment adds a significant amount of detail to the requirements and procedures to effectively administer a QDRO. Lastly, the amendment details how the partial lump sum payment option retirement allowance election will be administered when a valid QDRO is filed with the Kentucky Public Pensions Authority prior to a member's retirement.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the language used throughout to be consistent with 105 KAR 1:001. Additionally, the amendment is necessary to add a significant amount of detail to the requirements and procedures to effectively administer a QDRO. Lastly, the amendment is necessary to detail how the partial lump sum payment option retirement allowance election will be administered when a valid QDRO is filed with the Kentucky Public Pensions Authority prior to a member's retirement.

(c) How the amendment 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, 61.510 to 61.705, and 78.510 to 78.852. In addition, KRS 16.645, 61.690(3)(b), and 78.545 require the promulgation of an administrative regulation establishing the requirements, procedures, and forms necessary to administer qualified domestic relations orders.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists with the effective administration of the statutes by amendment adding a significant amount of detail to the requirements and procedures to effectively administer a QDRO. The amendment also assists with the effective administration of the statutes by detailing how the partial lump sum payment option retirement allowance election will be administered when a valid QDRO is filed with the Kentucky Public Pensions Authority prior to a member's retirement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation does not affect businesses, organizations, or state and local governments except for the KPPA. It is unknown how many individuals this administrative regulation affects because it is unknown how many QDROs may be filed with the Kentucky Public Pensions Authority in the future.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Kentucky Public Pensions Authority will be minimally impacted by these changes because this administrative regulation is largely already being administered as written.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of compliance should be negligible, as this administrative regulation is already being administered as written.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits should be negligible, as this administrative regulation is already being administered as written.

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

(a) Initially: The costs associated with the implementation of this amendment should be negligible.

**FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
(Amendment)**

(b) On a continuing basis: The continuing costs associated with this amendment 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: An increase in fees of 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 already included fees for administering a QDRO. This amendment does not change those fees or establish any new fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All entities are subject to the same processes and procedures.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 16.645, 61.505(1)(g), 61.690(3)(b), and 78.545

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Public Pensions Authority (KPPA) is the promulgating agency and the only affected unit, part or division.

(a) Estimate the following for the first year:

Expenditures: This administrative regulation will not significantly affect expenditures.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? None.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? None.

(4) Identify additional regulated entities not listed in questions (2) or (3): None.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? None.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The fiscal impact of this administrative regulation should be negligible because this administrative regulation is already being administered as written.

(b) Methodology and resources used to determine the fiscal impact: This administrative regulation is already being administered as written.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have a "major economic impact" because this administrative regulation is already being administered as written.

(b) The methodology and resources used to reach this conclusion: There is no major economic impact because this administrative regulation is already being administered as written.

105 KAR 1:411. Hospital and medical insurance for retired members and Kentucky Retirement Systems Insurance Fund Trust.

RELATES TO: KRS 16.505, 16.576(4), 61.505(1)(g), 61.510, 61.701, 61.702, 78.510, 78.5536, 26 U.S.C. 105(b), 106, 115, 213(d), 42 U.S.C. 300bb-8(3), 1395y(b), Pub.L. 111-148

STATUTORY AUTHORITY: KRS 61.505(1)(g), 61.702, 78.5536
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 61.702 and 78.5536 provide for the systems operated by the Kentucky Public Pensions Authority to offer hospital and medical insurance coverage to recipients (including retired members and some beneficiaries of deceased members), their spouses, and their disabled or dependent children, and require the promulgation of administrative regulations concerning requirements for medical insurance reimbursement programs. This administrative regulation establishes procedures for the administration of the hospital and medical insurance benefits provided by the Kentucky Retirement Systems and the County Employees Retirement System, as well as establishes eligibility requirements, necessary documentation for proof of insurance, deadlines for filing for reimbursement, and forms.

Section 1. Definitions.

(1) ["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)] ["Boards" means the Board of Trustees of the Kentucky Retirement Systems and the Board of Trustees of the County Employees Retirement System.]~~

~~[(3)] ["Complete" means all required sections of a form are filled out, the form has been fully executed by the recipient or the recipient's legal representative, and all supporting documentation required by the form is included with the form.]~~

~~[(4)] ["Dependent child" is defined by KRS 16.505(17) and 78.510(49).]~~

~~[(5)] ["Eligible spouse and dependent children" means spouses and dependent children who are eligible to receive all or a portion of their premiums paid for by the boards in accordance with KRS 61.702 and 78.5536.]~~

~~[(6)] ["File" means a form or document has been received at the retirement office by mail, fax, secure email, in-person delivery, or via Self Service on the Web site maintained by the agency (if available).]~~

~~[(7)] ["MEM" means:~~

~~(a) A Medicare eligible member who is retired and reemployed:~~
1. With a participating employer that offers the member a hospital and medical insurance benefit; or

~~2. By a participating employer that is prevented from offering a hospital and medical benefit to the member as a condition of reemployment under KRS 70.293, 95.022, or 164.952; and~~

~~(b) A Medicare eligible member who is retired and whose spouse meets the following criteria:~~

~~1. The spouse is also a member;~~

~~2. The spouse is reemployed with a participating employer that offers the spouse a hospital and medical insurance benefit, or by a participating employer that is prevented from offering a hospital and~~

VOLUME 50, NUMBER 11– May 1, 2024

medical benefit to the spouse as a condition of reemployment under KRS 70.293, 95.022, or 164.952; and

3. The spouse's hospital and medical insurance plan coverage is provided by the retired member's benefits pursuant to KRS 61.702(2) and 78.5536(2).

(3) "Months of service" is defined by KRS 61.702(1)(c) and 78.5536(1)(c).

~~[(8)] ["Member" is defined by KRS 16.505(21), 61.510(8), and 78.510(8).]~~

~~[(9)] ["Monthly contribution rate" means:]~~

~~[(a)] [The amount determined by the boards as the maximum contribution the systems will pay toward the premium of a retired member who began participating in the systems on or before June 30, 2003; or]~~

~~[(b)] [For a retired member who began participating in the system on or after July 1, 2003, the amount per month earned by the retired member based on years of service as provided in KRS 61.702(4)(e) and 78.5536(4)(e).]~~

~~[(4)](40) "Premium" means the monthly dollar cost required to provide hospital and medical insurance plan coverage for a recipient, a recipient's spouse, or a disabled or dependent child.~~

~~[(11)] ["Provide", if used in reference to a form or other document, means the agency makes a form or document available on its Web site (if appropriate) or, upon request by a recipient or other person, by mail, fax, secure email, or via Self Service on the Web site maintained by the agency (if available).]~~

~~[(5)](42) "Qualifying event" means a change in life circumstances that:~~

(a) Meets the agency's requirement for a member to alter an existing hospital and medical insurance plan, or sign up for a new one outside of new or open enrollment if the alteration is consistent with the change; and

(b) Is included on the list of qualifying events provided annually to the members by the agency.

~~[(13)] ["Recipient" is defined by KRS 16.505(26), 61.510(27), and 78.510(26).]~~

~~[(14)] ["Retired member" is defined by KRS 16.505(11), 61.510(24), and 78.510(23).]~~

~~[(15)] ["Retirement allowance" is defined by KRS 16.505(12), 61.510(16), and 78.510(16).]~~

~~[(16)] ["Retirement office" is defined by KRS 16.505(28), 61.510(31), and 78.510(29).]~~

~~[(17)] ["Systems" means the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System.]~~

~~[(6)](48) "Wellness" or "wellbeing promise" means an annual health assessment or screening that, if completed by the due date established by the Kentucky Employees' Health Plan[timely], provides a discounted insurance rate for the following fiscal year's health insurance plan premium.~~

Section 2. Trust Fund.

(1) Pursuant to KRS 61.701, fund assets shall be dedicated for use toward health benefits, as provided in KRS 61.702 and 78.5536, and as permitted under 26 U.S.C. 105 and 106 of the United States Internal Revenue Code, to retired recipients and employees of employers participating in the systems. Certain dependents or beneficiaries shall be included, such as qualified beneficiaries as described in 42 U.S.C. 300bb-8(3) of the United States Public Health Service Act.

(2) The boards may adopt a trust agreement and take all action authorized by KRS 61.701(6).

Section 3. Contribution Rates.

(1)(a) The boards shall adopt monthly contribution rates as follows:

1. Medicare eligible coverage;
2. Non-Medicare eligible coverage; and
3. MEM coverage.

(b) The boards may choose to adopt a monthly contribution rate for MEM coverage that is separate from the monthly contribution rate the boards adopt for Medicare and non-Medicare eligible coverage,

or may choose to adopt a monthly contribution rate that is the same for Non-Medicare eligible coverage and MEM coverage.

(2) The boards shall adopt a contribution plan for each monthly contribution rate in subsection (1) of this section.

~~[(3)] [The boards may adopt separate contribution rates for:]~~

~~[(a)] [Tobacco and non-tobacco users; and]~~

~~[(b)] [Wellness or wellbeing promise completion and incomplection.]~~

Section 4. Payments by the Boards.

(1)(a) The monthly contribution rate paid by the boards towards premiums for a recipient or eligible spouse or dependent child shall not exceed the monthly contribution rate to which the recipient is entitled under KRS 61.702 and 78.5536.

(b) The actual amount the systems will pay toward a retired member's hospital and medical insurance plan premium, or his or her eligible spouse and dependent children's hospital and medical insurance plan premium, is dependent on the membership date of the member.

1. Except as provided in subparagraph 3. of this paragraph, if the membership date is prior to July 1, 2003, the systems will pay a percentage of the contribution rate toward the hospital and medical insurance plan premiums in accordance with KRS 61.702(4)(b)-(d) and 78.5536(b)-(d).

2. Except as provided in subparagraph 3. of this paragraph, if the membership date is on or after July 1, 2003, the systems will pay a dollar amount of the contribution rate toward hospital and medical insurance plan premiums in accordance with KRS 61.702(4)(e) and 78.5536(4)(e).

3. For a member with a hire date that began July 1, 2003 through July 31, 2004, his or her hire date shall be used to determine if the hospital and medical insurance plan premiums are paid as a percentage of the single premium contribution rate as prescribed in subparagraph 1. of this paragraph, or as a dollar amount of the contribution rate as prescribed in subparagraph 2. of this paragraph.

(2) For a retired member who retired based on reciprocity with any other state-administered retirement system, the boards shall not pay more than a portion of the single monthly contribution rate for the hospital and medical insurance plan chosen by the retired member based on the retired member's service credit with the systems.

(3)(a) A retired member who is not Medicare eligible or is a MEM may cross-reference health insurance coverage with a spouse enrolled in the same hospital and medical insurance plan.

(b) A retired member identified in paragraph (a) of this subsection who has hazardous service and a membership date prior to July 1, 2003 may be able to use any unused portion of the monthly contribution rate the retired member is entitled to receive toward the premium cost attributable to the spouse, if the spouse's portion of the premium is not fully paid by the boards pursuant to KRS 61.702 and 78.5536.

(4) Pursuant to KRS 61.702(4)(d), 61.702(4)(e)5., 78.5536(4)(d), and 78.5536(4)(e)5., funds from the insurance trust fund or the 401(h) accounts provided for in KRS 61.702(3)(b) and 78.5536(3)(b) shall be used to pay the determined[a] percentage of the monthly contribution rate for family coverage for eligible spouses and dependent children[~~as defined in KRS 16.505(47) and 78.510(49)].~~

(5)(a) Members not eligible for Medicare who began participation in the system on or after July 1, 2003 and have accrued an additional full year of service as a participating employee beyond his or her career threshold may receive an additional five (5) dollar contribution toward monthly hospital and medical insurance premiums in accordance with KRS 61.702(4)(e)6.b. and 78.5536(4)(e)6.b.

(b)1. If a member who is eligible for an additional five (5) dollar contribution pursuant to paragraph (a) of this subsection has service in multiple systems operated by the agency, each system in which the member participates that meets the requirements of KRS 61.702(4)(e)6.b.iii. and 78.5536(4)(e)6.b.iii shall pay a portion of the additional five (5) dollar contribution based on the percentage of the member's service in each system.

2. If a member who is eligible for an additional five (5) dollar

VOLUME 50, NUMBER 11– May 1, 2024

contribution pursuant to paragraph (a) of this subsection has service in multiple systems operated by the agency, and not all of the systems in which the member participates meet the requirements of KRS 61.702(4)(e)6.b.iii. and 78.5536(4)(e)6.b.iii., only those systems that meet the requirements of KRS 61.702(4)(e)6.b.iii. and 78.5536(4)(e)6.b.iii shall pay a portion of the additional five (5) dollar contribution based on the percentage of the member's service in each system.

Section 5. Premiums Paid by Recipient.

(1) A recipient may be charged one (1) or more of the following monthly fees related to his or her hospital and medical insurance coverage:

(a) Tobacco user fee; and

(b) Wellness or wellbeing promise incompleteness fee.

(2) Any premium amount or fee that is not paid or payable by the insurance trust fund established under KRS 61.701 or a 401(h) account in accordance KRS 61.702 and 78.5536 shall be deducted from the monthly retirement allowance of the recipient.

(3) [(2)]

(a) If the amount of a premium or fee is not fully paid by the insurance trust fund established under KRS 61.701, a 401(h) account, and the recipient's monthly retirement allowance, then the recipient shall pay the balance of the premium monthly by electronic transfer of funds by completing and filing a valid[complete] Form 6131, Bank Draft Authorization for Direct Pay Accounts [~~at the retirement office~~].

(b) If a valid[complete] Form 6131, Bank Draft Authorization for Direct Pay Accounts, is required and is not filed [~~at the retirement office~~], then the recipient, the recipient's spouse, and any disabled or dependent children shall not be enrolled in a hospital and medical insurance plan established pursuant to KRS 61.702 and 78.5536.

(c) 1. If the electronic transfer of funds based on a valid[complete] Form 6131, Bank Draft Authorization for Direct Pay Accounts [~~on file at the retirement office~~] fails, then the agency shall provide an invoice to the recipient.

2. If a recipient fails to remit the balance of the premium or fee by the date provided on the invoice, then the enrollment of the recipient, the recipient's spouse, and any disabled or dependent children in the hospital and medical insurance plan shall be cancelled the month after the last month the recipient paid the premium.

(d) If the hospital and medical insurance plan coverage of a recipient, the recipient's spouse, or any disabled or dependent children is cancelled pursuant to this subsection, the recipient shall not be eligible to enroll in a hospital and medical insurance plan established pursuant to KRS 61.702 and 78.5536 until the next open enrollment period for hospital and medical insurance plan coverage.

Section 6. Eligibility to Participate in Hospital and Medical Insurance Plans.

(1) A person shall not be eligible to participate in the hospital and medical insurance plans established pursuant to KRS 61.702 and 78.5536 until the person is a recipient of a monthly retirement allowance, except as provided in KRS 16.576(4).

(2) A person who retires under disability retirement shall not be eligible to participate in the hospital and medical insurance plans established pursuant to KRS 61.702 and 78.5536 until the month the person receives his or her first monthly retirement allowance payment.

(3) A recipient's spouse, disabled child, or dependent child shall not be eligible to participate in the hospital and medical insurance plans established pursuant to KRS 61.702 and 78.5536 unless the recipient is participating in the hospital and medical insurance plans established pursuant to KRS 61.702 and 78.5536.

(4) An alternate payee shall not be eligible for participation in the hospital and medical insurance plans established pursuant to KRS 61.702 and 78.5536.

Section 7. Participation in a Hospital and Medical Insurance Plan.

(1) A recipient, spouse, or disabled or dependent child who is

Medicare eligible, except individuals identified in subsection (2) of this section, shall participate in the hospital and medical insurance plan established for Medicare eligible recipients pursuant to KRS 61.702 and 78.5536.

(2) MEMs, and spouses of MEMs and disabled or dependent children of MEMs who are Medicare eligible, shall participate in the group hospital and medical insurance plan established for MEMs pursuant to KRS 61.702(2)(b)3.b. and 78.5536(2)(b)3.b.[-]

(3) A recipient, spouse, or disabled or dependent child who is not Medicare eligible shall participate in a non-Medicare eligible group hospital and medical insurance plan established pursuant to KRS 61.702 and 78.5536.

(4) If a recipient, spouse, or disabled or dependent child is eligible for Medicare but the other persons enrolled in a group hospital and medical insurance plan are not, then the recipient, spouse, or disabled or dependent child who is not eligible for Medicare may continue to participate in the non-Medicare eligible group hospital and medical insurance plan established pursuant to KRS 61.702 and 78.5536.

(5) Members identified in subsections (1) through (4) of this section may waive enrollment in the hospital and medical insurance plan by filing:

(a) A completed KPPA Health Plans for Medicare Eligible Persons form, for Medicare eligible recipients; or

(b) A completed Retiree Health Insurance Enrollment/Change Form, for MEMs and non-Medicare eligible recipients.

(6) Members identified in subsections (1) through (4) of this section who do not enroll in or waive the hospital and medical insurance plan shall be automatically enrolled in an appropriate default plan in accordance with Section 9 of this administrative regulation.

Section 8. Required Forms.

(1) If the boards use the group hospital and medical insurance provided by the Kentucky Department of Employee Insurance to provide health insurance coverage for its non-Medicare eligible recipients, spouses, disabled or dependent children, and MEMs, then the agency shall provide these recipients and MEMs with the Retiree Health Insurance Enrollment/Change Form, required for enrollment, waiver, or changes to the group hospital and medical insurance plan.

(2) On behalf of the boards, the agency shall arrange hospital and medical insurance coverage for Medicare eligible recipients, spouses, and disabled or dependent children, except MEMs. The agency shall provide these recipients with the KPPA Health Plans for Medicare Eligible Persons form, required for enrollment, waiver, or changes to the hospital and medical insurance plans.

(3) The agency shall provide the Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, for recipients to complete to receive health insurance contributions toward an eligible spouse and dependent children who are between the ages of eighteen (18) and twenty-two (22).

Section 9. Default Plans.

(1) The boards shall adopt a default plan for new retired members upon initial enrollment, and for recipients who do not file a complete insurance enrollment form during annual open enrollment, if required.

(2) The boards shall adopt a default plan for retired members and recipients who are Medicare eligible, and a default plan for retired members and recipients who are non-Medicare eligible and recipients who are subject to 42 U.S.C. 1395y.

Section 10. Initial and Annual Enrollment and Qualifying Events.

(1)(a) The recipient shall complete and file valid[complete] insurance enrollment forms as described in Section 8 of this administrative regulation [~~at the retirement office~~] by the last day of the month the initial retirement allowance is paid.

(b) If the recipient fails to file the valid[complete] insurance enrollment forms as required by paragraph (a) of this subsection, the retired member shall be automatically enrolled in the appropriate default plan adopted by the boards as described in Section 9 of this

administrative regulation.

(c) If the recipient identified in paragraph (a) of this subsection files the valid[complete] insurance enrollment forms as described in Section 8 of this administrative regulation by the last day of the month in which he or she receives his or her initial retirement allowance payment, the retired member shall be enrolled in the selection indicated on the form effective the first day of the following month.

(2) If a recipient has a qualifying event, the recipient shall complete and file the valid[complete] insurance enrollment forms as described in Section 8(1) or (2) of this administrative regulation[~~at the retirement office~~] within the time period prescribed by state and federal law and the health insurance plan documents.

(3)(a) If enrollment is mandatory:

1. The recipient shall complete and file the valid[complete] insurance enrollment forms as described in Section 8 of this administrative regulation[~~at the retirement office~~] by the last day of the month of the annual open enrollment period.

2. If the recipient fails to file the complete insurance enrollment forms as required by subparagraph 1. of this paragraph, the recipient shall be automatically enrolled in the default plan adopted by the boards as described in Section 9 of this administrative regulation.

(b) If enrollment is not mandatory:

1. The recipient may complete and file the valid[complete] insurance enrollment forms as described in Section 8 of this administrative regulation[~~at the retirement office~~] by the last day of the month of the annual open enrollment period.

2. If the recipient does not file the valid[complete] insurance enrollment forms as required by subparagraph 1. of this paragraph, the recipient, and the recipient's spouse and disabled or dependent children as applicable, shall remain on the same plan with the same level of coverage as the previous plan year.

(4)(a)1. In order to receive health insurance contributions toward an eligible spouse or a dependent child who is between the ages of eighteen (18) and twenty-two (22), the recipient shall complete and file a valid[complete] Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, by the end-of-day on November 30th of the calendar year prior to the calendar year in which coverage is effective, regardless of whether enrollment is mandatory or not mandatory.

2. If a qualifying event results in a new eligible spouse or dependent child, in order to receive health insurance contributions toward the eligible spouse or a dependent child who is between the ages of eighteen (18) and twenty-two (22), the recipient shall complete and file a valid[complete] Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions.

(b)1. If the recipient does not file a valid[complete] Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, in accordance with paragraph (a) of this subsection, health insurance contributions shall not be paid toward the premiums for an eligible spouse or dependent children unless a complete Form 6256 is filed[~~at the retirement office~~] in the calendar year in which coverage is in effect.

2. If the recipient files a valid[complete] Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, between December 1 and December 31 of the calendar year prior to the calendar year in which coverage is effective, then health insurance contributions may be paid for an eligible spouse or a dependent child who is between the ages of eighteen (18) and twenty-two (22) as of January of the calendar year in which coverage is effective. If the health insurance contributions are not paid for an eligible spouse or a dependent child as of January of the calendar year in which coverage is effective, then health insurance contributions shall be paid starting in February of the calendar year in which coverage is effective and the recipient shall also be reimbursed for the January health insurance contributions for the eligible spouse or dependent child.

3. If the recipient files a valid[complete] Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, prior to December 31 of the calendar year in which coverage is in effect, health insurance contributions shall be paid toward premiums for an eligible spouse or a dependent child who is between the ages of eighteen (18) and twenty-two (22) in any month in the calendar year in which coverage is effective after the valid

Form 6256 is filed[~~at the retirement office~~]. If a valid[complete] Form 6256 is filed[~~at the retirement office~~] prior to December 31 of the calendar year in which coverage is in effect, the recipient shall also be reimbursed for up to three (3) months of health insurance contributions for the eligible spouse and dependent children.

Section 11. Changes in Spouse and Disabled or Dependent Child Eligibility.

(1) Recipients, spouses, and disabled or dependent children shall notify the agency of any change that may affect the eligibility of the spouse, disabled child, or dependent child to enroll in a hospital and medical insurance plan offered by the agency or the eligibility of the spouse or dependent child to have all or a portion of their premiums paid for by the boards in accordance with KRS 61.702 and 78.5536.

(2)(a) The recipient shall repay any premiums that were paid by the boards after the spouse or dependent child ceased to be eligible to have all or portion of their premiums paid in accordance with KRS 61.702 and 78.5536.

(b) If the agency is unable to recover from the recipient the full amount of premiums paid in accordance with paragraph (a) of this subsection, the agency may withhold any remaining amount from the recipient's monthly retirement allowance payment.

(c) If the agency is not able to recover the full amount of the premiums paid in accordance with paragraphs (a) and (b) of this subsection, the agency may recover any remaining amount from the spouse or dependent child.

Section 12. Medical Insurance Reimbursement Plan for Recipients Living Outside of Kentucky.

(1) A recipient may participate in the medical insurance reimbursement plan pursuant to KRS 61.702(6) and 78.5536(6) if the recipient lives in an area outside of the coverage of the group hospital and medical insurance plans offered by the agency.

(2) The medical insurance reimbursement plan shall be available in any month the recipient:

(a) Resides outside of Kentucky;

(b) Is not eligible for the same level of hospital and medical benefits as recipients who resided inside of Kentucky with the same Medicare status; and

(c) Has paid hospital and medical insurance plan premiums capable of being reimbursed.

(3) Recipients eligible to participate in the medical insurance reimbursement plan shall be reimbursed up to the applicable monthly contribution rate for premiums paid for hospital and medical coverage less any premiums paid by the recipient's employer.

(4)(a) In order to receive the applicable reimbursement, an eligible recipient shall complete and file a valid Form 6240, Application for Out of State Reimbursement for Medical Insurance, and as applicable a valid Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions,[~~at the retirement office~~] with one (1) or more of the following as proof of coverage and payment of premiums for hospital and medical insurance that covers the entire time period for the requested reimbursement:

1. A valid Form 6241, Employer Certification of Health Insurance for Health Insurance Reimbursement Plan, completed by the employer;

2. A valid Form 6242, Insurance Agency/Company Certification of Health Insurance for Health Insurance Reimbursement Plan, completed by the insurance agency or company;

3. A signed statement from the employer listing individuals covered, dates of hospital and medical insurance coverage, amount of premiums deducted from wages, and the cost of the single coverage; or

4. A signed statement or invoice from the insurance company listing individuals covered, the dates and cost of single hospital and medical insurance coverage, along with proof of payment such as a receipt or bank statement clearly indicating payment for the statement or invoice provided.

(b)1. If any provided documentation is deemed insufficient by the agency, the agency may request additional proof of medical and

hospital insurance coverage or payment.

2. The agency may verify the recipient's eligibility for reimbursement for hospital and medical insurance by requesting verification of coverage and payments directly from the insurance company indicated on the Form 6240, Application for Out of State Reimbursement for Medical Insurance.

(5) An eligible recipient may file for reimbursement quarterly each calendar year in accordance with subsection (4) of this section.

(6) If the eligible recipient files for reimbursement in accordance with subsection (4) of this section, the eligible recipient shall be reimbursed on the following schedule:

(a) In February, if all documentation is filed [~~at the retirement office~~] by January 20;

(b) In May, if all documentation is filed [~~at the retirement office~~] by April 20;

(c) In August, if all documentation is filed [~~at the retirement office~~] by July 20; or

(d) In November, if all documentation is filed [~~at the retirement office~~] by October 20.

(7) The agency shall not reimburse an eligible recipient for premiums for a calendar year in which the eligible recipient failed to file a request for reimbursement in accordance with subsection (4) of this section by March 20 of the following calendar year.

(8)(a) If a recipient receives a payment from the agency that does not qualify as a premium reimbursement, the recipient shall return the payment to the agency at the retirement office.

(b) If the recipient fails to return the payment, the agency may withhold the payment from the recipient's monthly retirement allowance payment.

Section 13. Dollar Contribution Medical Insurance Reimbursement Plan for Recipients Hired on or after July 1, 2003.

(1)(a) Except as provided in paragraph (b) of this subsection, beginning January 1, 2003, a recipient with a hire date on or after July 1, 2003 may participate in the hospital and medical insurance dollar contribution reimbursement plan pursuant to KRS 61.702(6) and 78.5536(6), if the recipient chooses to purchase a hospital and medical insurance plan not provided by the systems.

(b) A recipient who retired with reciprocity with another state-administered retirement system in accordance with KRS 61.680 and 78.545 shall not be eligible for the hospital and medical insurance dollar contribution reimbursement plan provided by KRS 61.702(6) and 78.6636(6) if the recipient elects to receive hospital and medical insurance coverage through another state-administered retirement system. The systems shall pay a pro rata share of the recipient's premium for hospital and medical insurance coverage in accordance with KRS 6.577, 21.427, and 105 KAR 1:020.

(2)(a) Recipients eligible to participate in the dollar contribution medical insurance reimbursement plan shall be reimbursed up to the applicable monthly contribution rate for premiums paid for the cost of single hospital and medical insurance coverage [~~less any premiums paid by the recipient's employer~~].

(b)1. The reimbursement detailed in this subsection shall be retroactive to January 1, 2023.

2. A recipient who previously received reimbursement that was reduced based on premiums paid by the recipient's employer or who was denied reimbursement solely based on premiums paid by the recipient's employer shall be reimbursed for an amount equal to the difference between what is owed to the recipient under this subsection and what was previously paid to the recipient.

(3)(a) In order to receive the applicable reimbursement, an eligible recipient shall complete and file a valid Form 6280, Application for Dollar Contribution Reimbursement for Medical Insurance, [~~at the retirement office~~] with one (1) or more of the following as proof of payment of premiums for hospital and medical insurance coverage that covers the entire time period for the requested reimbursement:

1. A valid Form 6281, Employer Certification of Health Insurance for Dollar Contribution Reimbursement Plan, completed by the employer;

2. A valid Form 6282, Insurance Agency/Company Certification of Health Insurance for Dollar Contribution Reimbursement Plan, completed by the insurance agency or company;

3. A signed statement from the employer or state-administered retirement system listing individuals covered, dates of hospital and medical insurance coverage, amount of premiums deducted from wages, and the cost of the single coverage; or

4. A signed statement or invoice from the insurance company listing the individuals covered, dates, and cost of single hospital and medical insurance coverage; along with proof of payment such as a receipt or bank statement clearly indicating payment for the statement or invoice provided.

(b)1. If any provided documentation is deemed insufficient by the agency, the agency may request additional proof of medical and hospital insurance coverage or payment.

2. The agency may verify the recipient's eligibility for reimbursement for hospital and medical insurance by requesting verification of coverage and payments directly from the insurance company indicated on the Form 6280, Application for Dollar Contribution Reimbursement for Medical Insurance.

(4) An eligible recipient may file for reimbursement in accordance with subsection (3) of this section, quarterly each calendar year.

(5) If the eligible recipient files a request for reimbursement in accordance with subsection (3) of this section, the eligible recipient shall be reimbursed on the following schedule:

(a) In February, if all documentation is filed [~~at the retirement office~~] by January 20;

(b) In May, if all documentation is filed [~~at the retirement office~~] by April 20;

(c) In August, if all documentation is filed [~~at the retirement office~~] by July 20; or

(d) In November, if all documentation is filed [~~at the retirement office~~] by October 20.

(6) The agency shall not reimburse an eligible recipient for premiums for a calendar year in which the eligible recipient failed to file a request for reimbursement in accordance with subsection (3) of this section by March 20 of the following calendar year.

(7)(a) If a recipient receives a payment from the agency that does not qualify as a premium reimbursement, the recipient shall return the payment to the agency at the retirement office.

(b) If the recipient fails to return the payment, the agency may withhold the payment from the recipient's monthly retirement allowance payment.

Section 14. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form 6131, "Bank Draft Authorization for Direct Pay Accounts", April 2021;

(b) "KPPA Health Plans for Medicare Eligible Persons", September 2022;

(c) "Retiree Health Insurance Enrollment/Change Form", September 2022;

(d) Form 6240, "Application for Out of State Reimbursement for Medical Insurance", September 2022;

(e) Form 6241, "Employer Certification of Health Insurance for Health Insurance Reimbursement Plan", September 2022;

(f) Form 6242, "Insurance Agency/Company Certification of Health Insurance for Health Insurance Reimbursement Plan", September 2022;

(g) Form 6256, "Designation of Spouse and/or Dependent Child for Health Insurance Contributions", September 2022;

(h) Form 6280, "Application for Dollar Contribution Reimbursement for Medical Insurance", September ~~2023~~[2022];

(i) Form 6281, "Employer Certification of Health Insurance for Dollar Contribution Reimbursement Plan", ~~June 2024~~[September 2022]; and

(j) Form 6282, "Insurance Agency/Company Certification of Health Insurance for Dollar Contribution Reimbursement Plan", September 2022.

(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, 8 a.m. to 4:30 p.m., or on the agency's Web site at kyret.ky.gov.

VOLUME 50, NUMBER 11– May 1, 2024

DAVID L. EAGER, Executive Director

APPROVED BY AGENCY: March 21, 2024

FILED WITH LRC: March 25, 2024 at 11:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing to allow for public comment on this administrative regulation shall be held on Tuesday, June 25, 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 June 30, 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, phone (502) 696-8800 ext. 8570, fax (502) 696-8615, email Legal.Non-Advocacy@kyret.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jessica Beaubien

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the administration of the health and hospital insurance benefits provided by the Kentucky Retirement Systems and the County Employees Retirement System, as well as establishes eligibility requirements, necessary documentation for proof of insurance, deadlines for filing for reimbursement, and forms.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for the administration of the health and hospital insurance benefits provided by the Kentucky Retirement Systems and the County Employees Retirement System, as well as establishes eligibility requirements, necessary documentation for proof of insurance, and forms. In addition, this administrative regulation satisfies the requirements in KRS 61.702(6) and 78.5536(6) to promulgate an administrative regulation to establish medical insurance reimbursement programs for members who began participating in the system on or after July 1, 2003 and purchase their own hospital and medical insurance, and for retirees who are not eligible for the same level of hospital and medical benefits as recipients living in Kentucky.

(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 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852. KRS 61.702 and 78.5536 provide for the systems operated by the Kentucky Public Pensions Authority to offer hospital and medical insurance coverage to recipients (including retired members and some beneficiaries of deceased members), their spouses, and their disabled or dependent children, this administrative regulation conforms to the authorizing statute by establishing procedures for the administration of the health and hospital insurance benefits by the systems. Additionally, this administrative regulation satisfies the requirements in KRS 61.702(6) and 78.5536(6) to promulgate an administrative regulation to establish medical insurance reimbursement programs for members who began participating in the system on or after July 1, 2003 and purchase their own hospital and medical insurance, and for retirees who are not

eligible for the same level of hospital and medical benefits as recipients living in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing procedures for the administration of the health and hospital insurance benefits provided by the Kentucky Retirement Systems and the County Employees Retirement System, as well as establishes eligibility requirements, necessary documentation for proof of insurance, deadlines for filing for reimbursement, and forms in accordance with KRS 61.702 and 78.5536.

(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 language to be uniform with all Kentucky Public Pensions Authority regulations, and with the definitions found in 105 KAR 1:001. It also updates the regulation to add details on the difference in the percentage payment versus the dollar payment towards hospital and medical insurance premiums based on membership date. Additionally, it provides details of eligibility for the dollar contribution reimbursement for recipients with reciprocity with another state-administered retirement system.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to the ensure the effective administration of KRS 61.702 and 78.5536.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statute by providing additional details in the procedures for the administration of the health and hospital insurance benefits by the systems.

(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 updating language to be uniform with all Kentucky Public Pensions Authority regulations, and with the definitions found in 105 KAR 1:001. It will also assist by updating the regulation to add details on the difference in the percentage payment versus the dollar payment towards hospital and medical insurance premiums based on membership date. Additionally, the amendment is adding details of eligibility for the dollar contribution reimbursement for recipients with reciprocity with another state-administered retirement system.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: One (1) entity that provides day-to-day operations for three (3) public pensions systems: Kentucky Public Pensions Authority (the public pension systems are the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System). Potentially, as many as 421,609 individuals who are members of the Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System, and the spouses, disabled or dependent children, and beneficiaries of these members.

(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 as this administrative regulation is already being administered as written.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of compliance with this administrative regulation should be negligible, as this administrative regulation is already being administered as written.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits should be negligible, as this administrative regulation is already being administered as written. (5) Provide an estimate of how much it will cost to implement this administrative regulation:

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

VOLUME 50, NUMBER 11– May 1, 2024

(a) Initially: The costs associated with the implementation of this amendment should be negligible, as this administrative regulation is already being administered as written.

(b) On a continuing basis: The continuing costs associated with this amendment 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. Please be advised that the tobacco usage and wellness or wellbeing promise incompleteness fees in Section 5 are not set by the Kentucky Public Pensions Authority or any of the systems for which it provides day-to-day operations; instead, these fees may be established by a vendor that provides group hospital and medical insurance plan coverage for Medicare-eligible recipients and/or the Kentucky Employees Health Plan. See KRS 61.702(2)-(3), 78.5536(2)-(3).

(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. Please be advised that the tobacco usage and wellness or wellbeing promise incompleteness fees in Section 5 are not set by the Kentucky Public Pensions Authority or any of the systems for which it provides day-to-day operations; instead, these fees may be established by a vendor that provides group hospital and medical insurance plan coverage for Medicare-eligible recipients and/or the Kentucky Employees Health Plan. See KRS 61.702(2)-(3), 78.5536(2)-(3).

(9) TIERING: Is tiering applied? Tiering is not applied. All regulated entities are subject to the same processes and procedures.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.505(1)(g), 61.702, 78.5536.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Public Pensions Authority (KPPA) is the promulgating agency. The other affected state units are the County Employees Retirement System Board of Trustees, the Kentucky Retirement Systems Board of Trustees, and the three systems for which KPPA provides day-to-day operations (the County Employees Retirement System, the Kentucky Employees Retirement System, and the State Police Retirement System).

(a) Estimate the following for the first year:

Expenditures: \$40,000.00 for the three systems for which KPPA provides day-to-day operations (the County Employees Retirement System, the Kentucky Employees Retirement System, and the State Police Retirement System). For more details, please see the KPPA's response to question number five (5) below.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Please see the KPPA's response to question number five (5) below.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Not applicable.

(4) Identify additional regulated entities not listed in questions (2) or (3): None.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? None.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: Due to the change to the dollar contribution reimbursement calculation method in Section 13(2), there will be a fiscal impact for the three (3) systems for which the KPPA provides day-to-day operations (the Kentucky Employees Retirement System, the State Police Retirement System, and the County Employees Retirement System):. Due to the retroactive application of the change to the dollar contribution reimbursement calculation method, once this change is effective, the three (3) systems are estimated to have a one-time expenditure of \$40,000.00 (in the aggregate for the three (3) systems) to correct previous underpayments of reimbursements. In addition, due this change to the dollar contribution reimbursement calculation method, the KPPA estimates that for each of the four (4) calendar years following the effective date of this change, the three (3) systems will pay approximately \$20,000.00 (in the aggregate) more to eligible recipients (compared with the prior dollar contribution reimbursement calculation method). This change to the dollar contribution reimbursement calculation method is expected to result in increased annual expenditures for the three (3) systems with time, particularly after the first four (4) years after this change is made effective, as more members of the three (3) systems with a membership date on or after July 1, 2003 retire and become eligible for the dollar contribution reimbursement program.

(b) Methodology and resources used to determine the fiscal impact: KPPA staff reviewed all Form 6280s, Application for Dollar Contribution Reimbursement for Medical Insurance, received in 2023. KPPA staff calculated the estimated difference between the reimbursement amount recipients who submitted a Form 6280 received based on the prior dollar contribution reimbursement calculation method in Section 13(2) and the reimbursement amount these same recipients will be eligible to receive once the change to the dollar contribution calculation method in Section 13(2) becomes effective.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have a "major economic impact" because this administrative regulation is already being administered as written.

(b) The methodology and resources used to reach this conclusion: There is a possible major economic impact due to the change to the dollar contribution reimbursement calculation method in Section 13(2); however, the economic impact would be spread out over a significant period of time of 10 or more years.

BOARDS AND COMMISSIONS
Board of Pharmacy
(Amendment)

201 KAR 2:015. Continuing education.

RELATES TO: KRS 315.010, 315.065, 315.120, 315.121
STATUTORY AUTHORITY: KRS 315.065, 315.110(1), 315.191(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.065(2) and (3) require the Board of Pharmacy to establish continuing education requirements for pharmacists. This administrative regulation establishes requirements for the continuing pharmacy education of registered pharmacists and requires all registered pharmacists holding a license issued by the board to participate in continuing pharmacy education as a means of renewal of their licenses.

Section 1. Definitions.

(1) "Continuing education unit" or "CEU" is defined by KRS 315.010(8).

VOLUME 50, NUMBER 11– May 1, 2024

(2) "Sponsor" means a person, school, association, company, corporation, or group who wishes to develop a continuing education program.

Section 2.

- (1) Continuing education hours for credit shall be relevant to the practice of pharmacy and free of commercial bias.
(2) Continuing education hours shall be approved if approved by:
(a) The Accreditation Council for Pharmacy Education (ACPE); or
(b) The board.

Section 3. (1) Continuing education sponsors shall submit an Application for Provider CE Approval to the board:

- (a) At least sixty (60) days prior to the presentation date, if pre-approval is sought; or
(b) Between sixty (60) days prior and thirty (30) days after the presentation date, if pre-approval is not sought.
(2) Program changes shall be submitted to and approved by the board, or the approval of the program shall be void.
(3) Continuing education credit shall be given only once for each program per participant.
(4) Sponsors shall retain a file of each participant's program completion for three (3) years.
(5) Board approval of each program shall expire three (3) years after the date of approval.

Section 4. (1) Pharmacists requesting approval of individually obtained continuing pharmacy education shall submit an Application for Pharmacist CE Approval to the board within thirty (30) days of completion of the educational presentation.

- (2) The board shall notify the requesting pharmacist whether the application request has been approved or denied.
(3) Continuing education that has not been approved by ACPE or the board shall not be used to meet continuing education requirements for renewal or issuance of a license.

Section 5. (1) A pharmacist shall:

- (a) Complete a minimum of one and five-tenths (1.5) CEU (fifteen (15) contact hours) annually between March 1 and February 28 of the subsequent year prior to licensing renewal [January 4 and December 31]; and
(b) For licensing years 2023 through 2028, one (1) contact hour of the fifteen (15) contact hours shall be on the opioid epidemic or opioid use disorder; and
(c) Not transfer or apply excess hours or units for future years.
(2) A pharmacist may be granted a deferral on a year-to-year basis at the determination of the board for illness, incapacity, or other extenuating circumstances.
(3) A pharmacist first licensed by the board within twelve (12) months immediately preceding the annual renewal date shall be exempt from the continuing pharmacy education provisions for that year.
(4) Pharmacists shall:
(a) Keep valid records, receipts, and certifications of continuing pharmacy education programs completed for three (3) years; and
(b) Submit that documentation to the board upon request.
(5) Submission of a fraudulent statement or certificate concerning continuing pharmacy education shall subject the pharmacist to discipline as provided in KRS 315.121.

Section 6. Each pharmacist shall keep the board informed of the pharmacist's correct address.

Section 7. CEU may be transferred from another state to Kentucky if the transfer state recognizes Kentucky CEU.

Section 8. A licensee who failed to timely renew his or her license shall:

- (1) Comply with the applicable provisions of KRS 315.120(2) or (3); and
(2) Complete fifteen (15) hours of continuing education for each

year the applicant failed to renew his or her license, up to a maximum of seventy-five (75) hours.

Section 9. Incorporation by Reference.

- (1) The following material is incorporated by reference:
(a) "Application for Provider CE Approval", June 2018; and
(b) "Application for Pharmacist CE Approval", June 2018.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or on the Web site at https://pharmacy.ky.gov/professionals/Pages/Continuing-Education.aspx [This material is also available on the board's Web site at https://pharmacy.ky.gov/Forms/Pages/default.aspx.]

CHRISTOPHER HARLOW, Pharm.D., Executive Director

APPROVED BY AGENCY: April 15, 2024

FILED WITH LRC: April 15, 2024 at 10:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 25, 2024, at 10:00 a.m. Eastern Time via zoom teleconference. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Christopher Harlow, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Christopher.harlow@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christopher Harlow

- (1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes continuing education requirements.
(b) The necessity of this administrative regulation: KRS 315.065(2) and (3) requires the board to promulgate a regulation that includes guidelines and criteria for reviewing and approving acceptable continuing education programs.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes guidelines and criteria for reviewing and approving acceptable continuing education programs as required by KRS 315.065(2) and (3).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Pharmacists will understand continuing education requirements necessary for renewal of licenses.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment changes the period of time in which CE hours are to be acquired to help streamline licensees ability to track CE in line with the requirements in other states.
(b) The necessity of the amendment to this administrative regulation: To assist pharmacists in tracking their CE obligation for Kentucky.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.065(2) and (3) requires the board to promulgate a regulation that includes guidelines and criteria for reviewing and approving acceptable continuing education programs; the amendment assists pharmacists with tracking their annual

continuing education.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will ensure pharmacists can track their CE obligations for Kentucky because the requirements will align with that in other states.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Only pharmacists will be impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Pharmacists will need to ensure that they familiarize themselves with the new period. Moreover, the Board will offer enforcement discretion for a period of time to assist with this.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Pharmacists will receive continuing education credit required for renewal. (5) Provide an estimate of how much it will cost to implement this administrative regulation:

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

(a) Initially: No costs will be incurred.

(b) On a continuing basis: No costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding to enforce the regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required because of this new 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? Tiering is not applied because the regulation is applicable to all pharmacists.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.191(1) and KRS 315.065.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Board of Pharmacy

(a) Estimate the following for the first year:

Expenditures: none.

Revenues: none.

Cost Savings: none.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no expenditures or cost savings.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None, only the Kentucky Board of Pharmacy is impacted.

(a) Estimate the following for the first year:

Expenditures: none.

Revenues: none.

Cost Savings: none.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This regulation does not create any expenditures, revenues or cost savings.

(4) Identify additional regulated entities not listed in questions (2) or (3): none.

(a) Estimate the following for the first year:

Expenditures: none.

Revenues: none.

Cost Savings: none.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This regulation does not create any expenditures, revenues or cost savings.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no fiscal impact from this regulation.

(b) Methodology and resources used to determine the fiscal impact: There are no fees or costs associated with this regulation.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) . This administrative regulation will not have an overall negative or adverse major economic impact to the entities identified.

(b) The methodology and resources used to reach this conclusion: There are no costs, expenditures or revenues from this regulation.

BOARDS AND COMMISSIONS
Board of Pharmacy
(Amendment)

201 KAR 2:030. License transfer and Non-Resident Pharmacist License.

RELATES TO: KRS 315.191(1)(c), (d), 315.050, 315.210

STATUTORY AUTHORITY: KRS 218A.205(8), 315.191(1)(a), (c), (d), 315.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.210 authorizes the board to establish conditions for licensure by reciprocity. KRS 218A.205(8) requires the board to establish requirements for background checks for licensees. This administrative regulation establishes conditions, forms, and examination requirements for licensure by reciprocity and for licensure of non-resident pharmacists.

Section 1. Definitions.

(1) "Board" is defined by KRS 315.010(4).

(2) "Good standing" means that a license is not suspended, revoked, surrendered, conditioned under terms of probation, or otherwise in a status that in any manner restricts the activity of the licensee.

(3) "License transfer" means a license to practice pharmacy in Kentucky issued by the board to a pharmacist licensed in another jurisdiction.

(4) [(3)] "NABP" means the National Association of Boards of Pharmacy.

(5) "Non-Resident Pharmacist License" means a license issued by the board to a pharmacist licensed and located in another jurisdiction to practice pharmacy to citizens in Kentucky.

Section 2. An applicant licensed in another jurisdiction shall be eligible for license transfer, if the:

(1) Requirements for licensure of the jurisdiction that granted his or her license met or exceeded Kentucky requirements for licensure when the license in the other jurisdiction was granted;

(2) Applicant holds in good standing, an active license to practice pharmacy;

(3) Applicant has:

(a) Completed and certified the NABP Preliminary Application for Transfer of Pharmacist License form; and

(b) Received an NABP Official Application for Transfer of Pharmacist License;

(4) Applicant is currently in good standing in the jurisdiction from which he or she has applied;

(5) Applicant has successfully completed an examination in jurisprudence;

(6) Applicant has submitted to a nation-wide criminal

VOLUME 50, NUMBER 11– May 1, 2024

background investigation by means of fingerprint check by the Department of Kentucky State Police and the Federal Bureau of Investigation; and

(7) Applicant has submitted to a query to the National Practitioner Data Bank of the United States Department of Health and Human Services.

Section 3. Required Information. An applicant shall provide the information required by the NABP Preliminary Application for Transfer of Pharmacist License form, including:

- (1) Name, maiden, and other names used currently or previously;
- (2) Address, telephone number;
- (3) Date of birth;
- (4) Social Security number;
- (5) Citizenship;
- (6) Sex;
- (7) State of original license by examination, including:
 - (a) License number;
 - (b) Original date of issue;
 - (c) Current status of original licensure; and
 - (d) State for which license transfer is requested;
- (8) Pharmacy education, including:
 - (a) Name and location of pharmacy school;
 - (b) Name of pharmacy degree;
 - (c) Date degree was received; and
 - (d) Other professional degrees, including the information specified by paragraphs (a) to (c) of this subsection;
- (9) Whether the applicant has earned certification by the Foreign Pharmacy Graduate Examination Committee, and, if so, the examination equivalency number assigned;
- (10) Total hours of practical experience as an intern prior to licensure as a pharmacist;
- (11) States, dates, and results of pharmacist licensure examinations;
- (12) Pharmacist licenses currently held, including issue date, expiration date, status, and any board action taken against the licensee;
- (13) Practice and employment, including nonpharmacist employment, from the past three (3) years;
- (14) Record of charges or convictions of any felony or misdemeanor offense, other than traffic offenses, and whether or not a sentence was imposed or suspended;
- (15) Record of any surrender of a pharmacist license or registration issued by the federal government or any state controlled substance authority;
- (16) Record of any pharmacist license revocation, suspension, restriction, termination, or other disciplinary action by any board of pharmacy or other state authority;
- (17) Record of whether the pharmacist is currently under investigation or subject to disciplinary action by the licensing jurisdiction, federal Food and Drug Administration, federal Drug Enforcement Administration or any state drug enforcement authority for the violation of any state or federal pharmacy, liquor, or drug laws;
- (18) Record of any condition or impairment, such as substance or alcohol abuse or dependency that in any way affects the pharmacist's ability to practice pharmacy in a safe and competent manner; and
- (19) Record of any application for initial licensure, renewal licensure, or licensure by transfer that was denied by any licensing authority, whether in pharmacy or any other profession.

Section 4. The board shall accept license transfer applications from jurisdictions that:

- (1) Are an active member of the NABP; and
- (2) Grant license transfers to pharmacists pursuant to conditions and requirements that are the equivalent of conditions and requirements established by the board.

Section 5. An applicant for license transfer shall take and pass the Multistate Pharmacy Jurisprudence Examination administered by the NABP and shall pay the fees in 201 KAR 2:050(1) and (19).

Section 6. An applicant licensed in another jurisdiction shall be eligible for non-resident pharmacist license if the applicant: [Fee. An applicant shall include the fees specified by 201 KAR 2:050, Section 4(2) and (19).]

(1) Holds in good standing an active license to practice pharmacy in any state;

(2) The applicant is issued a NABP Verify credential; and

(3) The applicant submits to a fingerprint-supported criminal record check by the Department of Kentucky State Police and the Federal Bureau of Investigation pursuant to KRS 218A.205(8).

Section 7. An applicant for non-resident pharmacist license shall be exempt from:

(1) The requirements for license transfer;

(2) The Multistate Pharmacy Jurisprudence Examination administered by NABP; and

(3) Continuing Education requirements of Kentucky.

Section 8. A non-resident pharmacist licensee shall:

(1) Maintain participation in the NABP Verify Program;

(2) Submit an initial application for non-resident pharmacist licensure;

(3) Submit an annual renewal of non-resident pharmacist license; and

(4) Pay the annual renewal of a pharmacist non-resident license fee established in 201 KAR 2:050.

Section 9. The following acts are prohibited with the utilization of a non-resident pharmacist license:

(1) Engaging in the practice of pharmacy in Kentucky while:

(a) Residing in Kentucky; or

(b) Employed by a pharmacy located in Kentucky; and

(2) Serving as a pharmacist-in-charge of a Kentucky permitted facility.

Section 10. Board Discretion.

(1) The board maintains the discretion to deny an applicant a licensee if the applicant fails to demonstrate good mental health and moral character pursuant to KRS 315.050(1);

(2) The board may waive the provisions of Section 9 of this administrative regulation during a declared state of emergency.

Section 11. [Section 7.] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "NABP Preliminary Application for Transfer of Pharmacist License", April 2018; and [is incorporated by reference.]

(b) "Application/Renewal for Non-Resident Pharmacist License", 04/2024.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or on the Web site at <https://pharmacy.ky.gov/professionals/Pages/Pharmacists.aspx>. [https://pharmacy.ky.gov/professionals/Pages/Reciprocal-Information.aspx.]

CHRISTOPHER HARLOW, Pharm.D., Executive Director

APPROVED BY AGENCY: April 15, 2024

FILED WITH LRC: April 15, 2024 at 10:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 25, 2024, at 10:00 a.m. Eastern Time via zoom teleconference. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the

public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Christopher Harlow, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Christopher.harlow@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christopher Harlow

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes conditions, forms, and examination requirements for licensure by reciprocity and for licensure of non-resident pharmacists.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to inform pharmacists of the conditions, forms, and examination requirements for reciprocal licensure and non-resident licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation, authorized by KRS 315.191(1)(a), establishes conditions, forms, and examination requirements for licensure by reciprocity and for licensure of non-resident pharmacists. This administrative regulation conforms to the authorizing statute because the authorizing statute gives the board authority to promulgate administrative regulations pertaining to pharmacists and pharmacies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure that pharmacists are informed of the conditions, forms, and examination requirements for reciprocal licensure and non-resident licensure.

(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 to an existing administrative regulation establishes a new classification of pharmacist licensure. This amendment to an existing administrative regulation establishes conditions, forms, and examination requirements for licensure of non-resident pharmacists.

(b) The necessity of the amendment to this administrative regulation: This amendment to an existing administrative regulation is necessary to inform non-resident pharmacists of the conditions, forms, and examination requirements for non-resident licensure.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment to an existing administrative regulation, authorized by KRS 315.191(1)(a), establishes conditions, forms, and examination requirements for non-resident licensure. This amendment to an existing administrative regulation conforms to the authorizing statute because KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations pertaining to pharmacists and pharmacies.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides rules for non-resident pharmacist licensure.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates that pharmacists seeking reciprocity and non-resident pharmacists will be affected, as pharmacists seeking reciprocity and non-resident pharmacists will need to comply with this administrative regulation to obtain licensure. Data was collected from non-resident pharmacies indicating the number of pharmacists dispensing prescriptions to residents of the Commonwealth without a license issued by the Kentucky Board of Pharmacy to be 9,250 pharmacists.

(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: 1. Pharmacists seeking reciprocity and non-resident pharmacists will have to familiarize themselves with this administrative regulation. 2. This administrative regulation establishes conditions, forms, and examination requirements for licensure by reciprocity and for licensure of non-resident pharmacists. 3. The board will help educate identified entities of this amendment to an existing administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Reciprocal applications cost \$250, and this is not being amended. Applications for non-resident licensure will cost \$50. These fees are in 201 KAR 2:050.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These pharmacists will have the benefit of practicing pharmacy in Kentucky.

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

(a) Initially: The Kentucky Board of Pharmacy is implementing a new licensing management software in 2024. The cost associated with this new software included the anticipated changes with the proposed and amended regulations. The base price for the software is \$220,500 plus the implementation cost of \$88,200. The yearly support and maintenance is \$66,150. This fund has been appropriated to the Kentucky Board of Pharmacy by the passing of HB6 in 2024. Additional administrative cost includes personnel for licensing pharmacists and non-resident pharmacies. The Kentucky Board of Pharmacy estimates the annual and ongoing personnel cost to be \$132,000.

(b) On a continuing basis: The year 2-5 support and maintenance for the licensing management software ranges from \$66,150 to \$72,284. Additional administrative cost to administer the proposed amendment includes personnel for licensing pharmacists and non-resident pharmacies. The Kentucky Board of Pharmacy estimates the annual and ongoing personnel cost to be \$132,000.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding to enforce the regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An amendment to 201 KAR 2:050 includes a new fee for non-resident licensure that has been created here.

(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, but in the non-resident licensure application, a fee is referenced. This fee originates in 201 KAR 2:050.

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all pharmacists seeking license transfer and all out of state pharmacists seeking a nonresident license.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.191(1) authorizes the Board to regulate pharmacists through licensing.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The promulgating agency, the Board of Pharmacy, is the only affected state unit impacted.

(a) Estimate the following for the first year:

Expenditures: The board is implementing new licensing management software in 2024. The cost associated with this software includes the anticipated changes from this amendment. The base price for the software is \$220,500 plus the implementation cost of \$88,200. The yearly support and maintenance is \$66,150. Additional administrative costs include personnel costs for licensing pharmacists. The Board estimates the annual personnel cost to be approximately \$132,000.

Revenues: The Board estimates additional revenues to be

VOLUME 50, NUMBER 11– May 1, 2024

approximately \$462,500 from annual renewals from non-resident pharmacists and those that practice into Kentucky via license transfer.

Cost Savings: none.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? It will depend on the number of applicants seeking transfer or to become a non-resident pharmacist licensee.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): There are no local affected entities with the exception of the Board.

(a) Estimate the following for the first year:

Expenditures: n/a

Revenues: n/a

Cost Savings: n/a

(b) How will expenditures, revenues, or cost savings differ in subsequent years? n/a

(4) Identify additional regulated entities not listed in questions (2) or (3): Out of state pharmacists are the regulated party that will be impacted by this regulation. This includes those applicants seeking license transfer and those pharmacists seeking a non-resident pharmacist license.

(a) Estimate the following for the first year:

Expenditures: \$50 for a non-resident pharmacist license and \$50 for the annual renewal. For transfer/reciprocating pharmacists, the cost is \$250 initially and \$105 each year for renewal.

Revenues: n/a

Cost Savings: n/a

(b) How will expenditures, revenues, or cost savings differ in subsequent years? It will depend on the number of pharmacists seeking license transfer or a non-resident pharmacist license.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The fiscal impact rests on pharmacists that are seeking licensure in Kentucky via the license transfer route or the limited license that can be obtained via non-resident pharmacist licensure. For transfer applicants, the cost is \$250 with an annual renewal of \$105. For non-resident pharmacist license applicants, the cost is \$50 and the renewal cost is \$50. If pharmacies pay for their pharmacists non-resident in aggregate, these numbers could be increased for the initial licensing of non-resident pharmacists. Currently 47.6% of pharmacists licensed with the Board are located outside of Kentucky.

(b) Methodology and resources used to determine the fiscal impact: The estimated revenues generated for the budget are obtained from current and historical data.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have an overall negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion: Agency data including the number of pharmacists that might seek a non-resident pharmacist license, as collected from pharmacy responses.

BOARDS AND COMMISSIONS
Board of Pharmacy
(Amendment)

201 KAR 2:050. Licenses and permits; fees.

RELATES TO: KRS 218A.205(3)(g), 315.035(1), (2), (4), 315.0351(1), 315.036(1), 315.050(5), 315.060, 315.110, 315.120, 315.191, 315.402

STATUTORY AUTHORITY: KRS 218A.205(3)(g), 315.035(1), (2), (4), 315.036(1), 315.050(5), 315.060, 315.110(1), 315.120(4), 315.191(1)(i), 315.402(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(i) authorizes the board to assess reasonable fees for services rendered to perform its duties and responsibilities. This administrative regulation establishes reasonable fees for the board to perform all the functions for which it is responsible.

Section 1. The following fees shall be paid in connection with pharmacist examinations and licenses, pharmacy permits, intern certificates, and the issuance and renewal of licenses and permits:

(1) Application for initial pharmacist license - \$150;

(2) Application and initial license for a pharmacist license by license transfer - \$250;

(3) Annual renewal of a pharmacist license - ninety-five (95) dollars;

(4) Delinquent renewal penalty for a pharmacist license - ninety-five (95) dollars;

(5) Annual renewal of an inactive pharmacist license - ten (10) dollars;

(6) Pharmacy intern certificate valid six (6) years - twenty-five (25) dollars;

(7) Duplicate of original pharmacist license wall certificate - seventy-five (75) dollars;

(8) Application for a permit to operate a pharmacy - \$150;

(9) Renewal of a permit to operate a pharmacy - \$150;

(10) Delinquent renewal penalty for a permit to operate a pharmacy - \$150 dollars;

(11) Change of location or change of ownership of a pharmacy or manufacturer permit - \$150;

(12) Application for a permit to operate as a manufacturer - \$150;

(13) Renewal of a permit to operate as a manufacturer - \$150;

(14) Delinquent renewal penalty for a permit to operate as a manufacturer - \$150;

(15) Change of location or change of ownership of a wholesale distributor license - \$150;

(16) Application for a license to operate as a wholesale distributor - \$150;

(17) Renewal of a license to operate as a wholesale distributor - \$150;

(18) Delinquent renewal penalty for a license to operate as a wholesale distributor - \$150;[-and]

(19) Query to the National Practitioner Data Bank of the United States Department of Health and Human Services - twenty-five (25) dollars;

(20) Application for non-resident pharmacist license - fifty (50) dollars;

(21) Renewal for non-resident pharmacist license - fifty (50) dollars; and

(22) Delinquent renewal penalty for non-resident pharmacist license - fifty (50) dollars.

Section 2. A pharmacy permit[An] applicant shall submit:

(1) An initial or renewal application for a pharmacy permit on either the:

(a)1. Application for Permit to Operate a Pharmacy in Kentucky;

or

2. Application for Resident Pharmacy Permit Renewal; or

(b)1. Application for Non-Resident Pharmacy Permit, as incorporated by reference into 201 KAR 2:465; or

2. Application for Non-Resident Pharmacy Permit Renewal, as incorporated by reference into 201 KAR 2:465; and

(2) As appropriate, the:

(a) Initial application fee established by Section 1(8) of this administrative regulation; or

(b) Renewal fee established by Section 1(9) of this administrative regulation.

Section 3. All fees shall be non-refundable.

Section 4. Applications shall expire one (1) year after the date the application is received by the board.

Section 5. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) ["Application for Non-Resident Pharmacy Permit", Form 3, 9/2023;]

[(b)] ["Application for Non-Resident Pharmacy Permit Renewal", Form 4, 9/2023;]

VOLUME 50, NUMBER 11– May 1, 2024

(e) "Application for Permit to Operate a Pharmacy in Kentucky", Form 1, 6/2023; and

(b)(4) "Application for Resident Pharmacy Permit Renewal", Form 2, 6/2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://pharmacy.ky.gov/Businesses/Pages/Pharmacy.aspx>.

CHRISTOPHER HARLOW, Pharm.D. Executive Director

APPROVED BY AGENCY: April 15, 2024

FILED WITH LRC: April 15, 2024 at 10:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 25, 2024, at 10:00 a.m. Eastern Time via zoom teleconference. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Christopher Harlow, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Christopher.harlow@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christopher Harlow

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees associated with Board of Pharmacy licensure.

(b) The necessity of this administrative regulation: KRS 315.191(1)(i) authorizes the Board of Pharmacy to assess reasonable fees for services rendered to perform its duties and responsibilities. This administrative regulation establishes reasonable fees for the board to perform all the functions for which it is responsible.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes reasonable fees for the operating costs to ensure that the board performs all functions as detailed in KRS 315.191(1) including regulating and controlling pharmacists, pharmacist interns, pharmacy technicians, pharmacies, wholesale distributors, and manufacturers, to the extent that regulation and control of same have not been delegated to another agency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation allows for the funding to support Board administration.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds additional fees for the category of non-resident pharmacist license, non-resident pharmacist license renewal, delinquent renewal penalty for non-resident pharmacist licensure, and this amendment clarifies that applications expire after one year and that all fees received are non-refundable.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to ensure the Board is adequately protecting the residents of the Commonwealth. The new fees created are for application in an amendment to 201 KAR 2:030 in which the Board seeks to license non-resident pharmacists that dispense prescription drugs to residents of the

Commonwealth. Licensing these pharmacists will provide the Board with jurisdiction to adequately monitor and discipline these pharmacists should they violate Kentucky law when providing care to Kentucky patients.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.191(1)(i) authorizes the Board of Pharmacy to assess reasonable fees for services rendered to perform its duties and responsibilities. KRS 315.005 states that the Board's purpose is to promote, preserve, and protect public health, safety, and welfare by and through effective control and regulation of all sites or persons, whether located in or outside the Commonwealth that distribute or sell drugs within the Commonwealth.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists that are dispensing prescription drugs to Kentucky patients.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Regarding the amendment related to non-resident licensure, non-resident pharmacists will be impacted by the new fees in this regulation. Should the pharmacy wish to pay the non-resident licensure fee for all their pharmacists in aggregate, the pharmacy would be impacted. All licensees and permit holders are impacted by this regulation because this regulation establishes the fee structure for all the board's licensees and permit holders. Those fees support all operating costs 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: Non-resident pharmacists that are currently dispensing prescription drugs into the Commonwealth for Kentucky patients that are not already licensed in Kentucky will need to become licensed in Kentucky pursuant to the rules established in the amendment to 201 KAR 2:030.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee for non-resident pharmacist licenses is fifty dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These licensees will have the ability to dispense prescriptions into Kentucky, enabling access to a larger patient population.

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

(a) Initially:

(b) On a continuing basis: Other explanation: This regulation contains fees that are already in effect. The only new fees are those regarding non-resident licensure. Those licenses will be maintained by the Board and the cost of which is detailed in our fiscal statement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from fees provide the funding to enforce the regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment creates a new category of fee for non-resident pharmacists dispensing prescription drugs into Kentucky. That is the only category in this regulation that has been added and is not currently already rule.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment does create new categories of fees for non-resident pharmacist licenses. That fee is \$50.

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all pharmacies, wholesale distributors, manufacturers, pharmacists and interns.

VOLUME 50, NUMBER 11– May 1, 2024

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.191(1)(a).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Board of Pharmacy will be impacted by this administrative regulation.

(a) Estimate the following for the first year:

Expenditures: 3,268,700

Revenues: 2,730,000

Cost Savings: none

(b) How will expenditures, revenues, or cost savings differ in subsequent years? In subsequent years, the expenditures are projected to be \$3,328,800 and the revenues approximately \$3,312,500.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): There are no local entities affected by this regulation.

(a) Estimate the following for the first year:

Expenditures: n/a

Revenues: n/a

Cost Savings: n/a

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There are no local entities impacted by this regulation.

(4) Identify additional regulated entities not listed in questions (2) or (3): Regulated entities include all pharmacies, wholesalers, resident manufacturers, pharmacists, and interns.

(a) Estimate the following for the first year:

Expenditures: It is dependent upon the type of regulated entity.

Revenues: It is dependent upon the type of regulated entity.

Cost Savings: It is dependent upon the type of regulated entity.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures should remain the same.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This regulation establishes fees to individuals and facilities regulated by the Kentucky Board of Pharmacy. The fees established provide a funding source for the board to achieve its mission to promote, preserve, and protect the public health, safety, and welfare for the people of the Commonwealth of Kentucky.

(b) Methodology and resources used to determine the fiscal impact: The estimates provided were based on historical revenues and expenditures. For the proposed amendment, data was collected from non-resident pharmacies indicating the number of pharmacists dispensing prescriptions to residents of the Commonwealth without a license issued by the Kentucky Board of Pharmacy.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) In total, because permit and licensing fees are how the Board funds its operations, this administrative regulation does have major economic impact.

(b) The methodology and resources used to reach this conclusion: This regulation serves as the primary funding source for the Kentucky Board of Pharmacy. The estimated revenues generated for the budget are obtained from current and historical data.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

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

RELATES TO: KRS 150.010, 150.025, 150.170, 50 C.F.R. 17.11

STATUTORY AUTHORITY: 150.025(1)(h)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

150.025(1)(h) authorizes the department to promulgate administrative regulations to carry out the purposes of KRS Chapter 150. This administrative regulation establishes definitions for terms used in 301 KAR Chapter 1.

Section 1. Definitions.

(1) "Adjacent landowner" means the owner of real property that shares a common boundary with department property.

(2) "Angler" means a person holding a valid resident or nonresident fishing license and includes those persons who are fishing license exempt as established in KRS 150.170.

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

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

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

(6) "Aquatic organisms" means fish, frog, crayfish, and other aquatic vertebrate and invertebrate.

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

(8) "Artificial bait" means a lure, bare hook, or fly made of wood, metal, plastic, feathers, preserved pork rind, or a similar inert material.

(9) "Bar mesh size" means the distance between two (2) knots on a line of a net.

(10) "Boat dock" means a privately owned floating or fixed structure that is used by an adjacent landowner to moor a boat on department property.

(11) "Boat dock tag" means a metal tag provided by the department that has a unique combination of letters and numbers and is permanently affixed to an approved boat dock so that it is visible from the lake.

(12) "Boating access area" means property owned or managed by the department and identified by signs as a public facility for launching and retrieving boats, including:

(a) Ramps, parking lots, courtesy docks, and access roads; and

(b) A zone extending fifty (50) feet into the water adjacent to the department property established in paragraph (a) of this subsection.

(13) "Bow fishing" means shooting rough fish with an arrow with a barbed or retractable style point that has a line attached to it for retrieval with archery equipment, a crossbow, or a pneumatic arrow launching device.

(14) "Buffer zone" means the area from the lake pool level of Cedar Creek Lake to the marked boundary.

(15) "Buyer's permit" means a Commercial Roe-bearing Fish Buyer's Permit.

(16) "By-catch" means any fish that is not an invasive carp or scaled rough fish.

(17) "Camp" means the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or parking of a motor vehicle, motor home, or trailer for the apparent purpose of overnight occupancy.

(18) "Catfish" means a blue catfish, channel catfish, or flathead catfish.

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

(20) "Chumming" means placing substances in the water for the purpose of attracting fish to a particular area.

(21) "Commercial fisher[fisherman]" means a person holding a valid resident or nonresident commercial fishing license.

(22) "Commercial gear tag" means a metal tag provided by the department and that is attached to legal commercial fishing gear as established in 301 KAR 1:146.

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

(24) "Cull" or "culling" means to release a previously caught fish that an angler has kept as a part of a daily limit and replace it with another fish of the same species.

(25) "Daily limit" means the maximum number of a particular

VOLUME 50, NUMBER 11– May 1, 2024

species or group of species a person may legally take in one (1) calendar day while fishing.

(26) "Department property" means lands or waters controlled by the department through ownership, lease, license, easement, or cooperative agreement at department-owned lakes.

(27) "Different body of water":

(a) Means a body of water that is separate and not contiguous to another body of water, including a man-made reservoir that is separated from a downstream river by a dam; and

(b) Does not mean a river, stream, or creek that is separated by a low-level dam.

(28) "Diploid grass carp" means a fish of the genus and species *Ctenopharyngodon idella* that is reproductively fertile and has not been genetically altered and therefore has the normal set of somatic chromosomes as determined by blood sample.

(29) "Existing structure" means an exempted access or nonaccess structure built on department property prior to April 2, 2010.

(30) "Flag net" means a gill or trammel net that is anchored on one (1) end, with the other end of the net unanchored, allowing this end of the gill or trammel net to float freely.

(31) "Gill net" means a passive capture device in which fishes are captured by becoming wedged, gilled, or entangled in a single panel of webbing fished vertically.

(32) "Harvester permit" means a Commercial Roe-bearing Fish Harvester's Permit.

(33)[(32)] "Idle speed" means the slowest possible speed at which maneuverability can be maintained.

(34)[(33)] "Immediate family" means a person's spouse, mother, father, daughter, brother, sister, grandparent, or son.

(35)[(34)] "Invasive carp" means:

(a) Bighead carp *Hypophthalmichthys nobilis*;

(b) Black carp *Mylopharyngodon piceus*;

(c) Grass carp *Ctenopharyngodon idella*; or

(d) Silver carp *Hypophthalmichthys molitrix*.

(36)[(35)] "Lake" means impounded waters from the dam upstream to the first riffle on the main stem river and tributary streams.

(37)[(36)] "Live bait" means the organisms established in paragraphs (a) through (h) of this subsection if they are alive:

(a) Live bait fish;

(b) Crayfish;

(c) Salamander;

(d) Frog, except bullfrog;

(e) Tadpole;

(f) Native lamprey;

(g) Asiatic clam (Genus *Corbicula*); or

(h) Other aquatic invertebrate organisms, except for mussel.

(38)[(37)] "Live bait fishes" means:

(a) Rough fish, except invasive carp and federally threatened or endangered species, as established in 50 C.F.R. 17.11; or

(b) Redear sunfish less than six (6) inches in length.

(39)[(38)] "Lower Ohio River Trophy Catfish" means, for the area downstream of Cannelton Lock and Dam in the Ohio River and its tributaries open to commercial fishing:

(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.

(40)[(39)] "Lower Ohio River Trophy Catfish Harvest Permit" means a permit that allows a commercial fisher[fisherman] to harvest Lower Ohio River Trophy Catfish.

(41)[(40)] "Normal pool" means a water level equal to the elevation of the lake's principal spillway.

(42)[(41)] "Overflow lake" means a permanent or temporary body of water that receives overflow flood waters from an adjacent stream.

(43)[(42)] "Pay lake" means a privately owned, impounded body of water where a daily fee is charged to fish and is open to the public.

(44)[(43)] "Pay lake operator" means a person who holds a valid pay lake license, as established in 301 KAR 3:022.

(45)[(44)] "Permanent dwelling":

(a) Means a private residence on an adjacent landowner's

property that is both fixed in location and of durable permanent construction; and

(b) Does not mean tents, motorized vehicles, trailers, camp trailers, or any type of interim construction or residence.

(46)[(45)] "Pneumatic arrow launching device" means a device designed to fire an arrow using a compressed air cartridge.

(47)[(46)] "Possession limit" means the maximum number of unprocessed fish a person holds after two (2) or more days of fishing.

(48)[(47)] "Processed fish" means a fish that has been gutted, with the head removed.

(49)[(48)] "Rebuild" means to totally reconstruct.

(50)[(49)] "Release" means to return a fish to the water from which it was taken immediately after removing the hook.

(51)[(50)] "Restricted water" means those areas, as established in 301 KAR 1:140, 1:146, 1:150, and 1:155, where:

(a) Commercial fishing is prohibited;

(b) Commercial fishing with gill or trammel nets is prohibited; or

(c) Commercial fishing with gill or trammel nets of restricted net mesh size is prohibited.

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

(53)[(52)] "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.

(54)[(53)] "Roe-bearing Fish Harvester's Permit" means a permit issued by the department to a licensed commercial fisher[fisherman] that entitles the permit holder to harvest and sell roe-bearing species.

(55)[(54)] "Rough fish" is defined by KRS 150.010(37).

(56)[(55)] "Scaled rough fish" means any scaled fish that is not an invasive carp, sport fish as established in 301 KAR 1:060, roe bearing fish, or a species ineligible for commercial harvest as established in 301 KAR 1:155.

(57)[(56)] "Shad" means a live gizzard shad or threadfin shad.

(58)[(57)] "Shoreline use permit" means a permit issued by the department that allows an adjacent landowner to construct a new access structure or to keep or rebuild an existing structure on department land.

(59)[(58)] "Single hook" means a hook with no more than one (1) point.

(60)[(59)] "Size limit" means the minimum legal length of a fish that is measured by laying the fish flat on a ruler with the mouth closed and tail lobes squeezed together.

(61)[(60)] "Slot limit" means a size range of a fish species that shall be released by an angler.

(62)[(61)] "Slow speed" means speed attained with the throttle of the motor set at its slowest forward position.

(63)[(62)] "Speeding and reckless operation" means any operation of a boat in any area of a lake that could endanger other persons or craft using the lake by intimidation, direct contact or by waves created by the speed or reckless operation of a boat.

(64)[(63)] "Sport fish" means those species established in 301 KAR 1:060.

(65)[(64)] "Sport fisherman" means a person holding a valid resident or nonresident fishing license and includes a person who is license exempt pursuant to KRS 150.170.

(66)[(65)] "Temporary aquatic area" means an area:

(a) Temporarily inundated from, but still connected to, a stream, river, or reservoir; and

(b) That persists only for the duration of the elevated water levels.

(67)[(66)] "Temporary pool" means an area temporarily inundated from, but not connected to, a stream, river, or reservoir.

(68)[(67)] "Traditional fishing methods" means the act of taking or attempting to take for non-commercial purposes any freshwater fish species using:

(a) Hook and line in hand; or

(b) Rod in hand.

(69) "Trammel net" means a passive capture device in which fishes are captured by becoming wedged, gilled, or entangled in two or three panels of webbing fished vertically.

VOLUME 50, NUMBER 11– May 1, 2024

(70)((68)) "Triploid grass carp" means a fish of the genus and species *Ctenopharyngodon idella* that is reproductively sterile because it has been genetically altered to have an additional or extra set of somatic chromosomes as determined by blood sample.

(71)((69)) "Trophy catfish" means a:

(a) Blue or flathead catfish that is a minimum of thirty-five (35) inches in length; or

(b) Channel catfish that is a minimum of twenty-eight (28) inches in length.

(72)((70)) "Turtle" means a:

(a) Common snapping turtle (*Chelydra serpentina*);

(b) Smooth softshell turtle (*Apalone mutica*); or

(c) Spiny softshell turtle (*Apalone spinifer*).

(73)((74)) "Unlicensed helper" means a person without a commercial fishing license who is assisting a commercial fisher[fisherman].

(74)((72)) "Unprocessed fish" means the whole fish prior to being processed.

(75)((73)) "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.

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

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

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

(79)((77)) "Water supply lake" means a lake that:

(a) Is owned by a municipality or other public water supply entity;

(b) Provides potable water supply for the public;

(c) Is not owned by the state; and

(d) Is not managed by the department.

(80)((78)) "Whip set" means a gill net or a trammel net rigged so it is free-floating.

RICH STORM, Commissioner

APPROVED BY AGENCY: April 12, 2024

FILED WITH LRC: April 15, 2024 at 10:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2024, at 11:00 a.m., at KDFWR Administration Building, 1 Sportsman's Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through, June 30, 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 definitions for terms used in 301 KAR Chapter 1.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to avoid confusion when interpreting the meaning of terms used in 301 KAR Chapter 1.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: KRS 150.025(1)(h) requires the department to promulgate administrative regulations to carry out the purpose of the chapter.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing definitions for the terms used in 301 KAR Chapter 1, misinterpretation of the regulations should be minimized.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds definitions for "Gill net" and "Trammel net", which are sampling gears used while commercial fishing. The phrase "commercial fisherman" was changed to "commercial fisher" throughout the regulation as well.

(b) The necessity of the amendment to this administrative regulation: These definitions will help clarify the specifications of each gear type and assist in enforcement of commercial fishing regulations.

(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 individuals reading this regulation or any regulation in 301 KAR Chapter 1 will be affected.

(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 conform to the definitions of "Gill net" and "Trammel net" when using these commercial fishing gears.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will avoid violation of regulations by conforming to the definitions of these commercial fishing gears.

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

(a) Initially: There will be no cost initially

(b) On a continuing basis: There will be no cost on a continuous 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: No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No direct or indirect fees will be established.

(9) TIERING: Is tiering applied? No tiering is applied. This regulation applies to all individuals, businesses, and organizations impacted by the regulations in 301 KAR Chapter 1.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. 150.025 (1)(h)

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Department's Divisions of Fisheries and Law Enforcement will be impacted.

(a) Estimate the following for the first year:

Expenditures: There will be no costs to administer this program for the first year.

VOLUME 50, NUMBER 11– May 1, 2024

Revenues: No revenue will be generated from this administrative regulation in the first year.

Cost Savings: There will be no cost savings outside of preventing fines assessed to users due to confusion in interpreting the terms found in 301 KAR Chapter 1.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no cost, revenues, or cost savings for subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

(a) Estimate the following for the first year:

Expenditures: There will be no cost to regulated entities for the first year.

Revenues: No revenue will be generated from this administrative regulation in the first year.

Cost Savings: There will be no cost savings outside of preventing fines assessed to users due to confusion in interpreting the terms found in 301 KAR Chapter 1.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no cost to regulated entities for subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3):

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

(b) How will expenditures, revenues, or cost savings differ in subsequent years? N/A

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: These amendments are for definitions only and have no fiscal impact.

(b) Methodology and resources used to determine the fiscal impact: As this regulation only provides definitions, there were no calculations or assessments needed for fiscal impact.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) These amendments are for definitions only and will have no overall negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion: As this regulation only provides definitions, there were no calculations or assessments needed to determine overall negative or positive economic impact.

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)**

301 KAR 1:152. Harvest and sale of invasive[Asian] carp.

RELATES TO: KRS Chapter 13B, 150.010, 150.170, 150.175, 150.445, 150.450(2), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources[department] to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area. This administrative regulation establishes the requirements for the harvest and sale of invasive[Asian] carp beyond the requirements of 301 KAR 1:155.

Section 1. Invasive Carp and Scaled Rough Fish Harvest Program.

(1) To participate in the program, a commercial fisher shall:

(a) Contact the department and request to be included in the program;

(b) Possess a valid Kentucky commercial fishing license;

(c) Contact the department at 270-226-4192 and provide the information established in subparagraphs 1. through 5. of this paragraph prior to fishing;

1. The participant's name;

2. The fish buyer's name;

3. Date fishing is to occur;

4. Restricted water body to be fished; and

5. Ramp, marina, or dock where boat(s) will be launched;

(d) Harvest a weight ratio of at least sixty-five (65) percent invasive carp to thirty-five (35) percent scaled rough fish over a one (1) month period, except that a commercial fisher whose license fee has been waived as established in subsection (2)(c) of this section shall only harvest invasive carp and not retain any scaled rough fish or by-catch;

(e) Only fish on dates and at locations provided to the department;

(f) Notify the department prior to changing any information as established in subsection (1)(c)2. through 5. of this section;

(g) Only use gill or trammel nets:

1. With a minimum bar mesh of three (3) inches;

2. That are always tended by a program participant when set less than three (3) feet below the surface of the water;

3. That are not left unattended by a program participant for more than six (6) hours when set at least three (3) feet below the surface of the water from April 1 through September 20; and

4. That are not left unattended by a program participant for more than eight (8) hours when set at least three (3) feet below the surface of the water from October 1 through March 31;

(h) Visibly mark each end of net sets or gangs of nets with floating buoys;

(i) Harvest, possess, and transport fish claimed under this program separately than fish harvested by any other method;

(j) Complete a Daily Harvest and Release Summary Card after each day's fishing and submit all cards to the department at the end of each month;

(k) Be allowed to sell all harvested invasive carp and scaled rough fish as established in subsection (1) of this section;

(l) Immediately release all by-catch; and

(m) Report all harvest on a Monthly Report of Commercial Fish Harvest in Kentucky, as established in 301 KAR 1:155.

(2) The department shall:

(a) Maintain a list of program participants and their contact information, which shall be:

1. Provided to known fish buyers; and

2. Updated at least weekly;

(b) Maintain a list of all restricted water fishing requests as established in subsection (1) of this section; and

(c) Waive the commercial fishing license fees, as established in 301 KAR 5:022, for a program participant who only harvests invasive carp in restricted or unrestricted waters.

(3) The department shall not approve a fishing request if:

(a) Higher than normal by-catch is likely to occur at that location and time; or

(b) Excessive user conflicts would occur.

Section 2. Experimental Commercial Fishing Methods Program.

(1) The following waterbodies, including restricted waters shall be open to experimentation to target invasive carp under this program upon department approval:

(a) Cumberland River downstream of Lake Barkley;

(b) Tennessee River downstream of Kentucky Lake;

(c) Green River from 200 yards downstream of Green River Lock and Dam 4 to the confluence with the Ohio River;

(d) Kentucky Lake;

(e) Lake Barkley;

(f) Mississippi River from the mouth of the Ohio River downstream to the Kentucky-Tennessee state line; and

(g) Ohio River downstream of Newburg Lock and Dam.

(2) The commercial fishing gear tag requirements as established in 301 KAR 1:146 shall be waived when department personnel are present during experimentation.

(3) The commercial fishing gear tag requirements as established in 301 KAR 1:146 must be followed when department personnel are

VOLUME 50, NUMBER 11– May 1, 2024

not present during experimentation.

(4) Any commercial gear not conforming to those established in 301 KAR 1:146 shall be reviewed by the department for commercial gear tagging feasibility and need.

(5) Any live fish holding net left overnight on the water shall have a commercial fishing gear tag attached and be marked with equipment issued by the department.

(6) Tier I requirements.

(a) A commercial fisher shall apply for Tier I of the program by submitting a completed Application for Experimental Commercial Fishing Methods Program Permit provided by the department.

(b) Participation in Tier I of the program shall be limited to three (3) program participants at any one time.

(c) In addition to meeting the qualification requirements established in paragraph (e) of this subsection, selection of the top three (3) applicants shall be based on the scoring criteria established in subparagraphs 1. through 4. of this paragraph:

1. The fisher's experience as a commercial fisher as well as the fisher's experience fishing for invasive carp;

2. The years of experience the fisher has with the gear and methods proposed and the past results of using the proposed gear and/or methods;

3. The status of the fisher's gear, including if:

a. They currently possess all the gear required for their proposed method;

b. They do not currently possess all the gear, but they attest they will possess such gear prior to their admission in the program; or

c. They have access to the gear; and

4. How their proposal shall help the department to achieve its mission of reducing the number of invasive carp in Kentucky waters.

(d) If at any time the number of program participants falls below three (3), all applications submitted prior to the vacancy will be reviewed as established in paragraph (c) of this subsection for selection of a new program participant.

(e) To qualify for Tier I of the program, a commercial fisher shall:

1. Have a minimum of three years commercial fishing experience with at least two years holding a valid commercial fishing license;

2. Have a boat and motor(s) which meets the following requirements:

a. Minimum boat length of twenty-two (22) feet, and space for essential crew and one (1) department-appointed observer, along with storage capacity for harvested fish;

b. Outboard motor with a minimum of seventy-five (75) horsepower;

c. Required safety equipment and personal flotation devices (PFD);

d. Fishing electronics, including traditional and side-imaging sonar, and water temperature; and

e. Valid boat registration;

3. Have a towing vehicle capable of boat transportation to and from designated removal sites and hauling of harvests for sale or disposal;

4. Have the necessary Kentucky Department of Transportation identification permits, insurance cards, and federal transportation tags for commercial transport of fish, and

5. Allow a department staff member to be present for all commercial fishing methods experimentation.

(f) A Tier I participant shall:

1. Fish under a paid commercial license that allows the harvest and sale of rough fish other than invasive carp;

2. Possess a valid Experimental Commercial Fishing Methods Program Permit;

3. Be present for all commercial fishing methods experimentation;

4. Coordinate with the department to request a fishing date and location at least five (5) days in advance of fishing;

5. Allow department staff onboard vessels to observe and record fish harvesting efforts;

6. Cease any experimentation considered by the department to:

a. Be unsafe;

b. Interfere with other recreational users;

c. Be detrimental to non-target species; or

d. Be unsuccessful for significant invasive carp harvest;

7. Be responsible for the removal and lawful disposal of all invasive carp species caught from waters during fishing efforts;

8. Indicate on sales receipts that fish were harvested by an experimental gear/method authorized under this program and identify the permit holder;

9. Be eligible for the department's Kentucky and Barkley Lake Invasive Carp Subsidy Program;

10. Submit itemized invoices, by date, to the department each month, including pounds harvested of each species;

11. Complete a Daily Harvest and Release Summary Card after each day's fishing and submit all cards to the department at the end of each month;

12. Report all harvest on a Monthly Report of Commercial Fish Harvest in Kentucky, as established in 301 KAR 1:155; and

13. Meet with department personnel quarterly to review the actions taken under this program.

(7) Tier II requirements.

(a) A commercial fisher shall apply for Tier II of the program by submitting a completed Application for Experimental Commercial Fishing Methods Program Permit provided by the department.

(b) Along with meeting the requirements established in subsection (6)(e)1. through 5. of this section, Tier II applicants must also meet the requirements established in subparagraphs 1. through 6. of this paragraph:

1. Shown proficiency in use of the experimental gear/method by either:

a. Participating for at least six (6) months in Tier I of the program, with gear/method fished a minimum of twenty (20) times; or

b. Previously utilizing experimental gear/method through a department Memorandum of Agreement and have been released from department observation of experimental fishing activities;

2. Maintained satisfactory communication with department staff during Tier I activities;

3. Harvested at least 200,000 pounds of invasive carps through Tier I of the program within the previous year;

4. Harvested a weight ratio of at least eighty (80) percent invasive carp to twenty (20) percent scaled rough fish over the most recent ten (10) fishing days under Tier I of the program;

5. By-catch, in the form of sportfish, must have represented five (5) percent or less by number of the fish caught, based upon the Department observer's visual estimate, over the most recent ten (10) fishing days under Tier I of the program; and

6. By-catch must have been in a condition where survival could be expected upon release.

(c) A Tier II participant shall:

1. Follow the requirements established in subsection (6)(f) of this section, except requests for a fishing date and location shall be made at least twenty-four (24) hours in advance of fishing;

2. Harvest a weight ratio of at least eighty (80) percent invasive carp to twenty (20) percent scaled rough fish over each one (1) month period;

3. By-catch, in the form of sportfish, must be maintained at five (5) percent or less by number of the fish caught, based upon the fisher's or a department observer's visual estimate; and

4. Keep daily records and report the following to department staff on a monthly basis:

a. Pounds of fish harvested by species;

b. Number of personnel assisting with the effort;

c. Names of licensed commercial fishers that fish were transferred to for the purpose of transport and sale (if any);

d. Name of processor or fish market receiving fish;

e. Number of hours experimental gear was fished;

f. Number of times gear was deployed; and

g. Other pertinent information associated with the gear (mesh size, gear depth, gear length, approximate depth of water gear was used in). [Definitions:]

[(1)] ["Asian carp" means:]

[(a)] [Bighead carp;]

[(b)] [Black carp;]

[(c)] [Grass carp; or]

[(d)] [Silver carp;]

[(2)] ["By-catch" means any fish that is not an Asian carp or scaled rough fish.]

VOLUME 50, NUMBER 11– May 1, 2024

~~[(3)] ["Program" means Asian Carp and Scaled Rough Fish Harvest Program.]~~

~~[(4)] ["Program participant" means a commercial fisherman who is:]~~

~~[(a)] [Enrolled in the Asian Carp and Scaled Rough Fish Harvest Program; and]~~

~~[(b)] [Fishing in restricted water.]~~

~~[(5)] ["Restricted water" means those areas, as established in 301 KAR 1:140, 1:146, 1:150, and 1:155, where:]~~

~~[(a)] [Commercial fishing is prohibited;]~~

~~[(b)] [Commercial fishing with gill or trammel nets is prohibited; or]~~

~~[(c)] [Commercial fishing with gill or trammel nets of restricted net mesh size is prohibited.]~~

~~[(6)] ["Scaled rough fish" means any scaled fish that is not an Asian carp, sport fish as established in 301 KAR 1:060, roe bearing fish, or a species ineligible for commercial harvest as established in 301 KAR 1:155.]~~

~~[(7)] ["Unlicensed helper" means a person without a commercial fishing license who is assisting a program participant.]~~

~~[Section 2.] [Program Participant Qualifications. A commercial fisherman shall:]~~

~~[(1)] [Contact the department and request to be included in the program; and]~~

~~[(2)] [Possess a valid Kentucky commercial fishing license.]~~

~~[Section 3.] [Program Participant Requirements. A program participant shall:]~~

~~[(1)] [Call the department at 270-226-4192 at least twenty-four (24) hours prior to the requested fishing date and provide the information established in paragraphs (a) through (f) of this subsection:]~~

~~[(a)] [The participant's name;]~~

~~[(b)] [The fish buyer's name;]~~

~~[(c)] [Date requested;]~~

~~[(d)] [Restricted water body to be fished;]~~

~~[(e)] [The location in the restricted water body to be fished, listed as river miles or embayment; and]~~

~~[(f)] [The name or location of the boat ramp that will be used;]~~

~~[(2)] [Harvest a weight ratio of at least sixty-five (65) percent Asian carp to thirty-five (35) percent scaled rough fish over a one (1) month period, except that a commercial fisherman whose license fee has been waived as established in Section 4 of this administrative regulation shall only harvest Asian carp and not retain any scaled rough fish or by-catch;]~~

~~[(3)] [Only fish:]~~

~~[(a)] [On dates approved by the department; and]~~

~~[(b)] [At a location approved by the department;]~~

~~[(4)] [Notify the department and receive approval prior to changing the:]~~

~~[(a)] [Fishing location in the restricted water body; or]~~

~~[(b)] [Boat ramp being used;]~~

~~[(5)] [Only use gill or trammel nets:]~~

~~[(a)] [With a minimum bar mesh size of three (3) inches;]~~

~~[(b)] [That are always tended by a program participant when set less than three (3) feet below the surface of the water;]~~

~~[(c)] [That are not left unattended by a program participant for more than six (6) hours when set at least three (3) feet below the surface of the water from April 1 through September 30; and]~~

~~[(d)] [That are not left unattended by a program participant for more than eight (8) hours when set at least three (3) feet below the surface of the water from October 1 through March 31;]~~

~~[(6)] [Visibly mark each end of net sets or gangs of nets with floating buoys;]~~

~~[(7)] [Harvest, possess, and transport fish claimed under this program separately than fish harvested by any other method;]~~

~~[(8)] [Complete a Daily Harvest and Release Summary Card after each day's fishing and submit all cards to the department at the end of each month;]~~

~~[(9)] [Be allowed to sell all harvested Asian carp and scaled rough fish as established in Section 2 and 3 of this administrative~~

~~regulation;]~~

~~[(10)] [Immediately release all by-catch; and]~~

~~[(11)] [Report all harvest on a Monthly Report of Commercial Fish Harvest form, as established in 301 KAR 1:155.]~~

~~[Section 4.] [Commercial Fishing License Fee Waiver. The commercial fishing license fees, as established in 301 KAR 3:022, shall be waived for a program participant who only harvests Asian carp in restricted or unrestricted waters.]~~

~~[Section 5.] [Department Program Requirements.]~~

~~[(1)] [The department shall:]~~

~~[(a)] [Maintain a list of program participants and their contact information, which shall be:]~~

~~[1.] [Provided to known fish buyers; and]~~

~~[2.] [Updated at least weekly; and]~~

~~[(b)] [Review all restricted water fishing requests as established in Section 3 of this administrative regulation.]~~

~~[(2)] [The department shall approve a qualified fishing request by assigning a fishing location and boat ramp to a program participant.]~~

~~[(3)] [The department shall not approve a fishing request for reasons established in paragraphs (a) and (b) of this subsection:]~~

~~[(a)] [Higher than normal by-catch is likely to occur at that location and time; or]~~

~~[(b)] [Excessive user conflicts would occur.]~~

~~Section 3.] [Section 6.] Unlicensed Helpers.~~

~~(1) A [program] participant in the Invasive Carp and Scaled Rough Fish Harvest Program shall not utilize more than two (2) unlicensed helpers while actively fishing.~~

~~(2) A participant in Tier I or Tier II of the Experimental Commercial Fishing Methods Program may use more than two (2) unlicensed helpers while actively fishing but must follow the reporting requirements as established in Section 2(7)(b)4.b. of this administrative regulation.~~

~~(3) A participant in either program [participant] shall ensure that an unlicensed helper complies with all boating safety requirements established in KRS Chapter 235.~~

~~[(3)] An unlicensed helper in either program shall:~~

~~(a) Be accompanied by a licensed program participant while using commercial fishing gear; and~~

~~(b) Be permitted to transport invasive[Asian] carp in the absence of a program participant with a Fish Transportation Permit as established in 301 KAR 1:125.~~

~~[(4)] A program participant 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 fisherman or another [program] participant in either program; or~~

~~(b) Assist a licensed Kentucky commercial fisherman or another [program] participant in either program in harvesting or transporting fish.~~

~~Section 4.] [Section 7.] Program Suspension, Revocation, and Disqualification.~~

~~(1) A [program] participant in either program whose commercial fishing license becomes revoked or suspended as established in 301 KAR 1:155 shall be disqualified from participating in those programs[the Asian Carp and Scaled Rough Fish Harvest Program] while that license is revoked or suspended.~~

~~(2) A participant in the Invasive Carp and Scaled Rough Fish Harvest Program [participant] shall be suspended from the program:~~

~~(a) For a three (3) month period beginning on the first day of the next month if the minimum requirements established in Section 1(1)(d)[3(2)] are not met; and~~

~~(b) For a period of one (1) year beginning on the first day of the next month if the requirements are not met a second time.~~

~~(3) A participant in Tier I of the Experimental Commercial Fishing Methods Program shall be suspended from the program:~~

~~(a) For a three (3) month period beginning on the first day of the next month if the minimum requirements established in Section~~

VOLUME 50, NUMBER 11– May 1, 2024

2(6)(f) are not met; and

(b) For a period of one (1) year beginning on the first day of the next month if the requirements are not met a second time.

(4) A participant in Tier II of the Experimental Commercial Fishing Methods Program shall be suspended from the program:

(a) For a three (3) month period beginning on the first day of the next month if the minimum requirements established in Section 2(7)(c) are not met; and

(b) For a period of one (1) year beginning on the first day of the next month if the requirements are not met a second time.

(5) Falsification of any information listed in an application shall result in disqualification from consideration for selection and revocation of any experimental methods permit that may have been issued to the applicant.

(6) Any participant who is disqualified, revoked, or suspended from participation in either[the] program may appeal the decision in accordance with KRS Chapter 13B.

(7)[(4)] To appeal the disqualification, revocation, or suspension, the participant shall provide a written request for a KRS Chapter 13B hearing, postmarked or delivered in person to the department no later than thirty (30) days after notification of the disqualification or suspension.

Section 5.[Section 8.] Non-commercial Invasive[Asian] Carp Harvest and Sale. Any person possessing a valid Kentucky sport fishing license:

(1) May harvest invasive[Asian] carp using legal fishing methods as established in 301 KAR 1:201; and

(2) May sell harvested invasive[Asian] carp.

Section 6.[Section 9.] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Daily Harvest and Release Summary Card", 2011 Edition; and[is incorporated by reference.]

(b) "Application for Experimental Commercial Fishing Methods Program Permit", 2024 Edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8:00 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: April 12, 2024

FILED WITH LRC: April 15, 2024 at 10:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2024, at 10:00 a.m., at KDFWR Administration Building, 1 Sportsman's Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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 the requirements for the Invasive Carp and Scaled Rough Fish Harvest Program and

Experimental Commercial Fishing Methods Program.

(b) The necessity of this administrative regulation: The regulation is necessary to provide two important mechanisms for the removal of invasive carp from waters critical to sport fishing and recreational boating.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the purpose of the statute by establishing processes for nuisance fish removal from waters of the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds the eligibility and participation requirements for the new voluntary Experimental Commercial Fishing Methods Program. This program allows commercial fishers to use special commercial fishing gear and methods to further the goal of invasive carp harvest in mass quantities. This amendment also removes the definitions section due to the creation of 301 KAR 1:001. Definitions for 301 KAR Chapter 1. Finally, this amendment changes all references to "Asian carp" to "invasive carp".

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to create the guidelines for the Experimental Commercial Fishing Methods Program which will allow for increased harvest of invasive carp.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above. (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: See 1(d) above.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all commercial fishers who wish to use experimental gears and methods to harvest invasive carp. Additionally, this regulation may positively affect all recreational anglers and boaters in the Mississippi and Ohio rivers, their tributaries, and in Kentucky and Barkley lakes.

(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: Program participants will need to follow those regulation amendments provided in question (2)(a) above as well as purchase the appropriate Experimental Commercial Fishing Methods Program permit.

(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 commercial fishers participating in the Experimental Commercial Fishing Methods Program will depend on which permit they purchase. Resident permits cost \$800 for Tier I and \$1,600 for Tier II. Non-resident permits cost \$1,200 for Tier I and \$2,400 for Tier II.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Commercial fishers participating in the Experimental Commercial Fishing Methods Program will be allowed to use fishing gears/methods not traditionally allowed for commercial fishing and potentially allow the license holder to catch and sell more invasive carp.

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

(a) Initially: There will be minimal cost to the department to implement this administrative regulation initially.

(b) On a continuing basis: There will be minimal cost to the

department 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 Invasive Carp Federal Funds and 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: There will be no need for fee increases at the state level.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The only fee established is the cost to purchase the appropriate Experimental Commercial Fishing Methods Program permit to participate in the program.

(9) TIERING: Is tiering applied? No. All commercial fishers participating in this program will need to follow the same regulations and purchase the appropriate permit.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, to regulate the buying, selling, or transporting of fish and wildlife, and to make these requirements apply to a limited area.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Department's Fisheries Division and Law Enforcement Division will be impacted by this amendment.

(a) Estimate the following for the first year:

Expenditures: There will be a minimal cost for KDFWR to administer this program in the first year.

Revenues: There will be minimal revenue in the first year. Tier I of the program is capped at three participants and Tier II participants will be three or below. Revenue to the department will be limited to the cost of the permits purchased.

Cost Savings: This amendment will not generate any cost savings in the first year but will potentially allow commercial fishers to harvest more invasive carp and generate more revenue for themselves.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This amendment will not generate any cost savings in subsequent years but will potentially allow commercial fishers to harvest more invasive carp and generate more revenue for themselves. Any increase in revenue for the department will be limited to an increase in Tier II participants and the funds generated by their purchase of a permit.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

(a) Estimate the following for the first year:

Expenditures: The cost for regulated entities in the first year will depend on which permit they are purchasing.

Revenues: This regulation will not directly generate revenue for state or local government in the first year, but local economies could be positively impacted through removal of invasive carp species.

Cost Savings: There will be no cost savings generated from this amendment, but it will potentially allow commercial fishers to harvest more invasive carp and generate more revenue for themselves.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This regulation will not directly generate revenue for state or local government in subsequent years, but local economies could be positively impacted through removal of invasive carp species.

(4) Identify additional regulated entities not listed in questions (2) or (3):

(a) Estimate the following for the first year:

Expenditures:

Revenues:

Cost Savings:

(b) How will expenditures, revenues, or cost savings differ in

subsequent years?

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There will be a minor cost to commercial fishers associated with the purchasing of a permit. However, the permit will allow commercial fishers to use gear and methods that could increase their revenue far beyond the cost of the permit. There will be no cost to other entities, but reduction of invasive carp in affected waters could increase tourism and associated revenues.

(b) Methodology and resources used to determine the fiscal impact: Experimental gears and methods have the ability to increase commercial fishers' catch of invasive carp. This will increase their revenue from sale of their harvested fish. In addition, increased harvest will result in decreased adverse impacts from these invasive fish and could increase tourism dollars in affected areas.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have a negative major economic impact to the entities identified in question (2) - (4).

(b) The methodology and resources used to reach this conclusion: The only costs to the entities in questions (2) - (4) will be the cost to purchase a permit. However, the permit will allow commercial fishers to use gear and methods that could increase their revenue far beyond the cost of the permit.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 5:022. License, tag, and permit fees.

RELATES TO: KRS 150.025, 150.180, 150.183, 150.240, 150.275, 150.280, 150.290, 150.450, 150.485, 150.520, 150.525, 150.600, 150.603, 150.660, 150.720

STATUTORY AUTHORITY: KRS 150.175, 150.195(4)(f), 150.225, 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.175 authorizes the types of licenses, permits, and tags. KRS 150.195(4)(f) requires the Department of Fish and Wildlife Resources to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.225 requires the department to promulgate administrative regulations establishing reasonable license fees relating to hunting, fishing, and trapping. KRS 150.620 authorizes the department to charge reasonable fees for the use of lands and waters it has acquired for wildlife management and public recreation. This administrative regulation establishes fees and terms for licenses, permits, and tags.

Section 1. Licenses, tags, and permits listed in this section shall be valid from March 1 through the last day of February the following year, except the senior lifetime sportsman's license shall be valid for the life of the license holder while the license holder maintains Kentucky residency.

(1) Sport fishing licenses:

(a) Statewide annual fishing license (resident): twenty-three (23) dollars;

(b) Statewide annual fishing license (nonresident): fifty-five (55) dollars;

(c) Joint married couple statewide fishing license (resident): forty-two (42) dollars;

(d) Statewide three (3) year fishing license (resident): fifty-five (55) dollars; and

(e) Trout permit: ten (10) dollars.

(2) Commercial fishing licenses:

(a) Commercial fishing license (resident), plus ten (10) resident commercial gear tags: \$150;

(b) Commercial fishing license (nonresident), plus ten (10) nonresident commercial gear tags: \$600; and

VOLUME 50, NUMBER 11– May 1, 2024

- (c) Commercial fishing license for Asian carp and scaled rough fish (nonresident), plus ten (10) nonresident gear tags: \$150.
- (3) Commercial fishing gear tags (shall not be sold singly):
 - (a) Commercial fishing gear tags (resident) block of ten (10) tags: fifteen (15) dollars;
 - (b) Commercial fishing gear tags (nonresident) block of ten (10) tags: \$100; and
 - (c) Commercial fishing gear tags for Asian carp and scaled rough fish (nonresident), block of ten (10) tags: fifteen (15) dollars.
- (4) Hunting licenses:
 - (a) Statewide hunting license (resident): twenty-seven (27) dollars;
 - (b) Statewide hunting license (nonresident): ~~\$160~~[\$150];
 - (c) Statewide youth hunting license (resident): six (6) dollars;
 - (d) Statewide youth hunting license (nonresident): ten (10) dollars;
 - (e) Shooting preserve hunting license: five (5) dollars; and
 - (f) Migratory ~~[game]~~bird and waterfowl permit: fifteen (15) dollars.
- (5) Combination hunting and fishing license (resident): forty-two (42) dollars.
- (6) Sportsman's licenses:
 - (a) Sportsman's license (resident), which includes a resident hunting and fishing license, spring turkey permit, fall turkey permit, trout permit, state migratory ~~[game]~~bird and waterfowl permit, and statewide deer permit: ninety-five (95) dollars;
 - (b) Youth sportsman's license (resident), which may be issued to a person before he or she has reached his or her sixteenth birthday and for which the privileges remain valid through the end of the applicable license year, and which includes a statewide [youth] hunting license, a statewide [youth] deer permit, a spring [and two (2) youth] turkey permit [permits], fall turkey permit, migratory game bird and waterfowl permit, statewide annual fishing license, and a Ballard WMA waterfowl hunt permit valid for all days the license holder lawfully waterfowl hunts at Ballard WMA: thirty (30) dollars;
 - (c) Senior sportsman's licenses, which include a resident hunting and fishing license, spring turkey permit, fall turkey permit, trout permit, state migratory ~~[shore and upland game]~~ bird ~~[,]and~~ waterfowl permit, and statewide deer permit. Senior licenses shall not be valid unless the holder carries proof of their Kentucky residency and proof of age on the holder's person while performing an act authorized by the license:
 - 1. Annual senior sportsman's license (resident): twelve (12) dollars; and
 - 2. Senior lifetime sportsman's license (resident): \$180;
 - (d) Disabled sportsman's license (resident), which includes a resident hunting and fishing license, spring turkey permit, fall turkey permit, trout permit, state migratory ~~[shore and upland game]~~ bird, waterfowl permit, and statewide deer permit: twelve (12) dollars.
- (7) Trapping licenses:
 - (a) Trapping license (resident): twenty (20) dollars;
 - (b) Trapping license (resident landowner – tenant): ten (10) dollars;
 - (c) Trapping license (nonresident): \$130; and
 - (d) Youth trapping license (resident): five (5) dollars.
- (8) Game permits:
 - (a) Bear permit (resident): thirty (30) dollars;
 - (b) Youth bear permit (resident): ten (10) dollars;
 - (c) Bear chase permit (resident): thirty (30) dollars;
 - (d) Youth bear chase permit (resident): ten (10) dollars;
 - (e) Combination bear permit (resident), which includes a bear permit and a bear chase permit: fifty (50) dollars;
 - (f) Bear permit (nonresident): \$250;
 - (g) Youth bear permit (nonresident): \$100;
 - (h) Bear chase permit (nonresident): fifty (50) dollars;
 - (i) Youth bear chase permit (nonresident): fifteen (15) dollars;
 - (j) Quota cow elk permit (resident): sixty (60) dollars;
 - (k) Quota cow elk permit (nonresident): \$400;
 - (l) Quota bull elk permit (resident): \$100;
 - (m) Quota bull elk permit (nonresident): \$550;
 - (n) Quota either sex archery and crossbow elk permit (resident): \$100;
 - (o) Quota either sex archery and crossbow elk permit

- (nonresident): \$550.
- (p) Out-of-zone elk permit (resident): thirty (30) dollars;
- (q) Out-of-zone elk permit (nonresident): \$400;
- (r) Statewide deer permit (resident): thirty-five (35) dollars;
- (s) Statewide deer permit (nonresident): ~~\$235~~[\$185];
- (t) Statewide youth deer permit (resident), valid for taking four (4) deer: ten (10) dollars;
- (u) Statewide youth deer permit (nonresident), valid for taking four (4) deer: fifteen (15) dollars;
- (v) Additional deer permit: fifteen (15) dollars;
- (w) Spring turkey permit (resident): thirty (30) dollars;
- (x) Spring turkey permit (nonresident): ~~\$110~~[~~eighty-five (85)~~ dollars];
- (y) Fall turkey permit (resident): thirty (30) dollars;
- (z) Fall turkey permit (nonresident): ~~\$110~~[~~eighty-five (85)~~ dollars];
- (aa) Youth turkey permit (resident), valid for taking one (1) wild turkey during spring or fall seasons: ten (10) dollars;
- (bb) Youth turkey permit (nonresident), valid for taking one (1) wild turkey during spring or fall seasons: fifteen (15) dollars;
- (cc) Quota youth elk permit (resident): thirty (30) dollars; and
- (dd) Quota youth elk permit (nonresident): \$200.
- (9) Peabody WMA user ~~[individual]~~ permit: fifteen (15) dollars.
- (10) Land Between the Lakes hunting permit: as stated at landbetweenthe lakes.us.
- (11) Conservation permit: five (5) dollars.
- (12) Bobcat hunting permit: Free.
- (13) Commercial guide licenses:
 - (a) Commercial guide license (resident): \$150; and
 - (b) Commercial guide license (nonresident): \$400.
- (14) Experimental commercial fishing methods program permits:
 - (a) Tier I experimental commercial fishing methods program permit (resident): \$800;
 - (b) Tier I experimental commercial fishing methods program permit (nonresident): \$1,600;
 - (c) Tier II experimental commercial fishing methods program permit (resident): \$1,200; and
 - (d) Tier II experimental commercial fishing methods program permit (nonresident): \$2,400.

Section 2. Licenses, tags, and permits listed in this section shall be valid for the calendar year issued.

- (1) Live fish and bait dealer's licenses:
 - (a) Live fish and bait dealer's license (resident): fifty (50) dollars; and
 - (b) Live fish and bait dealer's license (nonresident): \$150.
- (2) Commercial taxidermist license: \$150.
- (3) Shooting area permit: \$150.
- (4) Dog training area permit: fifty (50) dollars.
- (5) Collecting permits:
 - (a) Educational wildlife collecting permit: twenty-five (25) dollars; and
 - (b) Scientific wildlife collecting permit: \$100.
- (6) Nuisance wildlife control operator's permit: \$100.
- (7) Pay lake license:
 - (a) Pay lakes obtaining all fish from private hatcheries only:
 - 1. Lakes with two (2) acres or less: \$250; and
 - 2. Each additional acre or part of an acre: Fifty (50) dollars; and
 - (b) Pay lakes obtaining all or a portion of catfish from public waters:
 - 1. Lakes with two (2) acres or less: \$600; and
 - 2. Each additional acre or part of an acre: fifty (50) dollars.
- (8) Commercial captive wildlife permit: \$150.
- (9) Commercial fish propagation permit: fifty (50) dollars.
- (10) Wildlife rehabilitator's permit: twenty-five (25) dollars.
- (11) Annual wildlife transportation permit: \$250.
- (12) Peabody Wildlife Management Area annual event permit: \$250.
- [~~(13) [Fish transportation permit: twenty-five (25) dollars.]~~]

Section 3. Licenses, tags, and permits listed in this section shall be valid for three (3) years from the date of issue.

VOLUME 50, NUMBER 11– May 1, 2024

- (1) Falconry permit: seventy-five (75) dollars.
- (2) Noncommercial captive wildlife permit: seventy-five (75) dollars.

Section 4. Licenses, tags, and permits listed in this section shall be valid for the date or dates specified on each.

- (1) Short-term licenses:
 - (a) One (1) day fishing license (resident): seven (7) dollars;
 - (b) One (1) day fishing license (nonresident): fifteen (15) dollars;
 - (c) Seven (7) day fishing license (nonresident): thirty-five (35) dollars;
 - (d) One (1) day hunting license (resident) (not valid for deer, elk, bear, or turkey hunting): seven (7) dollars;
 - (e) One (1) day hunting license (nonresident) (not valid for deer, elk, bear, or turkey hunting): twenty-five (25) dollars; and
 - (f) Seven (7) day hunting license (nonresident) (not valid for deer, elk, bear, or turkey hunting): sixty-five (65) dollars.
- (2) Individual wildlife transportation permit: twenty-five (25) dollars.
 - (3) Special resident commercial fishing permit: \$600.
 - (4) Special nonresident commercial fishing permit: \$900.
 - (5) Commercial waterfowl shooting area permit: \$150.
 - (6) Shoot-to-retrieve field trial permits:
 - (a) Per trial (maximum four (4) days): seventy-five (75) dollars; and
 - (b) Single day: twenty-five (25) dollars.
 - (7) Boat dock permit: \$100 per ten (10) year permit period beginning January 1, 2008, except that the fee shall be pro-rated for the number of years remaining in the ten (10) year period.
 - (8) Shoreline use permit: Valid for a fifteen (15) year permit period beginning January 1, 2010, pro-rated to the nearest five (5) year interval remaining in the fifteen (15) year period, and containing three (3) tiers, including:
 - (a) Tier I: \$100;
 - (b) Tier II: \$200; and
 - (c) Tier III: \$300.
 - (9) Peabody individual event permit: twenty-five (25) dollars.
 - (10) Commercial roe-bearing fish buyer's permit:
 - (a) Commercial roe-bearing fish buyer's permit (resident): \$500; and
 - (b) Commercial roe-bearing fish buyer's permit (nonresident): \$1,000.
 - (11) Commercial roe-bearing fish harvester's permit:
 - (a) Commercial roe-bearing fish harvester's permit (resident): \$500; and
 - (b) Commercial roe-bearing fish harvester's permit (nonresident): \$1,500.
 - (12) Otter Creek Outdoor Recreation Area:
 - (a) Daily Entry Permit: three (3) dollars, with children under twelve (12) free; and
 - (b) Daily Special Activities Permit: seven (7) dollars.
 - (13) Commercial foxhound training enclosure permit: \$150.
 - (14) Fish transportation permit: twenty-five (25) dollars.

Section 5. Licenses, tags, and permits listed in this section shall be valid on a per-unit basis as specified.

- (1) Ballard WMA waterfowl hunt permit (per person, per day; youths under age sixteen (16) exempted): fifteen (15) dollars.
- (2) Pheasant hunt permit (per person, per day): twenty-five (25) dollars.
- (3) Horse stall rental (per space, per day): two (2) dollars.
- (4) Dog kennel rental (per dog, per day): fifty (50) cents.
- (5) Captive cervid permit (per facility, per year): \$150.
- (6) Noncommercial captive cervid permit (per facility, per three (3) years): seventy-five (75) dollars.

Section 6. The following licenses listed in this section shall be valid from April 1 through March 31 of the following year:

- (1) Fur processor's license (resident): \$150;
- (2) Fur buyer's license (resident): fifty (50) dollars; and
- (3) Fur buyer's license (nonresident): \$300.

Section 7. The following Otter Creek Outdoor Recreation Area permits shall be valid from July 1 through June 30 of the following year:

- (1) Annual Entry Permit: thirty (30) dollars, with children under twelve (12) free; and

- (2) Annual Special Activities Permit: seventy (70) dollars.

RICH STORM, Commissioner

APPROVED BY AGENCY: April 12, 2024

FILED WITH LRC: April 15, 2024 at 10:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 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 June 30, 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 fees and terms for licenses, permits, and tags sold by the Department of Fish and Wildlife Resources.

- (b) The necessity of this administrative regulation: This administrative regulation is necessary for the department to establish reasonable license fees, permit terms, and the expiration dates of licenses and permits.

- (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.175 authorizes the types of licenses, permits, and tags that the department can issue. KRS 150.195(4)(f) requires the department to promulgate an administrative regulation establishing the license and permit terms and the expiration date of licenses and permits. KRS 150.225 requires the Department to prescribe reasonable fees for licenses, permits, and registrations authorized by Chapter 150. KRS 150.620 authorizes the department to charge reasonable fees for the use of lands and waters it has acquired for wildlife management and public recreation.

- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation fulfills the requirements and purposes of the statutes identified in (1)(c) by establishing reasonable fees and terms for licenses, permits, and tags issued by the Department.

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

- (a) How the amendment will change this existing administrative regulation: This amendment creates a resident and nonresident experimental commercial fishing methods program permit that is tiered into a tier I and tier II category. It also moves the fish transportation permit to the correct section based on KRS 105.180(6).

- (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to create the new experimental commercial fishing methods program permits and establish the pricing for each and fix an error in the location of the fish transportation permit.

- (c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

VOLUME 50, NUMBER 11– May 1, 2024

(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: Commercial fishermen wishing to experiment with special gear and methods will be positively influenced by the addition of these permit options and the associated experimental methods program. All businesses and organizations affected by the presence of invasive carp in their area will be positively influenced through the potential removal of more invasive carp from the water.

(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: Purchasers of the above permits will be allowed to use fishing gear and methods that are not traditionally allowed to be used by commercial fishers in the attempt to catch more invasive carp in Kentucky waters.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): See (2)(a) above.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Experimental commercial fishing methods program permit holders will be allowed to use fishing gears/methods not traditionally allowed for commercial fishing and potentially allow the permit holder to catch more invasive carp.

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

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

(b) On a continuing basis: There will be no additional cost to the department 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: There will be no need for fee increases at the state level.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: See (4)(b)

(9) TIERING: Is tiering applied? No. Tiering is not applied because every eligible person will have to pay the same price for each particular permit issued.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.175, 150.195, 150.225, and 150.620.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: KDFWR will be impacted by this amendment.

(a) Estimate the following for the first year:

Expenditures: There should be no additional expenditures for the first year.

Revenues: Additional revenues should be realized through the sale of new permit types and the increased fees associated with nonresident licenses and permits. It is estimated additional revenues should be approximately two million dollars assuming similar sales volumes as our prior license year.

Cost Savings: There should not be any cost savings for the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Subsequent years should be roughly equal to the first year in regards to expenditures, revenues, and cost savings.

(3) Identify affected local entities (for example: cities, counties,

fire departments, school districts): There shouldn't be a direct impact upon any local entities.

(a) Estimate the following for the first year:

Expenditures: n/a

Revenues: n/a

Cost Savings: n/a

(b) How will expenditures, revenues, or cost savings differ in subsequent years? N/A, however, the removal of invasive carp from Kentucky waters should indirectly provide a positive economic benefit for local governments.

(4) Identify additional regulated entities not listed in questions (2) or (3): Commercial fishers participating in the experimental methods program and nonresident sportsmen purchasing licenses and permits.

(a) Estimate the following for the first year:

Expenditures: The expenditure for individuals participating in the experimental methods program will increase based upon the permit type they qualify for and purchase (from \$800 to \$2,400 per permit). Expenditures for nonresident sportsmen will vary based upon the licenses and permits purchased (from \$10 to \$50 per license or permit).

Revenues: The amount of revenue generated in the first year for commercial fishers is unknown but by utilizing experimental methods, the fishers should be able to recoup some of the permit costs or may achieve a net profit based upon increased harvests. No revenues will be generated for nonresident sportsmen.

Cost Savings: The experimental commercial fishing methods program permits will not generate cost savings in the first year but will potentially allow commercial fishers to harvest more invasive carp and generate more revenue for themselves. No cost savings will be realized by nonresident sportsmen.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Subsequent years should be roughly equal to the first year in regards to expenditures, revenues, and cost savings.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: Fiscal impact of this regulation will be a net positive for the Commonwealth and its citizens. The precise benefits to commercial fishers is unknown and highly dependent upon the success of the experimental methods program participants choose to implement. The fiscal benefit to the Commonwealth in regard to the increase of certain nonresident permit fees would be approximately two million dollars each year, assuming consistent sales of nonresident licenses and permits as compared to our prior license year.

(b) Methodology and resources used to determine the fiscal impact: The amount of the fiscal benefit was calculated based upon the increased nonresident license and permit costs if an equal number of non-resident licenses and permits are sold as were sold in the prior license year, and based upon the anticipated type and number of new experimental methods permits to be sold in the first year (one nonresident tier II, and three resident tier I permits).

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have a major economic impact as defined above.

(b) The methodology and resources used to reach this conclusion: For nonresident license and permit sales and experiment methods permit sales, all negative impact upon the individual purchasers will be directly offset by a positive impact to the Commonwealth. Additionally, the negative impact to the limited number of commercial fishermen who voluntarily participate in the experimental methods program for the cost of their associated permit. The use of experimental methods will provide the potential for greater income to the fishermen who participate through the sale of invasive carp harvested and may result in a net positive impact for those individuals.

EDUCATION AND LABOR CABINET
Board of Education
Department of Education
(Amendment)

704 KAR 7:140. Authentic high school diploma to an honorably discharged veteran of World War II, ~~the~~ Korean conflict, or Vietnam War~~[Veterans diplomas].~~

RELATES TO: KRS 158.140(5)(4)

STATUTORY AUTHORITY: KRS 158.140(5)(b)(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.140(5)(b)(4) requires the Kentucky Board of Education to promulgate an administrative regulation establishing the guidelines for use by local boards of education when awarding an authentic high school diploma to an honorably discharged veteran who ~~was enrolled in, but~~ did not complete high school prior to being inducted into the United States Armed Forces during World War II, ~~as defined in KRS 40.010, or~~ the Korean conflict, or the Vietnam War ~~as defined in KRS 40.010~~. This administrative regulation establishes the requirements for awarding an authentic high school diploma to honorably discharged veterans of World War II, ~~the~~ Korean conflict, and the Vietnam War by local boards of education ~~[veterans]~~.

Section 1. Definitions.

(1) "Korean conflict" is defined by KRS 40.010(18);

(2) "Vietnam War" is defined by KRS 158.140(5)(a)3; and

(3) "World War II" is defined by KRS 40.010(17).

Section 2. ~~Documentation Needed to Determine Eligibility.~~

(1) An honorably discharged veteran of World War II, ~~or~~ the Korean conflict, ~~the Vietnam War~~, or a member of the veteran's family, shall ~~submit~~ provide a discharge certificate showing the period of service ~~and~~ type of discharge, and the name of the high school and district of enrollment ~~at the time of induction into the United States Armed Forces~~ to the Kentucky Department of Veterans' Affairs, 1111 Louisville Road, Suite B, Frankfort, Kentucky 40601.

~~(2) Section 2. Guidelines for Local Boards of Education to Award Diplomas.~~

(4) The Kentucky Department of Veterans' Affairs shall forward the verified documentation to the local board of education ~~in which the veteran was enrolled prior to being inducted into the United States Armed Forces.~~

~~(3)(2)~~ Upon receipt of documentation, ~~from the Kentucky Department of Veterans' Affairs, the~~ local board of education shall verify the veteran was enrolled in, but did not complete, high school prior to induction and meets the requirements of KRS 158.140 ~~prior to issuing the authentic high school diploma~~. If the high school or district has ~~since been consolidated or reconfigured since the veteran's enrollment, the current local board of education with jurisdiction shall provide the verification and issue the authentic high school diploma.~~

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, Chairperson

APPROVED BY AGENCY: April 15, 2024

FILED WITH LRC: April 15, 2024 at 11:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held June 26, 2024 at 10am, 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 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public.

Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: 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 7:140 establishes the requirements for local boards of education for awarding an authentic high school diploma to honorably discharged veterans of World War II, the Korean conflict, and the Vietnam War.

(b) The necessity of this administrative regulation: KRS 158.140(5)(b) requires the Kentucky Board of Education (KBE) in consultation with the Kentucky Department of Veterans' Affairs to promulgate administrative regulations establishing the guidelines for use by local boards of education when awarding an authentic high school diploma to an honorably discharged veteran who did not complete high school prior to being inducted into the United States Armed Forces during World War II, the Korean conflict, or the Vietnam War. Per KRS 158.140(5)(a), "[a] local board of education shall award an authentic high school diploma to an honorably discharged veteran who did not complete high school prior to being inducted into the United States Armed Forces during: World War II, as defined in KRS 40.010; The Korean conflict, as defined in KRS 40.010; or The Vietnam War. As used in this paragraph, "Vietnam War" means the period beginning August 5, 1964, and ending May 7, 1975. However, for a member of the United States Armed Forces serving in Vietnam prior to August 5, 1964, the period shall begin February 28, 1961."

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 158.140(5)(b) requires the Kentucky Board of Education (KBE) in consultation with the Kentucky Department of Veterans' Affairs to promulgate administrative regulations establishing the guidelines for use by local boards of education when awarding an authentic high school diploma to an honorably discharged veteran who did not complete high school prior to being inducted into the United States Armed Forces during World War II, the Korean conflict, or the Vietnam War. The regulation provides guidelines for local boards of education for determining eligibility and receiving verified documentation from the Kentucky Department of Veterans' Affairs in order to award an authentic high school diploma for honorably discharged veterans of World War II, the Korean conflict, or the Vietnam War.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides guidelines for local boards of education for determining eligibility and receiving verified documentation from the Kentucky Department of Veterans' Affairs in order to award an authentic high school diploma for honorably discharged veterans of World War II, the Korean conflict, or the Vietnam War as required under KRS 158.140(5).

(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: 704 KAR 7:140 has been amended to include honorably discharged veterans of the Vietnam War as eligible to receive an authentic high school diploma as provided under KRS 158.140(5)(a)3.

(b) The necessity of the amendment to this administrative regulation: While 704 KAR 7:140 provides guidelines to local boards of education for awarding authentic high school diplomas for honorably discharged veterans of World War II and the Korean

VOLUME 50, NUMBER 11– May 1, 2024

conflict, amendments are necessary to include honorably discharged veterans of the Vietnam War as defined under KRS 158.140(5)(a)3.

(c) How the amendment conforms to the content of the authorizing statutes: The amended regulation conforms to KRS 158.140(5)(a)3 by including honorably discharged veterans of the Vietnam War as eligible for receiving an authentic high school diploma and provides guidelines to local board of education for awarding the diploma to eligible veterans of the Vietnam War.

(d) How the amendment will assist in the effective administration of the statutes: The amendments provide local boards of education with guidelines for determining eligibility and receiving verified documentation from the Kentucky Department of Veterans' Affairs in order to award an authentic high school diploma for honorably discharged veterans of World War II, the Korean conflict, or the Vietnam War as required under KRS 158.140(5).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local boards of education, the Kentucky Department of Veterans' Affairs, and the Kentucky Department of Education (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 7:140 provide guidelines that local boards of education must follow when awarding an authentic high school diploma by the local school district to honorably discharged veterans of World War II, the Korean conflict, and the Vietnam War. The Kentucky Department of Veterans' Affairs is responsible for working in consultation with the KBE in promulgating administrative regulations to establish the guidelines for awarding the authentic diplomas, as provided under KRS 158.140(5)(b).

(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 local boards of education, the Kentucky Department of Education, and the Department of Veterans' Affairs is minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Honorably discharged veterans of the Vietnam War, as defined under KRS 158.140(5)(a)3, who did not complete high school prior to being inducted into the United States Armed Forces, may receive an authentic high school diploma.

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

(a) Initially: While the initial implementation is unknown, the cost to the Kentucky Department of Education is minimal and may include staff time to provide guidance to local districts for implementation.

(b) On a continuing basis: The cost on an ongoing basis to the Kentucky Department of Education is minimal and may include staff time to provide guidance to local districts, as needed.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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 staffing in place at the local school district, the cost to print/issue an authentic high school diploma, and the number of diplomas awarded as required under KRS 158.140(5) for honorably discharged veterans of the Vietnam War.

(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 as the administrative regulation applies equally to all schools and

districts.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.140(5)(b) requires the Kentucky Board of Education (KBE), in consultation with the Kentucky Department of Veterans' Affairs, to promulgate administrative regulations to establish the guidelines for local boards of education for awarding an authentic high school diploma to honorably discharged veterans who did not complete high school prior to being inducted into the United States Armed Forces during World War II, the Korean conflict, or the Vietnam War.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: KRS 158.140(5)(b) requires the Kentucky Board of Education in consultation with the Kentucky Department of Veterans' Affairs to promulgate administrative regulations establishing the guidelines for use by local boards of education when awarding an authentic high school diploma to an honorably discharged veteran who did not complete high school prior to being inducted into the United States Armed Forces during World War II, the Korean conflict, or the Vietnam War. The Kentucky Department of Education will provide guidance to local boards of education as needed.

(a) Estimate the following for the first year:

Expenditures: While the initial implementation is unknown, the cost to the Kentucky Department of Education is minimal and may include staff time to provide guidance to local districts for implementation. The cost for the Kentucky Department of Veterans' Affairs is minimal.

Revenues: No revenue in the first year.

Cost Savings: The administrative regulation will not generate cost savings in the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The cost in subsequent years to the Kentucky Department of Education is minimal and may include staff time to provide guidance to local districts, as needed. The cost in subsequent years for the Kentucky Department of Veterans' Affairs is minimal. There is no revenue or cost savings in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Local boards of education.

(a) Estimate the following for the first year:

Expenditures: The cost to local boards of education during the first year is unknown, but is anticipated to be minimal. The cost is dependent upon the number of diplomas awarded under KRS 158.140(5)(a), the staffing available at the local school district, and the cost for issuing the diploma.

Revenues: No revenue.

Cost Savings: The administrative regulation will not generate cost savings for the affected local entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The cost for local boards of education in subsequent years is minimal and may include staff time for verifying eligibility and costs for printing/issuing an authentic high school diploma depending on the number of diplomas awarded each year for those who qualify under KRS 158.140(5). There is no revenue or cost savings in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): No additional regulated entities.

(a) Estimate the following for the first year:

Expenditures: Not applicable as no additional regulated entities have been identified.

Revenues: Not applicable as no additional regulated entities have been identified.

Cost Savings: Not applicable as no additional regulated entities have been identified.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Not applicable as no additional regulated entities have been identified.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: Local boards of education are not required by KRS 158.140 to report the number

of diplomas issued to honorably discharged veterans of World War II, the Korean Conflict, or the Vietnam War to the Kentucky Department of Education. Therefore, the fiscal impact is unknown but anticipated to be minimal.

(b) Methodology and resources used to determine the fiscal impact: There is no current mechanism in place at the Kentucky Department of Education to specifically track the number of diplomas awarded to those who qualify under KRS 158.140(5). Additionally, there is no provision provided in statute that requires local school districts to report the number of diplomas issued to those who qualify under KRS 158.140(5). However, it can be estimated that the number of diplomas will be few in number and that this will have a minimal fiscal impact.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation is not anticipated to have an overall negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion: There is no current mechanism in place at the Kentucky Department of Education to specifically track the number of diplomas awarded to those who qualify under KRS 158.140(5). Additionally, there is no provision provided in statute that requires local school districts to report the number of diplomas issued to those who qualify under KRS 158.140(5). However, it can be estimated that the number of diplomas will be few in number and that this have a minimal fiscal impact on the entities identified in questions (2) – (4).

EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(Amendment)

780 KAR 3:030. Appointments.

RELATES TO: KRS 156.808

STATUTORY AUTHORITY: 156.808

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.808(3)(e) and (f) require the Kentucky Board of Education~~[executive director]~~ to promulgate comprehensive administrative regulations for the selection of employees and type of appointments for certified and equivalent personnel employed by the Department of Education, Office of Career and Technical Education. This administrative regulation establishes the requirements governing selection and appointments of certified and equivalent personnel.

Section 1. Notice of Classes, Minimum Qualifications, and Vacancies.

(1) An official list of classes, minimum qualifications, and vacancies developed by the Department of Education~~[Division of Human Resources Management]~~ shall be posted to the official Personnel Cabinet Web site~~[of all classifications and minimum qualifications shall be posted in each area business office and each division office for public review]~~.

(2)

(a) All vacancies shall be posted online~~[in all facilities on a statewide basis]~~ for a minimum of five (5)~~[ten (10)]~~ days.

(b) The vacancy posting shall ~~[be on a Kentucky Tech School System Vacancy Posting Notice form and shall]~~ contain the title, minimum qualifications, and other pertinent information about the vacancy.

Section 2. Establishment and Abolishment of Positions. The appointing authority ~~[or his designee]~~ shall establish and abolish positions, transfer certified and equivalent employees between positions, and change titles and compensation of existing offices of certified and equivalent employees consistent with the provisions of KRS 156.808~~[12.060 and the classifications and compensation plan~~

~~of the certified and equivalent personnel system]~~.

Section 3. ~~[Filing]~~ Applications.

(1) Each application shall be submitted on an Application for Employment from the official Personnel Cabinet Web site.

(2) The application shall be signed and the truth of the statements therein certified by a signature under penalty of removal for falsification and any criminal penalties that apply.

(3) The appointing authority~~[executive director]~~ shall authorize individuals to verify work experience and educational attainment of an applicant for a position in the certified and equivalent personnel system.

(4) The application shall be consistent with the state and federal equal employment opportunity requirements~~[guidelines]~~.

Section 4. Minimum Qualifications for Filing. A position shall be filled by an applicant who meets the standards or requirements prescribed by the appointing authority~~[executive director]~~ with regard to education and experience and any other factors as may be held to relate to the ability of the candidate to perform with reasonable efficiency the duties of the position.

Section 5. Selection of Employees. The Department of Education~~[Division of Human Resources Management]~~ shall only consider those~~[maintain a central referral list which shall be compiled and submitted to area business for inclusion in the consideration of]~~ qualified applicants that have applied to the posted position in consideration for employment.

Section 6.

(1) Except as provided in subsection (4) of this section, the appointing authority ~~[or his designee]~~ shall fill a position~~[an appointment]~~ through the consideration of a list of recommendations submitted by a designated interview committee composed of no less than three (3) or more than seven (7) members, or from supervisory recommendations~~[, or peer recommendations]~~.

(2) The procedure for determining the composition of the designated interview committee shall be determined by the appointing authority~~[or his designee]~~.

(3) The committee shall make recommendations to the designated Office of Career and Technical Education official as determined by the appointing authority.

(4) If deemed in the best interest of the Commonwealth, the appointing authority shall not utilize an interview committee.

~~[Section 7.] [Incorporation by Reference.]~~

~~[(1)] [The following material is incorporated by reference:]~~

~~[(a)] [Kentucky Tech School System Vacancy Posting Notice, August 2006; and]~~

~~[(b)] [Application for Employment, December 2005.]~~

~~[(2)] [This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workforce Development, Office of Career and Technical Education, Division of Human Resources Management, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

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, Chairperson

APPROVED BY AGENCY: April 15, 2024

FILED WITH LRC: April 15, 2024 at 11:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2024 at 10 a.m. Eastern Time, in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this meeting 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 want to submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: 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: This administrative regulation establishes the requirements governing selection and appointments of certified and equivalent personnel.

(b) The necessity of this administrative regulation: KRS 156.808 requires the Kentucky Board of Education to promulgate personnel policies and procedures for all full-time and part-time unclassified employees, certified and equivalent staff, including administrative, teaching, and supervisory staff in the Office of Career and Technical Education central office and state-operated area technology centers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides that policies and procedures for all full-time and part-time unclassified employees, certified and equivalent staff, including administrative, teaching, and supervisory staff in the Office of Career and Technical Education central office and state-operated area technology centers shall be provided by the Kentucky Board of Education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the policies and procedures for applications and selection of certified and equivalent employees.

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

(a) How the amendment will change this existing administrative regulation: This amendment will update the existing regulation to parallel the statute and will clarify the specific policies and procedures of the Kentucky Board of Education to govern the state-operated area technology centers.

(b) The necessity of the amendment to this administrative regulation: Changes were made to KRS 156.808; consequently, the administrative regulation should be updated as well. Additionally, this regulation has not been updated in many years and needs to be revised.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides conformity with the authorizing statute, KRS 156.808.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation amendment aligns details in the regulation to statute language.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All certified and equivalent staff in the Office of Career and Technical Education state-operated area technology centers will be 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: There will be no additional action needed

from the Office of Career and Technical Education state-operated area technology centers to comply with this administrative regulation. Amendments reflect current operations within the Department of Education.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This change to the administrative regulation requires no additional direct costs to the Kentucky Department of Education or the state-operated area technology centers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Amendments reflect current operations of the Office of Career and Technical Education under the Department of Education.

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

(a) Initially: This amendment requires no additional cost.

(b) 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 generated 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 increased fees or funding are anticipated as a result of this regulation 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 fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to the Office of Career and Technical Education and all state-operated area technology centers.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.808, KRS 156.804

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Department of Education

(a) Estimate the following for the first year:

Expenditures: \$0.00

Revenues: \$0.00

Cost Savings: \$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Secondary state-operated area technology centers

(a) Estimate the following for the first year:

Expenditures: \$0.00

Revenues: \$0.00

Cost Savings: \$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(4) Identify additional regulated entities not listed in questions (2) or (3): The amendment to this regulation does not impact any additional regulated entities.

(a) Estimate the following for the first year:

Expenditures: \$0.00

Revenues: \$0.00

Cost Savings: \$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(b) Methodology and resources used to determine the fiscal

impact: The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) The amendment to this regulation will not have an overall negative or adverse economic impact on any identified entities.

(b) The methodology and resources used to reach this conclusion: The amendment to this regulation will not have an overall negative or adverse economic impact on any identified entities.

**EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(Amendment)**

780 KAR 3:035. Employee evaluations.

RELATES TO: KRS 156.808(3)(j), 156.828

STATUTORY AUTHORITY: KRS 156.070, 156.808(3)(j), 156.828(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.808(3)(j) requires the Kentucky Board of Education ~~executive director~~ to promulgate ~~comprehensive~~ administrative regulations, ~~personnel policies and procedures for all~~ ~~for the~~ certified and equivalent staff ~~in the Office of Career and Technical Education~~, governing employee evaluations. KRS 156.828(1) requires the ~~commissioner of education~~ ~~executive director~~ to adopt written evaluation procedures for all certified and equivalent employees. This administrative regulation establishes the requirements for employee evaluations for certified and equivalent employees working in the Office of Career and Technical Education.

Section 1. General Provisions.

(1) Evaluations of ~~certified and equivalent employees~~ ~~school administrators~~ shall be conducted in accordance with the "Kentucky Tech Certified Evaluation Plan" ~~"Performance Evaluation Criteria and Procedures for School Administrators"~~, revised ~~annually~~ ~~7/2008~~, ~~published~~ by the ~~associate commissioner of the Office of Career and Technical Education~~ ~~.~~ ~~and~~

~~(2)~~ ~~[Evaluations of instructors shall be conducted in accordance with the Teacher Standards for Evaluation – Formative, published by the Office of Career and Technical Education.]~~

~~(2)~~ ~~(3)~~ Evaluations of certified ~~.~~ ~~and~~ equivalent employees of the Office of Career and Technical Education ~~or central office staff~~ shall be conducted in accordance with KRS 156.828 and the requirements of the Kentucky framework for personnel evaluations as set forth in 704 KAR 3:370 ~~the "Performance Evaluation Criteria and Procedures for Other Certified, Equivalent and Central Office Staff", revised 11/93, published by the Office of Career and Technical Education.~~

~~[Section 2.] [Incorporation by Reference.]~~

~~[(1)] [The following material is incorporated by reference:]~~

~~[(a)] [School Administrator Standards for Evaluation – Formative, revised July 2008;]~~

~~[(b)] [Teacher Standards for Evaluation – Formative, revised July 2007; and]~~

~~[(c)] ["Performance Evaluation Criteria and Procedures for Other Certified, Equivalent and Central Office Staff", revised 11/93.]~~

~~[(2)] [This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Human Resources Management, Education and Labor Cabinet, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40604, Monday through Friday, 8 a.m. to 4:30 p.m..]~~

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, Chairperson

APPROVED BY AGENCY: April 15, 2024

FILED WITH LRC: April 15, 2024 at 11:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2024 at 10 a.m. Eastern Time, in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this meeting 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 want to submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: 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: This administrative regulation establishes the requirements for evaluations of certified and equivalent employees working in the Kentucky Department of Education (KDE) Office of Career and Technical Education (OCTE).

(b) The necessity of this administrative regulation: KRS 156.808 requires the Kentucky Board of Education to promulgate personnel policies and procedures for all full-time and part-time unclassified employees, certified and equivalent staff, including administrative, teaching and supervisory staff in the Office of Career and Technical Education regarding employee evaluations. KRS 156.828 requires the commissioner of education to adopt written evaluation procedures for all certified and equivalent employees of the Office of Career and Technical Education.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides specific details regarding employee evaluations processes pursuant to the requirements in KRS 156.808.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides additional detail by establishing that the Kentucky Board of Education creates policies and procedures regarding employee evaluations and that the commissioner of education shall adopt written evaluation procedures for all certified and equivalent employees of the Office of Career and Technical Education which assists in the effective administration of KRS 156.808 and KRS 156.828. This administrative regulation provides the requirement of using the Kentucky Tech Certified Evaluation Plan and the Kentucky framework for personnel evaluations set forth by 704 KAR 3:370.

(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 update the existing regulation to parallel the statutes and will clarify the specific governing body over policies and procedures relating to employee evaluations.

(b) The necessity of the amendment to this administrative regulation: KRS 156.808 requires that the Kentucky Board of Education create policies and procedures relating to employee evaluations. KRS 156.828 requires the commissioner of education

VOLUME 50, NUMBER 11– May 1, 2024

to adopt written evaluation procedures for all certified and equivalent employees of the Office of Career and Technical Education.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation provides specific details in relation to the policies and procedures regarding employee evaluations required by KRS 156.828.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation amendment aligns details in the regulation to statute language.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Office of Career and Technical Education and the Kentucky Tech System of Area Technology Centers will be 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 Office of Career and Technical Education and the Ky Tech System will be required to use the Ky Tech Certified Evaluation Plan for evaluations of certified and equivalent employees. This practice is already in place and will not be a new requirement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to the Office of Career and Technical Education of the Ky Tech System.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be no benefits accrued by the regulated entities.

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

(a) Initially: This amendment regarding employee evaluations will require no additional cost to the Kentucky Department of Education.

(b) On a continuing basis: There is no continuing cost to as a result of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State generated 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 increased fees or funding is anticipated as a result of this regulation 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 fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all certified and equivalent employees of the Office of Career and Technical Education.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070, KRS 156.808, KRS 156.828

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Department of Education

(a) Estimate the following for the first year:

Expenditures: \$0.00

Revenues: \$0.00

Cost Savings: \$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Secondary state-operated area

technology centers

(a) Estimate the following for the first year:

Expenditures: \$0.00

Revenues: \$0.00

Cost Savings: \$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(4) Identify additional regulated entities not listed in questions (2) or (3): The amendment to this regulation does not impact any additional regulated entities.

(a) Estimate the following for the first year:

Expenditures: \$0.00

Revenues: \$0.00

Cost Savings: \$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(b) Methodology and resources used to determine the fiscal impact: The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) The amendment to this regulation will not have an overall negative or adverse economic impact on any identified entities.

(b) The methodology and resources used to reach this conclusion: The amendment to this regulation will not have an overall negative or adverse economic impact on any identified entities.

EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(Amendment)

780 KAR 3:100. Employee actions.

RELATES TO: KRS 156.808, 156.830

STATUTORY AUTHORITY: KRS 156.070, 156.808(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.808(1) requires the Kentucky Board of Education[Executive Director for the Office of Career and Technical Education] to promulgate administrative regulations establishing personnel policies and procedures for all [full-time and part-time unclassified employees,] certified and equivalent staff, including administrative, teaching, and supervisory staff in the Office of Career and Technical Education central office and state-operated area technology centers[vocational facilities]. This administrative regulation establishes the method for determining an employee's work station and the requirements governing employee actions.

Section 1. Definition. "Work station"[Work station] means an employee's physical location where duties are to be performed and shall include the:

(1)

(a) Official work station of an employee assigned to a position[an office];by the appointing authority; and

(b) Street address where the work station[office] is located; or

(2)

[(a)] One (1) or more alternate work stations assigned by the appointing authority[Official Work station of an employee assigned to an office; and]

[(b)] [Street address to which the employee is assigned upon appointment to the employee's position].

VOLUME 50, NUMBER 11– May 1, 2024

Section 2. Employee Work Stations.

(1) ~~The work station of an employee shall be established by the [Each employee shall be assigned to a work station by the] appointing authority [or designee].~~

(2) ~~The position [A work station] may be changed by the appointing authority~~ to better meet the needs of the agency.

(3)

(a) An employee may be temporarily assigned to a different work station in a different county for a period of up to sixty (60) calendar days.

(b) The employee shall be reimbursed for travel expenses, in accordance with 200 KAR 2:006, and the appointing authority [or designee] shall notify the employee in writing prior to the effective date of the action.

(4)

(a) An appointing authority [or designee] may assign an employee to work in a different work station [site] within the county of employment.

(b) Reassignment within a county shall not be an appealable action.

Section 3. Promotion. An employee in the certified and equivalent personnel system may be promoted to a position of greater scope of discretion and responsibility or to the unclassified system in the Office of Career and Technical Education.

Section 4. Demotion.

(1) An appointing authority may [or designee shall] demote an employee who makes a written request for voluntary demotion [154B].

(2) The written request shall:

(a) Be on a completed form prescribed by the Kentucky Department of Education [Voluntary Transfer or Voluntary Demotion Form]; and

(b) Include:

1. A statement of the reason for the request;
2. The effective date of the requested demotion;
3. Identifying information concerning the position demoted from and to; and
4. A waiver of the right of appeal concerning the demotion.

(3) A copy of the request shall be placed in the employee's official file.

Section 5. Transfer.

(1) An employee in the certified and equivalent personnel system may be transferred from one (1) position [office] to another and from one (1) county [district] to another.

(2)

(a) The transfer shall be on a voluntary or involuntary basis.

(b) Unless an employee requests a transfer in writing, the transfer shall be deemed to have been made on an involuntary basis.

(c) The appointing authority or designee shall establish a reasonable basis for selecting an employee for involuntary transfer.

(3)

(a) If the transfer is on an involuntary basis, the employee shall receive written notice of the transfer prior to the effective date of the transfer.

(b) Following notification of an involuntary transfer, an employee shall report for work at the work station to which the employee was transferred on the effective date of the transfer.

(c) The notice shall be in writing, and shall:

1. State:

- a. The effective date of the transfer;
- b. The reason for the employee's selection for transfer;
- c. The new work station; and
- d. The employee's obligation to report to the new work station;

2. Advise the employee that the employee may appeal the transfer to the Kentucky Technical Education Personnel Board within thirty (30) days of receipt of the notice excluding the day that notification was received; and

3. Advise the employee of the provisions of subsection (4) of this

section.

(d) Upon employee notification, copies of the notice shall be forwarded to the associate commissioner [Executive Director] of the Office of Career and Technical Education.

(4) If an involuntary transfer is to a position with a work station in a different county, the following provisions shall apply:

(a) The employee shall receive the notice specified in subsection (3) of this section at least thirty (30) days prior to the effective date of the transfer; and

(b) The appointing authority or designee shall pay the employee's moving and travel expenses following transfer for thirty (30) days following the effective date of transfer in accordance with 200 KAR 2:006.

(5)

(a) If an employee with status requests a transfer in writing, the appointing authority or designee may make a voluntary transfer.

(b) The written request shall:

1. Be on a completed form prescribed by the Kentucky Department of Education [Voluntary Transfer or Voluntary Demotion-154B Form]; and

2. Include:

- a. A statement of the reason for the request;
- b. The effective date of the requested transfer;
- c. Identifying information concerning the position transferred from and to; and
- d. A waiver of the right to appeal concerning the transfer.

(c) A copy of this request shall be forwarded to the associate commissioner [Executive Director] of the Office of Career and Technical Education.

Section 6. Reemployment.

(1) Reemployment in the certified and equivalent personnel system shall occur in accordance with KRS 156.830 for laid-off employees [154B.080].

(2) A laid off former employee on a reemployment list shall meet all qualifications in order to be considered for a position.

Section 7. Resignations and Retirements.

(1) An employee who desires to terminate service with the state shall submit a written resignation or notice of retirement to the appointing authority [or designee].

(2)

(a) A resignation or notice of retirement shall be submitted at least thirty (30) calendar days before the final working day.

(b) A copy of an employee's resignation shall be attached to the advice effecting the separation and shall be filed in the employee's service record in the department.

(3) Failure of an employee to give thirty (30) calendar days' notice upon resignation or notice of retirement may result in forfeiture of accrued annual leave.

(4) A part-time hourly employee who has not worked for six (6) months shall be deemed to have resigned.

Section 8. Temporary Overlap. The appointing authority [or designee] may place an employee in a position currently occupied by another employee for a period not to exceed ninety (90) [sixty (60)] calendar days for training purposes.

Section 9. Retirement. If an employee voluntarily retires, the employee shall be considered separated without prejudice.

[Section 10.] [Incorporation by Reference.]

[(1)] ["Voluntary Transfer or Voluntary Demotion 154B", form 07/21/2008, Personnel Cabinet, is incorporated by reference.]

[(2)] [This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education and Labor Cabinet, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m.]

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption

VOLUME 50, NUMBER 11– May 1, 2024

by the Kentucky Board of Education, as required by KRS 156.070(5).

ROBIN FIELDS KINNEY, Interim Commissioner of Education
SHARON PORTER ROBINSON, Chairperson

APPROVED BY AGENCY: April 15, 2024

FILED WITH LRC: April 15, 2024 at 11:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2024 at 10 a.m. Eastern Time, in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this meeting 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 want to submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: 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: This administrative regulation establishes the method for determining the work station and the requirements governing employee actions for certified and equivalent staff in the Office of Career and Technical Education.

(b) The necessity of this administrative regulation: KRS 156.808 requires the Kentucky Board of Education to promulgate administrative regulations establishing personnel policies and procedures for all certified and equivalent staff in the Office of Career and Technical Education central office and state operated area technology centers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides the policies and procedures for all full-time and part-time, certified and equivalent staff, including administrative, teaching, and supervisory staff in the Office of Career and Technical Education regarding employee actions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes personnel policies and procedures regarding employee actions as required by KRS 156.808.

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

(a) How the amendment will change this existing administrative regulation: This amendment will update the existing regulation to parallel the statutes and will clarify the specific governing body over policies and procedures relating to certified and equivalent employee actions in the Office of Career and Technical Education central office and state operated area technology centers.

(b) The necessity of the amendment to this administrative regulation: KRS 156.808 requires the Kentucky Board of Education to promulgate personnel policies and procedures relating to employee actions for certified and equivalent staff in the Office of Career and Technical Education.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation amendment provides specific details in relation to the policies and procedures regarding certified and equivalent employee actions.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation amendment aligns details in the regulation to statute language.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Office of Career and Technical Education central office and the Kentucky Tech System of area technology centers.

(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 requires no additional actions of each of 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 will be no additional cost to the regulated entities in complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be no benefits accrued by the regulated entities.

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

(a) Initially:

(b) On a continuing basis:

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation will be implemented using state generated 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 will be necessary to implement this administrative regulation 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 or increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate for this administrative regulation because the policies and procedures that govern employee actions apply to all certified and equivalent staff in the Office of Career and Technical Education central office and the state operated area technology centers.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070, KRS 156.808, KRS 156.828

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Department of Education

(a) Estimate the following for the first year:

Expenditures: \$0.00

Revenues: \$0.00

Cost Savings: \$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Secondary state-operated area technology centers

(a) Estimate the following for the first year:

Expenditures: \$0.00

Revenues: \$0.00

Cost Savings: \$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(4) Identify additional regulated entities not listed in questions (2) or (3): The amendment to this regulation does not impact any

additional regulated entities.

(a) Estimate the following for the first year:

Expenditures: \$0.00

Revenues: \$0.00

Cost Savings: \$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(b) Methodology and resources used to determine the fiscal impact: The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) The amendment to this regulation will not have an overall negative or adverse economic impact on any identified entities.

(b) The methodology and resources used to reach this conclusion: The amendment to this regulation will not have an overall negative or adverse economic impact on any identified entities.

EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(Amendment)

780 KAR 3:120. Appeals and hearings.

RELATES TO: KRS Chapter 13B, 156.808, 156.820, 156.832, 344.030

STATUTORY AUTHORITY: KRS 156.070, 156.808(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.808(3)(s)[156.808(8)] requires the Kentucky Board of Education[Executive Director of the Office of Career and Technical Education] to promulgate administrative regulations governing employee appeals, for all full-time and part-time certified or equivalent employees of the Office of Career and Technical Education. KRS 156.808(6)(a) requires the Kentucky Board of Education to promulgate administrative regulations to govern proceedings which provide for procedures to be utilized by the Kentucky Technical Education Personnel Board in the conduct of hearings. KRS 156.808(8) requires the Kentucky Board of Education to promulgate administrative regulations for certified and equivalent employees of the Office of Career and Technical Education that have been dismissed, demoted, suspended, or otherwise penalized for cause. This administrative regulation establishes the requirements for appeals and hearings [requirements] for certified and equivalent employees of the Office of Career and Technical Education.

Section 1. Definitions.

(1) "Because of sex" or "on the basis of sex" is defined by KRS 344.030(8).

(2) "Qualified individual with a disability" is defined by KRS 344.030(1).

(3) "Reasonable accommodation" is defined by KRS 344.030(6).

(4) "Religion" is defined by KRS 344.030(7).

(5) "Undue hardship" is defined by KRS 344.030(9).

Section 2. An appeal of an action alleged to be based on discrimination shall be founded in[based on] the terms defined in Section 1 of this administrative regulation.

Section 3. General Provisions.

(1) To file an appeal, an employee shall file a completed Appeal

Form and, if applicable, other documents relating to the appeal, [~~with the Kentucky Technical Education Personnel Board~~] through the office of the ombudsman of the Office of Career and Technical Education.

(2)

(a) An appeal or document relating to an appeal shall be filed within thirty (30) calendar days after receiving notification of the penalization or after becoming aware of the penalization through the exercise of due diligence.

(b) If the 30th day of the filing period falls on a day the Office of Career and Technical Education is closed during normal working hours, the appeal may be filed on the next regular working day.

(3)

(a) An appeal shall be heard in Frankfort, Kentucky or in a location mutually acceptable to the parties and approved by the hearing officer[~~and the employee~~].

(b) The hearing officer shall make the final determination of the location of the hearing.

(4) If the appeal form indicates that the employee has retained counsel upon filing an appeal, notice of the scheduled hearing and all future notices, correspondence, or orders regarding the appeal shall be transmitted to that attorney, and all filings or motions on behalf of the employee shall be submitted by that attorney.

(5)

(a) Unless otherwise directed by the board, the ombudsman of the Office of Career and Technical Education shall assign a hearing officer or officers to an appeal.

(b) If more than one (1) hearing officer is assigned, one (1) shall be designated as chief.

(c) If the appeal is to be heard by the full board, the chairman of the board shall serve as the chief hearing officer.

(6) A state employee shall not use state time, equipment, materials, or personnel in pursuing an appeal.

Section 4. Continuances.

(1) Except as provided by subsection (5) of this section, a party may[shall] request a continuance of a scheduled hearing for good cause by following the procedures established in subsections (2) and (3) of this section.

(2) A request for continuance shall:

(a) Be written;

(b) State the reason for the request;

(c) Include proposed dates for rescheduling the hearing;

(d) Be filed with the board; and

(e) Be mailed to all parties at least ten (10) days prior to the scheduled hearing.

(3) An objection to a request for a continuance shall:

(a) Be written;

(b) State the reason for the objection to the request for continuance;

(c) Be filed with the board; and

(d) Be mailed to all parties at least five (5) days prior to the scheduled hearing.

(4) A continuance may be granted in extraordinary circumstances by the hearing officer.

(5) A request for a continuance based on a personal emergency shall be granted upon appropriate justification.

(6)

(a) At the direction of the hearing officer, the ombudsman of the Office of Career and Technical Education shall execute and transmit to all parties an interim order either granting or denying the continuance.

(b) If the continuance is granted, the interim order shall indicate the date on which the hearing has been rescheduled or the hearing has been continued generally.

Section 5. Prehearing Procedures.

(1) A motion, request, or filing shall:

(a) Be in writing;

(b) Be filed with the board through the office of the ombudsman of the Office of Career and Technical Education; and

(c) Be served on all other parties.

VOLUME 50, NUMBER 11– May 1, 2024

(2)(a) An interim order by the hearing officer shall be executed and transmitted by the board through the ombudsman of the Office of Career and Technical Education to all parties.

(b) Unless an interim order provides for review by the board prior to the conclusion of a hearing, the board shall review an interim order simultaneously as it considers the recommended order, record, or exceptions.

(3)(a) If an employee retains counsel subsequent to filing an appeal, the attorney shall file a written entry of appearance.

(b) All future notices, correspondence, or orders regarding the appeal shall be transmitted to that attorney, and all future filings or motions on behalf of the employee shall be submitted by that attorney.

(4) An employee shall notify all parties and the board in writing of a change of address or a change in counsel.

~~[(a)] Discovery may be taken in accordance with KRS 13B.080. [A deposition may be taken only in an extraordinary circumstance and upon authorization by the hearing officer.]~~

~~[(b)] [A request to take a deposition shall be filed at least seven (7) days prior to the scheduled hearing.]~~

~~[(c)] [An objection to the request shall be filed prior to the scheduled hearing.]~~

(6)(a) Upon agreement of all parties and approval by the hearing officer, two (2) or more appeals that involve the same or similar facts may be consolidated.

(b) Upon motion of a party or upon the hearing officer's motion, the hearing officer may join other parties as necessary to appropriately consider the matter.

(7) An agreed settlement shall be submitted in writing for the full board's review and final action.

(8) The ombudsman of the Office of Career and Technical Education, general counsel, and board staff may participate in ex parte communication concerning pending and impending proceedings before the board relating to:

- (a) Procedural questions; or
- (b) Scheduling of hearings.

Section 6. Conduct of Hearing.

(1) The hearing shall be conducted pursuant to:

- (a) KRS Chapter 13B; and
- (b) This administrative regulation.

(2) Unless the appeal is heard by the full board, the hearing officer assigned shall hear the appeal.

(3)(a) A party shall provide three (3) copies of an exhibit that is to be introduced as evidence.

(b) Copies shall be prepared prior to the hearing unless otherwise authorized by the hearing officer.

Section 7. Board Review and Action.

~~(1) Written exceptions, and responses thereto. [A response to a written exception] to a recommended order shall be filed in accordance with KRS 13B.110(4). A response shall be:~~

- (a) In writing; and
- (b) Served on all parties.

(2) Exceptions and responses not timely filed shall be noted and made a part of the record, but shall not be considered by the board in making a final determination.

(3) At the request of a party or on its own motion, the board may permit oral arguments before the full board. A request for oral argument shall be:

- (a) In writing;
- (b) Filed with the board within fifteen (15) days of issuance of a recommended order; and
- (c) Served on all parties.

(4) The board shall issue a final order in accordance with KRS 13B.120.

(5)(a) Following consideration by the full board, a final order shall be entered disposing of the appeal.

(b) The order shall be prepared, executed, and entered at the direction of the board by the ombudsman of the Office of Career and Technical Education.

~~[Section 8.] [Incorporation by Reference.]~~

~~[(1)] ["Appeal Form", August 2006, is incorporated by reference.]~~

~~[(2)] [This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Career and Technical Education, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

ROBIN FIELDS KINNEY, Interim Commissioner of Education
SHARON PORTER ROBINSON, Chairperson

APPROVED BY AGENCY: April 15, 2024

FILED WITH LRC: April 15, 2024 at 11:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2024 at 10 a.m. Eastern Time, in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this meeting 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 want to submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: 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: This administrative regulation establishes the requirements for appeals and hearings for certified and equivalent employees of the Office of Career and Technical Education.

(b) The necessity of this administrative regulation: KRS 156.808 requires the Kentucky Board of Education to promulgate administrative regulations governing appeals for all full-time and part-time, certified and equivalent staff, including administrative, teaching, and supervisory staff in the Office of Career and Technical Education central office and state-operated area technology centers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides specific details in regard to the requirements for appeals for all full-time and part-time, certified and equivalent staff, including administrative, teaching, and supervisory staff in the Office of Career and Technical Education central office and state-operated area technology centers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides details the Kentucky Board of Education has established for policies and procedures for the appeals system.

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

(a) How the amendment will change this existing administrative regulation: This amendment will update the existing regulation to conform to the statutes and will clarify the specific governing body over policies and procedures relating to the appeals system for certified and equivalent employees of the Office of Career and Technical Education.

(b) The necessity of the amendment to this administrative regulation: KRS 156.808 requires the Kentucky Board of Education to promulgate administrative regulations relating to the appeals system. KRS 156.820 provides the appeals process for all certified

VOLUME 50, NUMBER 11– May 1, 2024

and equivalent employees in the Office of Career and Technical Education.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation amendment provides specific details in relation to the policies and procedures regarding the appeals process for certified and equivalent employees.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation amendment aligns specific language from the statutes to the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All full-time and part-time, certified and equivalent staff, including administrative, teaching, and supervisory staff in the Office of Career and Technical Education central office and state-operated area technology centers will be 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: There will be no additional action needed from the Office of Career and Technical Education or any of its certified and equivalent employees. The regulation contains procedures in the event of discipline or penalization of a certified or equivalent employee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost is anticipated as a result of this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation provides due process procedures for certified and equivalent employees subject to discipline or penalization.

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

(a) Initially: This amendment regarding the appeals process will require no additional cost to the Kentucky Department of Education.

(b) On a continuing basis: The Office of Career and Technical Education is required by state legislation and is implemented using state funds.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State generated 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 increased fees or funding is anticipated as a result of this regulation 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 fees.

(9) TIERING: Is tiering applied? Tiering is not appropriate in this administrative regulation because the administration regulation applies equally to all certified and equivalent employees of the Office of Career and Technical Education.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070, 156.808, 156.820, 344.030

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Department of Education

(a) Estimate the following for the first year:

Expenditures: \$0.00

Revenues: \$0.00

Cost Savings: \$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Secondary state-operated area technology centers

(a) Estimate the following for the first year:

Expenditures: \$0.00

Revenues: \$0.00

Cost Savings: \$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(4) Identify additional regulated entities not listed in questions (2) or (3): The amendment to this regulation does not impact any additional regulated entities.

(a) Estimate the following for the first year:

Expenditures: \$0.00

Revenues: \$0.00

Cost Savings: \$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(b) Methodology and resources used to determine the fiscal impact: The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) The amendment to this regulation will not have an overall negative or adverse economic impact on any identified entities.

(b) The methodology and resources used to reach this conclusion: The amendment to this regulation will not have an overall negative or adverse economic impact on any identified entities.

EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(Amendment)

780 KAR 3:130. Employee grievances.

RELATES TO: KRS 156.808(3)(t), 156.820
STATUTORY AUTHORITY: KRS 156.070, 156.808(3)(t)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.808(3)(t) requires the Kentucky Board of Education [Executive Director of the Office of Career and Technical Education] to promulgate administrative regulations governing employee grievances and complaints for certified and equivalent staff of the Office of Career and Technical Education. [KRS 156.808(3)(t) requires the Office of Career and Technical Education to prescribe a form to complete by an employee who wishes to file an appeal.] This administrative regulation establishes the requirements governing employee grievances for certified and equivalent employees of the Office of Career and Technical Education.

Section 1. Definition. "Grievance" means a complaint filed by an employee which concerns working conditions over which the Office of Career and Technical Education has control and which has specifically occurred, or of which the employee has become aware, within thirty (30) calendar days prior to filing.

Section 2. General Provisions.

(1) An employee in the certified and equivalent personnel system who believes that the employee has been subjected to unfair or unjust treatment concerning the conditions of employment may file a grievance in accordance with this administrative regulation.

(2) A grievance concerning an action which is appealable directly to the Kentucky Technical Education Personnel Board may

VOLUME 50, NUMBER 11– May 1, 2024

be filed with the Office of Career and Technical Education. The filing of a grievance with the office shall not:

(a) Prohibit the employee from filing an appeal with the Kentucky Technical Education Personnel Board; or

(b) Extend the thirty (30) calendar day appeal period.

(3) An employee shall be entitled to file grievances without interference, coercion, discrimination, or reprisal.

(4) The associate commissioner~~[appointing authority]~~ shall inform all employees in the Office of Career and Technical Education of the provisions of this administrative regulation, or any modifications in the levels of review.

(5) The associate commissioner~~[Executive Director]~~ of the Office of Career and Technical Education shall make available to employees, ~~[through the appointing authority,]~~ the "KRS 156 Grievance Form [-451B]", which shall be used to file a grievance. The form shall contain a notice that, if the grievance concerns an action appealable directly to the Kentucky Technical Education Personnel Board pursuant to KRS 156.820, the employee's right to file an appeal shall not be extended beyond thirty (30) calendar days.

(6) A state employee shall not use state time, equipment, materials, or personnel in pursuing a grievance, except for the participation in an interview scheduled by the agency to evaluate or investigate the grievance.

Section 3. Procedures.

(1) A grievance shall be filed with the employee's immediate supervisor within thirty (30) calendar days following occurrence, or the employee becoming aware through the exercise of due diligence, of the action which is the subject of the grievance. If an act of the immediate supervisor is the basis for the grievance, the grievance shall be filed with the next line supervisor.

(2) The employee shall set forth in writing the basis of the grievance or complaint together with the corrective action desired. If the employee wishes to submit additional information or documentation, the employee shall attach it to the grievance.

(3) If a grievance is filed that alleges harassment or discrimination on the basis of race, color, religion, national origin, sex, disability or age, the recipient shall immediately notify the associate commissioner~~[Executive Director]~~ of the Office of Career and Technical Education and the agency~~[Office of]~~ Equal Employment Opportunity (EEO) Coordinator to comply with the affirmative action plan.

~~[(4)] [An interview to evaluate or investigate the grievance outside of normal work hours with the grievant or other employees shall entitle those employees to compensatory time.]~~

~~[(4)]~~~~[(5)]~~ An interview to evaluate or investigate the grievance held with the grievant or other employee shall not require the use of leave time.

~~[(5)]~~~~[(6)]~~ Both parties shall be given the opportunity to have a representative present at each step of the grievance procedure.

Section 4. Grievance Levels.

(1)(a) Except as provided in paragraph (d) of this subsection, the immediate supervisor shall, upon investigation, issue findings and a decision in writing to the employee within ten (10) working days after receipt of the grievance.

(b) If the first line supervisor is unable to resolve the complaint to the satisfaction of the employee, the employee may request review of the grievance within five (5) working days of receipt of the decision to the second line supervisor.

(c) If the area supervisor or the division director is the first line supervisor, the request for review shall automatically be requested from the Ombudsman for the Office of Career and Technical Education.

(d) In accordance with Section 3(1) of this administrative regulation, if an act of the immediate supervisor was the basis for the grievance:

1. The immediate supervisor shall not investigate or issue findings or a decision; and

2. The grievance shall be investigated by the second line supervisor, with subsequent appeals available, as provided in subsections (2) through (6) of this section.

(2)(a) The second line supervisor shall, upon investigation, issue findings and a decision in writing to the employee within ten (10) working days after receipt of the grievance.

(b) If the second line supervisor is unable to resolve the complaint to the satisfaction of the employee, the employee may request review of the grievance within five (5) working days of receipt of the decision to the ombudsman in the Office of Career and Technical Education.

(3) If the ombudsman is unable to mediate the grievance to the satisfaction of the employee, the employee may request review of the grievance within five (5) working days of receipt of the decision to the associate commissioner~~[Executive Director]~~ of the Office of Career and Technical Education or his or her designee for a final determination. The associate commissioner~~[executive director]~~, upon investigation, shall issue findings and a final determination in writing to the employee within ten (10) working days.

(4) Failure of supervisory or management personnel to respond within the prescribed time limits shall be grounds for the advancement of the grievance to the next review level, unless the time limits have been extended by agreement of the parties.

(5) An intermediate grievance level may be waived by written agreement of the parties.

Section 5. Incorporation by Reference.

(1) "KRS 156 Grievance Form[-451B]", 4/2024~~[revised 7/2008,]~~ is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education~~[Office of Career and Technical Education]~~, 300 Sower Blvd., 5th Floor~~[500 Mero Street, 3rd Floor]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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, Chairperson

APPROVED BY AGENCY: April 15, 2024

FILED WITH LRC: April 15, 2024 at 11:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2024 at 10 a.m. Eastern Time, in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this meeting 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 want to submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: 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: This administrative regulation establishes the requirements governing employee grievances for certified and equivalent employees of the Office of Career and Technical Education.

(b) The necessity of this administrative regulation: KRS

VOLUME 50, NUMBER 11– May 1, 2024

156.808(3)(t) requires the Kentucky Board of Education to promulgate administrative regulations governing employee grievances and complaints for certified and equivalent staff of the Office of Career and Technical Education.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides specific details governing the grievance process for certified and equivalent employees of the Office of Career and Technical Education required by 156.808.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes specific details governing the grievance process for certified and equivalent employees of the Office of Career and Technical Education required by 156.808.

(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 changes to the facilitation of the grievance process through the Office of Career and Technical Education as an office within the Department of Education governed by the Kentucky Board of Education.

(b) The necessity of the amendment to this administrative regulation: The initial promulgation of this regulation predates the Office of Career and Technical Education being included as an office within the Department of Education and it has not been amended since the Office of Career and Technical Education was moved from the Workforce Development Cabinet to the Department of Education.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment will assist in the effective administration of the statutes by providing accurate details regarding the grievance process for certified and equivalent employees of the Office of Career and Technical Education.

(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 providing details regarding the grievance process for certified and equivalent staff in the Office of Career and Technical Education.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Certified and equivalent staff within the Office of Career and Technical Education will be 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: There are no additional actions required by the Office of Career and Technical Education to comply with this administrative regulation amendment.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation provides an efficient and fair process for certified and equivalent staff to file and have grievances addressed consistent with KRS 156.808.

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

(a) Initially:

(b) 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 generated 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 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 or increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in

this administrative regulation because the administration regulation applies equally to all certified and equivalent employees of the Office of Career and Technical Education.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.808

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Department of Education

(a) Estimate the following for the first year:

Expenditures: \$0.00

Revenues: \$0.00

Cost Savings: \$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Secondary state-operated area technology centers

(a) Estimate the following for the first year:

Expenditures: \$0.00

Revenues: \$0.00

Cost Savings: \$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(4) Identify additional regulated entities not listed in questions (2) or (3): The amendment to this regulation does not impact any additional regulated entities.

(a) Estimate the following for the first year:

Expenditures: \$0.00

Revenues: \$0.00

Cost Savings: \$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(b) Methodology and resources used to determine the fiscal impact: The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) The amendment to this regulation will not have an overall negative or adverse economic impact on any identified entities.

(b) The methodology and resources used to reach this conclusion: The amendment to this regulation will not have an overall negative or adverse economic impact on any identified entities.

**EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(Amendment)**

780 KAR 6:010. Classification plan.

RELATES TO: KRS 156.070, 156.808

STATUTORY AUTHORITY: KRS 156.808

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.808(1) requires the Kentucky Board of Education[executive director] to promulgate administrative regulations to govern [the classification plan for] unclassified service in the Kentucky Department of Education Office of Career and Technical Education. This administrative regulation establishes the classification plan for unclassified staff in the Office of Career and Technical Education.

VOLUME 50, NUMBER 11– May 1, 2024

Section 1. General Provisions.

(1) The Kentucky Department of Education~~[executive director]~~ shall prepare and approve~~[recommend through the Secretary of the Education and Labor Cabinet and to the Governor]~~ a classification plan for unclassified staff in the Office of Career and Technical Education~~[adoption]~~.

(2) The plan shall be based upon similarity of duties performed and responsibilities assumed so that the same qualifications and the same schedule of pay apply to all positions in the same class.

(3) Each position shall be allocated to its proper class in the classification plan.

(4) The classification plan shall include for each class of position an appropriate title, description of duties and responsibilities, and the required education, experience, and other qualifications.

Section 2. Interpretation of Class Specifications.

(1) Class specifications shall be descriptive, explanatory, and designed to indicate the kinds of positions to be allocated to the various job classifications as determined by their characteristics, duties, and responsibilities.

(2) Characteristics of a class shall be general statements indicating the level of responsibility and discretion of positions in that job classification.

(3) Examples of duties or responsibilities shall not be construed as describing what the duties or responsibilities of any position shall be and shall not limit the Office of Career and Technical Education Associate Commissioner's~~[executive director's]~~ ability to take, add to, or otherwise alter the duties and responsibilities of a position. The use of an individual expression or illustration as to duties or responsibilities shall not be regarded as excluding assignments of others not mentioned which are of similar kind or quality.

(4) Minimum requirements shall be comprehensive statements of the minimum background as to education, experience, and other qualifications which shall be required in all cases as evidence of an appointee's ability to perform the work properly.

Section 3. Official Copy of Class Specifications.

(1) The Kentucky Department of Education~~[Office of Career and Technical Education]~~ shall maintain a master set for all approved class specifications. These specifications shall constitute the official class specifications for the classification plan. The copies of the specification of each job classification shall indicate the date of adoption or the last revision of the specification.

(2) The Kentucky Department of Education~~[Office of Career and Technical Education]~~ shall provide class specifications for inspection to any employee or the public under reasonable conditions during regular business hours.

Section 4. Title of Position.

(1) The title of the job classification to which a position has been allocated shall be used to designate that position in all payroll and other official records, documents, vouchers, and communications in connection with all personnel processes.

(2) An office title, abbreviation or code symbol may be used in lieu of the class title for purposes of internal administration or for any other purpose that does not involve personnel processes.

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, Chairperson

APPROVED BY AGENCY: April 15, 2024

FILED WITH LRC: April 15, 2024 at 11:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2024, 2024 at 10 a.m. Eastern Time, in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this meeting 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 want to submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: 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: This administrative regulation establishes the classification plan for unclassified staff in the Kentucky Department of Education Office of Career and Technical Education.

(b) The necessity of this administrative regulation: KRS 156.808(1) requires the Kentucky Board of Education to promulgate administrative regulations to govern the unclassified service in the in the Office of Career and Technical Education.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides details regarding the process of establishing a classification plan for unclassified staff in the Office of Career and Technical Education required by KRS 156.808.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes details regarding the process of establishing a classification plan for unclassified staff in the Office of Career and Technical Education.

(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 changes the existing administrative regulation to reflect the structure of the Office of Career and Technical Education within the Kentucky Department of Education as opposed to the Workforce Development Cabinet where the Office of Career and Technical Education previously existed.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to reflect the process of providing a classification plan for unclassified staff within the Office of Career and Technical Education through the Kentucky Department of Education Division of Resource Management to the commissioner of education.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment provides appropriate details regarding the process of establishing a classification plan for unclassified staff in the Office of Career and Technical Education.

(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 providing accurate details regarding the process of establishing a classification plan for unclassified staff in the Office of Career and Technical Education.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Education Office of Career and Technical Education will be 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

VOLUME 50, NUMBER 11– May 1, 2024

in question (3) will have to take to comply with this administrative regulation or amendment: There are no additional actions required of the regulated entities to comply with 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 are no additional costs associated with complying with this administrative regulation amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this administrative regulation provides a fair and equitable system for establishing job classifications for the unclassified service pursuant to KRS 156.808.

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

(a) Initially:

(b) 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 generated 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 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 or increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all unclassified employees of the Office of Career and Technical Education.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070, KRS 156.808

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Department of Education

(a) Estimate the following for the first year:

Expenditures: \$0.00

Revenues: \$0.00

Cost Savings: \$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Secondary state-operated area technology centers

(a) Estimate the following for the first year:

Expenditures: \$0.00

Revenues: \$0.00

Cost Savings: \$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(4) Identify additional regulated entities not listed in questions (2) or (3): The amendment to this regulation does not impact any additional regulated entities.

(a) Estimate the following for the first year:

Expenditures: \$0.00

Revenues: \$0.00

Cost Savings: \$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(b) Methodology and resources used to determine the fiscal impact: The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) The amendment to this regulation will not have an overall negative or adverse economic impact on any identified entities.

(b) The methodology and resources used to reach this conclusion: The amendment to this regulation will not have an overall negative or adverse economic impact on any identified entities.

EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(Amendment)

780 KAR 6:020. Compensation plan.

RELATES TO: KRS 156.808

STATUTORY AUTHORITY: KRS 156.070, 156.808

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.808(11) requires the Kentucky Board of Education~~[executive director of the Office of Career and Technical Education]~~ to promulgate administrative regulations governing the unclassified service in the Office of Career and Technical Education. This administrative regulation establishes the compensation plan for unclassified employees of the Office of Career and Technical Education.

Section 1. General Provisions.

(1) The Kentucky Department of Education~~[executive director]~~ shall prepare and recommend ~~[through the Secretary of the Education and Labor Cabinet.]~~to the commissioner of education who shall recommend to the Kentucky Board of Education~~[Secretary of the Finance and Administrative Cabinet]~~ a pay plan for all Office of Career and Technical Education employees in the unclassified service taking into account:

(a) The relative levels of duties and responsibilities of various classes of positions;

(b) Rates paid for comparable positions elsewhere; and

(c) The state's financial resources.

(2) The pay shall become effective after recommendation by the commissioner of education and upon approval by the Kentucky Board of Education~~[Governor after submission by the executive director through the Secretary of the Education and Labor Cabinet and the Secretary of the Finance and Administration Cabinet].~~

(3) An amendment to the pay plan shall be made in the same manner.

(4) Each employee shall be appointed at a rate set forth within the pay plan for the position in which he or she is employed.

Section 2. Appointments. A new unclassified service employee~~[employees]~~ or reentering unclassified service employee shall be appointed at the salary within the salary structure for unclassified service employee commensurate with education level and experience.

Section 3. Salary Adjustments.

(1) Promotion.

(a) A certified or equivalent employee who is promoted to the unclassified service shall receive a five (5) percent salary increase at the time of promotion unless his or her current salary is above the minimum on the salary schedule. If the employee's salary is above the minimum, the five (5) percent increase shall be at the discretion of the appointing authority.

(b) If the promotion is to a position which constitutes an unusual increase in the level of responsibility, the associate commissioner of the Office of Career and Technical Education~~[executive director]~~ may grant upon promotion a ten (10) percent to twenty (20) percent salary increase over the employee's previous salary.

(c) Upon the successful completion of a six (6) month promotional probationary period, an unclassified employee may

VOLUME 50, NUMBER 11– May 1, 2024

receive at the discretion of the appointing authority~~[executive director]~~ a five (5) percent promotional increase at the beginning of the month following completion of the probationary period.

(2) Demotion. An unclassified employee in the Office of Career and Technical Education who is demoted to another position in the unclassified service shall have his or her salary adjusted in accordance with the appropriate salary schedule.

~~[(3) [Other salary adjustments. The executive director for the Office of Career and Technical Education may authorize performance bonuses in lump sum payments for outstanding job performance in the unclassified service in any fiscal year in which monies are available.]~~

~~[Section 4.] [Salary Advancements. Annual salary increments for unclassified employees shall occur commensurate with each person's established increment date.]~~

~~[Section 5.] [Paid overtime. An unclassified employee shall be awarded overtime payments in accordance with the Fair Labor Standards Act, 29 U.S.C. 201 et seq.]~~

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, Chairperson

APPROVED BY AGENCY: April 15, 2024

FILED WITH LRC: April 15, 2024 at 11:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2024 at 10 a.m. Eastern Time, in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this meeting 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 want to submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: 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: This administrative regulation establishes the compensation plan for unclassified employees of the Office of Career and Technical Education.

(b) The necessity of this administrative regulation: KRS 156.808(1) requires the Kentucky Board of Education to promulgate administrative regulations governing unclassified service in the Office of Career and Technical Education.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides details governing the compensation plan for unclassified staff in the Office of Career and Technical Education required by 156.808.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative assists in the effective administration of the statute by providing details which govern compensation plan for unclassified staff in the Office of Career and Technical Education required by 156.808.

(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 changes the existing administrative regulation to reflect the structure of the Office of Career and Technical Education within the Kentucky Department of Education as opposed to the Workforce Development Cabinet where the Office of Career and Technical Education previously existed.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to reflect the process governing compensation plan for unclassified staff within the Office of Career and Technical Education through the Kentucky Department of Education Division of Resource Management to the commissioner of education.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment provides appropriate details regarding the process governing compensation plan for unclassified staff in the Office of Career and Technical Education.

(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 providing accurate details regarding the process governing the compensation plan for unclassified staff in the Office of Career and Technical Education.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Education Office of Career and Technical Education will be 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: There are no additional actions required of the regulated entities to comply with 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 are no additional actions required of the regulated entities to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation requires that the Office of Career and Technical Education develop a fair and transparent compensation system for unclassified employees.

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

(a) Initially:

(b) On a continuing basis:

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation does not require the use of additional funds to implement the amendment.

(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 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 or increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation applies equally to all unclassified employees of the Office of Career and Technical Education.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.808

(2) Identify the promulgating agency and any other affected

VOLUME 50, NUMBER 11– May 1, 2024

state units, parts, or divisions: The Department of Education

(a) Estimate the following for the first year:

Expenditures: \$0.00

Revenues: \$0.00

Cost Savings: \$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Secondary state-operated area technology centers.

(a) Estimate the following for the first year:

Expenditures: \$0.00

Revenues: \$0.00

Cost Savings: \$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(4) Identify additional regulated entities not listed in questions (2) or (3): The amendment to this regulation does not impact any additional regulated entities.

(a) Estimate the following for the first year:

Expenditures: \$0.00

Revenues: \$0.00

Cost Savings: \$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(b) Methodology and resources used to determine the fiscal impact: The amendment to this regulation does not result in any new expenditures, revenues, or cost savings.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) The amendment to this regulation will not have an overall negative or adverse economic impact on any identified entities.

(b) The methodology and resources used to reach this conclusion: The amendment to this regulation will not have an overall negative or adverse economic impact on any identified entities.

PUBLIC PROTECTION CABINET Department of Financial Institutions (Amendment)

808 KAR 10:260. Examination requirement for individuals advising the public on securities, broker-dealers, and agents.

RELATES TO: KRS 292.310, 292.331(3), 292.337, 292.500(3)

STATUTORY AUTHORITY: KRS 292.331(3), 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.331(3) authorizes the commissioner to require an examination as evidence of knowledge of the securities business as a condition of registration. KRS 292.500(3) authorizes the commissioner to classify securities persons and matters within his jurisdiction and prescribe different requirements for different classes. This administrative regulation requires an individual who advises the public regarding securities to successfully complete a written examination that demonstrates knowledge of the requirements of the securities laws and exempts certain individuals from the examination requirement. This administrative regulation also sets the examination requirements for individuals who participate in the FINRA Maintaining Qualifications Program (FINRA MQP) pursuant to FINRA Rule 1240(c), provided the individual elects to participate in the NASAA Examination Validity Extension Program (NASAA EVEP).

Section 1. Except as provided in Section 2 of this administrative regulation, an individual, including an investment adviser or an investment adviser representative, who advises the public regarding the value of a security or the advisability of investing in, purchasing, or selling a security shall demonstrate competence in the law of securities by providing the commissioner with proof of obtaining a passing score, as determined by the Financial Industry Regulatory Authority (FINRA), on one (1) of the following examinations:

(1) The Uniform Investment Advisor Law Examination (Series 65 examination); or

(2)

(a) The General Securities Representative Examination (Series 7 examination); and

(b) The Uniform Combined State Law Examination (Series 66 examination).

Section 2. The following individuals shall not be required to take and pass the examination:

(1) An individual who registered as an investment adviser or investment adviser representative in a state on or before January 1, 2000 and has been continuously registered since that date, except that the commissioner may require the examinations identified in Section 1 of this administrative regulation for an individual found to have violated a state or federal securities law as a condition of continued registration;

(2) An individual who currently holds one (1) of the following professional designations and is in compliance with all continuing education and other requirements of good standing for the designation:

(a) Certified Financial Planner (CFP) issued by the Certified Financial Planner Board of Standards, Inc.;

(b) Chartered Financial Consultant (ChFC) issued by The American College, Bryn Mawr, Pennsylvania;

(c) Personal Financial Specialist (PFS) granted by the American Institute of Certified Public Accountants;

(d) Chartered Financial Analyst (CFA) granted by the Association for Investment Management and Research; or

(e) Chartered Investment Counselor (CIC) granted by the Investment Counsel Association of America; or

(3) An individual who was registered as a broker-dealer agent prior to January 1, 1988, has been continuously registered since that date and has had no reportable disclosures on Form U-4, as incorporated by reference in 808 KAR 10:010.

Section 3. An individual not required to take and pass any examination because of holding a designation specified in Section 2(2) of this administrative regulation may be required to take the examination if that individual fails to maintain the designation in good standing.

Section 4. A registered investment adviser shall not employ an individual as an investment adviser or as one who represents an investment adviser unless that individual has complied with this administrative regulation.

Section 5. To register in Kentucky as a broker-dealer or agent, an individual or a principal, if the applicant is an entity, shall:

(1) Pass the appropriate examination, which depending on the proposed business, shall be one (1) of the following FINRA examinations: Series 1, 2, 6, 7, 11, 17, 22, 24, 26, 39, 40, 52, 53, 62, or 79; and

(2) Pass the North American Securities Administrators Association ("NASAA") Series 63 or Series 66 examination.

Section 6.

(1) Except as provided in subsections (2) and (3) of this section, an individual who has been unregistered for a period of time in excess of two (2) years shall be required to take and pass the examinations specified in Sections 1 and 5 of this administrative regulation unless the commissioner grants a waiver for good cause shown in response to a written request by the investment adviser,

VOLUME 50, NUMBER 11– May 1, 2024

broker-dealer, or issuer which the individual will represent.

(2) An individual who has been unregistered as an agent in any state for a period of time in excess of two (2) years but less than five (5) years, who has elected to participate in the FINRA Maintaining Qualifications Program (FINRA MQP) pursuant to FINRA Rule 1240(c), and whose FINRA qualifying examinations remain valid pursuant to participation in the FINRA MQP, shall be deemed in compliance with the examination requirements of Section 5 of this administrative regulation, provided the individual elects to participate in the NASAA Examination Validity Extension Program (NASAA EVEP) within two (2) years of agent registration termination; and

(3) An individual who terminates his or her registration as an investment adviser representative may maintain the validity of his or her Series 65/Uniform Investment Adviser Law Examination, or the investment adviser representative portion of the Series 66/Uniform Combined State Law Examination, as applicable, without being employed by or associated with an investment adviser or a federally covered investment adviser for a maximum of five years following the termination of the individual's investment adviser representative registration, provided the individual:

(a) Previously passed the examination for which the individual seeks to maintain validity under this rule;

(b) Was registered as an investment adviser representative for at least one (1) year immediately preceding the termination of the investment adviser representative registration;

(c) Was not subject to a statutory disqualification as defined in Section 3(a)(39) of the Exchange Act while registered as an investment adviser representative or at any period after termination of the registration;

(d) Elects to participate in the NASAA EVEP under this paragraph within two (2) years from the effective date of the termination of the investment adviser representative registration;

(e) Does not have a deficiency under the investment adviser representative continuing education program at the time the investment adviser representative registration becomes ineffective; and

(f) Completes annually, no later than December 31 of each calendar year in which the person participates in the investment adviser representative NASAA EVEP:

1. Six (6) credits of investment adviser representative continuing education Ethics and Professional Responsibility Content offered by an authorized provider, including at least three (3) hours covering the topic of ethics; and

2. Six (6) credits of IAR CE Products and Practice Content offered by an authorized provider;

(4) An individual who elects to participate in NASAA EVEP must complete the credits required by subsection (3)(f) of this section for each calendar year that elapses after the individual's investment adviser representative registration became ineffective, regardless of when the individual elects to participate in NASAA EVEP.

(5) An individual who complies with the FINRA MQP under FINRA Rule 1240(c) shall be deemed in compliance with subsection (3)(f)2. of this section.

MARNI R. GIBSON, Commissioner

RAY PERRY, Secretary

APPROVED BY AGENCY: April 12, 2024

FILED WITH LRC: April 12, 2024 at 1:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 20, 2024, at 9:00 a.m., at 500 Mero Street, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact persons.

CONTACT PERSON: Gary Stephens, Assistant General

Counsel and Marni Gibson, Commissioner, 500 Mero Street, 2 SW 19, Frankfort, Kentucky 40601, phone 502-782-9046, fax 502-573-8787, email Gary.Stephens@ky.gov and Marni.Gibson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Stephens

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires an individual who advises the public regarding securities to successfully complete a written examination that demonstrates knowledge of the requirements of the securities laws and exempts certain individuals from the examination requirement.

(b) The necessity of this administrative regulation: This administrative regulation provides guidance to individuals who have registered with the agency regarding compliance with examination requirements and maintaining qualifications for compliance purposes and registration.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 292.331(3) authorizes the commissioner to require an examination as evidence of knowledge of the securities business as a condition of registration.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will require an individual, including an investment adviser or an investment adviser representative, who advises the public regarding the value of a security or the advisability of investing in, purchasing, or selling a security shall demonstrate competence in the law of securities by providing the commissioner with documentation of proficiency to provide securities-related advice for clients and to maintain his or her registration as needed.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation amendment provides guidance for individuals to participate in the FINRA Maintaining Qualifications Program ("FINRA MQP") pursuant to FINRA Rule 1240(c) provided the individual elects to participate in the NASAA Examination Validity Extension Program ("NASAA EVEP"). The amended language provides guidance as to the requirements to qualify for this extension to required registration practices.

(b) The necessity of the amendment to this administrative regulation: This amended language allows for proscribed steps an adviser must take in order to maintain the qualifications necessary to renew a registration beyond the existing two-year window.

(c) How the amendment conforms to the content of the authorizing statutes: The amended language allows for proscribed steps to be taken in order to maintain registration and be in compliance with current statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amended language confirms with FINRA rule exception requirements for registration and permits the same exception, creating uniformity.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Broker-dealer agents and investment adviser representatives who leave the industry and wish to return without re-taking qualifying examinations for a limited period of time are affected. The number is unknown as it is dependent on those leaving the industry and electing to enter the program; however, all broker-dealer agents and investment adviser representatives would be eligible.

(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 provides an optional program for registered individuals to elect to extend their examinations beyond the current two-year window. To comply,

VOLUME 50, NUMBER 11– May 1, 2024

individuals elect to enter the program, pay the fee established by the nationwide registration system, and maintain any necessary continuing education.

(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 registrant will be a minimal, one-time fee to enter the program, which is paid to the nationwide registration system.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Registered broker-dealer agents and investment adviser representatives will be allowed to maintain a basic level of qualifications for their registrations should they decide or need to leave the industry for a period of time beyond the current two-year limitation, enabling easier re-entry into the industry.

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

(a) Initially: Costs to implement this regulation amendment are minimal, if any, as the processes are already incorporated into the nationwide registration system.

(b) On a continuing basis: Costs for subsequent years are minimal, if any, as the processes are already incorporated into the nationwide registration system.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current Department resources.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Applicants for the program pay a fee for the entry into the program on the nationwide registration system; however, this fee is not charged by the state of Kentucky, and Kentucky receives no increase in revenue from the fee.

(9) TIERING: Is tiering applied? Tiering was not applied. The regulation did not require tiering to be applied to implement.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amended regulation is not expected to impact costs for additional regulated entities.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The costs will be minimal to the registrant, but any costs that are incurred for maintaining basic continuing education requirements will be determined by the time, manner, and medium in which the registrant participates in the required program components.

(b) Methodology and resources used to determine the fiscal impact: This fiscal impact was determined by reviewing the requirements to comply with the amended regulation.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This regulation will not have a major economic impact on the regulated entities or the Department.

(b) The methodology and resources used to reach this conclusion: The expected costs and revenues were reviewed.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 292.500(3), KRS 292.331(3), KRS 292.310, KRS 292.337

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Department of Financial Institutions, Division of Securities

(a) Estimate the following for the first year:

Expenditures: None

Revenues: Minimal

Cost Savings: Minimal

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The effect on overall revenue for the Department will be minimal and will not have a substantial impact on the Department's budget.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

(a) Estimate the following for the first year:

Expenditures: None

Revenues: None

Cost Savings: None

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amended regulation should have no financial impact on state or local government agencies.

(4) Identify additional regulated entities not listed in questions (2) or (3): The amended regulation is not expected to affect additional regulated entities.

(a) Estimate the following for the first year:

Expenditures: None

Revenues: None

Cost Savings: None

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](#).

**STATE BOARD OF ELECTIONS
(New Administrative Regulation)**

31 KAR 3:041. Electronic Voter Registration System.

RELATES TO: KRS 116.045, 116.0452, 116.065, 116.155
STATUTORY AUTHORITY: KRS 116.045(4)(e), 117.015(1)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1) requires the State Board of Elections to supervise the registration of voters within the state. KRS 116.045(4)(e) provides that a person may register to vote or change party affiliation by methods of registration or reregistration approved by the State Board of Elections. KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties. This administrative regulation approves and establishes procedures for use of an electronic voter registration system to register or reregister to vote or to update voter registration information.

Section 1. Definition. "Applicant" means a person who uses the electronic voter registration system established by the State Board of Elections to register or reregister to vote or to update voter registration information.

Section 2. Use of Electronic Voter Registration System.

(1) The State Board of Elections shall, as funds permit, establish an electronic voter registration system by which persons may register or reregister to vote or update voter registration information.

(2) In addition to the methods set forth in KRS 116.045(4), a person who meets all eligibility requirements may register or reregister to vote or update voter registration information by using the electronic voter registration system established by the State Board of Elections pursuant to this administrative regulation.

Section 3. Contents of Electronic Voter Registration System Application Form. The electronic voter registration system application shall:

(1) Include the electronic equivalent of the registration application form prescribed and furnished by the State Board of Elections under KRS 116.155, including a warning relating to the potential penalties applicable to an applicant knowingly filing an application with untrue information and a voter declaration affirmation as required by KRS 116.065;

(2) Require the applicant who has a Kentucky driver's license or Kentucky personal identification card to:

(a) Agree to the use of his or her Kentucky driver's license signature or Kentucky personal identification card signature for voter registration purposes; and

(b) Provide his or her Kentucky driver's license number or Kentucky personal identification card number.

(3) Require the applicant who does not have a Kentucky driver's license or Kentucky personal identification card, to either:

(a) Provide an electronic signature to be used for voter registration purposes; or

(b) Print the registration application, sign it, and return it to the county clerk for the county in which the applicant resides.

Section 4. Processing Voter Registration Application Submitted Via the Electronic Voter Registration System.

(1) The electronic voter registration system shall not allow an applicant to submit an application unless:

(a) The entire application form, including the voter declaration affirmation as required by KRS 116.065, is completed by the applicant; and

(b) The applicant has either:

1. Agreed to the use of his or her Kentucky driver's license signature or Kentucky personal identification card signature for voter registration purposes and provided his or her Kentucky driver's license number or Kentucky personal identification card number pursuant to Section 3(2) of this administrative regulation; or

2. Provided an electronic signature to be used for voter registration purposes pursuant to Section 3(3)(a) of this administrative regulation.

(2) Immediately upon the applicant's submission of an application that meets the requirements of subsection (1) of this section, the State Board of Elections shall:

(a) If the applicant agreed to the use of his or her Kentucky driver's license signature or Kentucky personal identification card signature for voter registration purposes and provided his or her Kentucky driver's license number or Kentucky personal identification card number pursuant to Section 3(2) of this administrative regulation:

1. Check the information submitted by the applicant to ensure that the Kentucky driver's license number or Kentucky personal identification card number submitted by the applicant matches the information maintained by the Transportation Cabinet; and

2. If a match is made:

a. Electronically forward the information provided in the application, along with a digital copy of the applicant's signature obtained from the Transportation Cabinet, to the county clerk for the county in which the applicant resides; and

b. Notify the applicant that the application has been electronically forwarded to the county clerk for the county in which the applicant resides, but that the applicant will not be officially registered to vote or that changes to the applicant's existing registration will not be made until the application is received and processed by the county clerk.

3. If a match cannot be made, notify the applicant that the application cannot be processed and instruct the applicant to print the application, sign it, and mail or hand deliver it to the county clerk for the county in which the applicant resides.

(b) If the applicant provided an electronic signature to be used for voter registration purposes pursuant to Section 3(3)(a) of this administrative regulation:

1. Electronically forward the information provided in the application, along with the applicant's electronic signature, to the county clerk for the county in which the applicant resides; and

2. Notify the applicant that the application has been electronically forwarded to the county clerk for the county in which the applicant resides, but that the applicant will not be officially registered to vote or that changes to the applicant's existing registration will not be made until the application is received and processed by the county clerk.

(3) An electronic voter registration application shall be deemed to have been made and received by the appropriate county clerk as of the date the applicant is informed pursuant to subsection (2) of this section that the application has been electronically forwarded to the county clerk for the county in which the applicant resides.

(4) Except as otherwise specifically provided, an electronic voter registration application electronically forwarded by the State Board of Elections shall be considered an application for registration by mail.

Section 5. Incorporated by Reference.

(1) Commonwealth of Kentucky Voter Registration Application, Form SBE 01, 04/2024, is incorporated by reference.

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

VOLUME 50, NUMBER 11– May 1, 2024

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 12, 2024

FILED WITH LRC: April 15, 2024 at 10:56 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this new administrative regulation shall be held on June 28, 2024, at 10:00 a.m. ET, at the office of the State Board of Elections. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 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: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation approves and establishes procedures for use of an electronic voter registration system to register or reregister to vote or to update voter registration information.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to allow voters in the Commonwealth the ability to register or reregister to vote or to update their voter registration information electronically.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation allows the public to readily see that the Electronic Voter Registration System is a method of registration or reregistration approved by the State Board of Elections under KRS 116.045(4)(e).

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all voters in the Commonwealth who seek the ability to register or reregister to vote or to update their voter registration information, as well as, the county clerks who may receive those registrations.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To comply with this administrative regulation, voters will need to go on to the internet to access the Electronic Voter Registration System and county clerks will need to go online to receive and process submitted applications.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in

question (3): The State Board of Elections estimates that the implementation of this administrative regulation will cost voters and county clerks no more funds than are already being expended.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit voters and county clerks in standardizing the voter registration process while adding the convenience of online access to the process.

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

(a) Initially: The cost of the implementation of this administrative regulation for the State Board of Elections will be minimal as it will require only the creation of the new Form SBE 01.

(b) On a continuing basis: The State Board of Elections anticipates this administrative regulation will cost no more funds than are already being expended.

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

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

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

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

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 117.015(1), 117.015(1)(a), and 116.045(4)(e) require and authorize the actions taken by this administrative regulation.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: This administrative regulation will affect the promulgating agency, the State Board of Elections.

(a) Estimate the following for the first year:

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

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation will not generate any specific cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This administrative regulation will affect county clerks.

(a) Estimate the following for the first year:

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

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent

VOLUME 50, NUMBER 11– May 1, 2024

years.

(4) Identify additional regulated entities not listed in questions (2) or (3): This administrative regulation will affect voters of the Commonwealth.

(a) Estimate the following for the first year:

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

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The State board of Elections expects that this administrative regulation will have little to no fiscal impact on the regulated entities, outside those expenditures already undertaken.

(b) Methodology and resources used to determine the fiscal impact: This determination of this administrative regulation's fiscal impact is made by the listed contact person and other agency staff based on their collective experience with the subject matter.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) The State Board of Elections does not expect that this administrative regulation will result in a negative or adverse major economic impact to the entities identified in questions (2) - (4).

(b) The methodology and resources used to reach this conclusion: This conclusion is made by the listed contact person and other agency staff based on their collective experience with the subject matter.

STATE BOARD OF ELECTIONS (New Administrative Regulation)

31 KAR 4:031. Reporting.

RELATES TO: KRS 117.085, 117.086, 117.235, 117.255, 117.275, 117.355, 118.425, 119.307

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.086(5), 117.275(15), 117.355(4), 118.425(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 117. KRS 117.355(4) requires the State Board of Elections to prescribe the forms for the precinct election sheriff and the county board of elections to report election irregularities and recommendations for improving the election process, to report special ballot and voter assistance usage statistics, and to report other information required by the state board. KRS 117.086(5) requires the State Board of Elections to prescribe a form on which the county board of elections shall report the number of rejected absentee ballots and the reasons for rejection of those ballots. KRS 118.425(4) requires the State Board of Elections to prescribe a form by which the county board of elections shall make out duplicate certificates of the total number of votes received by each of the candidates for office and the total number of votes for an against each of the ballot questions. KRS 117.275(15) requires a secure online connection be available for the transmission of unofficial election results from county boards of election to the State Board of Elections following the tallying of votes. This administrative regulation establishes the procedure and forms for the county clerk, the county board of elections, and the precinct election sheriff to report election and voting data after the election.

Section 1. The following reporting forms shall be filed in accordance with the referenced statutes:

(1) Pursuant to KRS 117.355(1), the precinct election sheriff shall file the Precinct Election Sheriff's Postelection Report, SBE 53, with the chair of the county board of elections and the local grand jury;

(2) Pursuant to KRS 117.355(2), the county board of election shall file the County Board of Elections Postelection Report, SBE 54, with the State Board of Elections and the local grand jury;

(3) Pursuant to KRS 117.275(7) and 117.355(2), the county board of elections shall file the County Board of Elections Postelection Statistical Report, SBE 54A, with the State Board of Elections;

(4) Pursuant to KRS 117.355(2), the county board of elections shall file the County Board of Elections Precinct Election Officials Absence Report, SBE 54B, with the State Board of Elections;

(5) Pursuant to KRS 117.275(12) and 117.086(4)(c), the county clerk shall file the County Board of Elections Provisional Ballots Issued to Voters and Counted, SBE 54C with the State Board of Elections.

(6) Pursuant to KRS 117.086(4)(a)-(b), the county clerk shall file the Absentee Ballot Report, SBE 33A, with the State Board of Elections;

(7) Pursuant to KRS 117.086(5), the county board of elections shall file the Number of Rejected Absentee Ballots and Reasons for Rejected Ballots, SBE 33B; and

(8) Pursuant to KRS 117.275(11)-(12) and 118.425(4), the county board of elections shall file the Certification Official Count and Record of Election Totals, SBE 49, with the Secretary of State.

Section 2. Any form described in Section 1 that is capable of being recorded or filled automatically through the State Board of Elections' Voter Registration System may be deemed by the State Board of Elections as being transmitted following the successful capture of all required information by the Voter Registration System.

Section 3.

(1) Pursuant to KRS 117.275(15), the State Board of Elections shall develop and maintain a platform with a secure online connection for the transmission of unofficial election results from county boards of election to the State Board of Elections following the tallying of votes for all primary, and regular elections, as well as special elections for statewide office, the General Assembly, and the United States Congress.

(2) Beginning at 6:00 p.m., prevailing time, on the day of a primary or regular election, as well as a special election for statewide office, the General Assembly, and the United States Congress, county boards of election shall use the secure online platform maintained by the State Board of Elections to transmit their county's unofficial election tally. The unofficial vote tally transmitted shall include precinct-by-precinct totals from counts of all mail-in absentee ballots, excused in-person absentee ballots, no-excuse in-person absentee ballots, and election day ballots, and shall include totals for those candidates who have filed a declaration of intent to be a write-in candidate pursuant to KRS 117.265(2). Unofficial vote tallies transmitted using the secure online platform shall be transmitted using a computer-file-type and format selected by the State Board of Elections, which shall be selected following the certification of candidates by the Secretary of State pursuant to KRS 118.215(1), or immediately after receiving the Secretary of State's certification pursuant to KRS 118.770.

(3) The State Board of Elections shall display the tally information received from the county boards of election through the secure online transmittal platform on a secure website freely available to the general public. The display shall list precinct-by-precinct tallies for all candidates and questions but shall only list a candidate's precinct absentee vote totals as cumulative.

(4) County boards of election or county clerks shall verify with the State Board of Elections that their county's unofficial vote tally has been successfully transmitted to the State Board of Elections no later than six (6) hours after the close of polls. Should a county's tally not be complete six (6) hours after the close of polls, a

VOLUME 50, NUMBER 11– May 1, 2024

representative of the county clerk's office shall update the State Board of Elections by telephone as to the status of the tally transmittal at the end of the sixth hour and then subsequently at the top of each following hour unless the transmittal is completed before such time.

Section 4. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "Precinct Election Sheriff's Postelection Report", SBE 53, 04/2024;
- (b) "County Board of Elections Post-election Report", SBE 54, 04/2024;
- (c) "County Board of Elections Post-election Statistical Report", SBE 54A, 04/2024;
- (d) "County Board of Elections Precinct Election Officials Absence Report", SBE 54B, 04/2024 September 2002;
- (e) "Absentee Ballot Report", SBE 33A, 04/2024;
- (f) "Number of Rejected Absentee Ballots and Reasons for Rejected Ballots", SBE 33B, 04/2024; and
- (g) "Certification Official Count and Record of Election Totals", SBE 49, 04/2024.

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

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 12, 2024

FILED WITH LRC: April 15, 2024 at 10:56 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the secure online connection for the transmission of unofficial election results from county boards of election to the State Board of Elections following the tallying of votes, as well as the procedure and forms for the county clerk, the county board of elections, and the precinct election sheriff to report election and voting data after the election.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure accurate and secure election results, as well as election and voting data.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the secure online connection for the transmission of unofficial election results from county boards of election to the State Board of Elections following the tallying of votes, as required by KRS 117.275(15) and establishes the various post-election reporting forms required throughout KRS Chapter 117.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes the secure online connection for the transmission of unofficial election results from county boards of election to the State Board of Elections following the tallying of votes and the procedures for its use.

(b) The necessity of the amendment to this administrative regulation: KRS 117.275(15) requires a secure online connection be available for the transmission of unofficial election results from county boards of election to the State Board of Elections following the tallying of votes.

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

(d) How the amendment will assist in the effective administration of the statutes: This amendment explains the expected use of the secure online connection related to unofficial election results.

(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 county clerks and the State Board of Elections.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To comply with this administrative regulation, the State Board of Election will need to continue to maintain, and county clerks will need to continue to use, the secure online connection for election-night results that has been in use the last several years.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will have minimal costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit all in ensuring that election reporting is done in the most secure and efficient way possible.

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

(a) Initially: The cost of the implementation of this administrative regulation for the State Board of Elections will be minimal as it will require only the creation of the new Forms incorporated by reference.

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

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

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

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

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

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 117.015(1)(a) and 117.275(15) require and authorize the actions taken by this administrative regulation.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: This administrative regulation will affect the promulgating agency, the State Board of Elections.

(a) Estimate the following for the first year:

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

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

VOLUME 50, NUMBER 11– May 1, 2024

Cost Savings: The State Board of Elections expects that this administrative regulation will not generate any specific cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This administrative regulation will affect county clerks.

(a) Estimate the following for the first year:

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

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): N/A

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

(b) How will expenditures, revenues, or cost savings differ in subsequent years? N/A

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The State board of Elections expects that this administrative regulation will have little to no fiscal impact on the regulated entities, outside those expenditures already undertaken.

(b) Methodology and resources used to determine the fiscal impact: This determination of this administrative regulation's fiscal impact is made by the listed contact person and other agency staff based on their collective experience with the subject matter.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) The State Board of Elections does not expect that this administrative regulation will result in a negative or adverse major economic impact to the entities identified in questions (2)-(4).

(b) The methodology and resources used to reach this conclusion: This conclusion is made by the listed contact person and other agency staff based on their collective experience with the subject matter.

STATE BOARD OF ELECTIONS
(New Administrative Regulation)

31 KAR 4:220. Recount procedures.

RELATES TO: KRS 120.095, 120.157, 120.185, 120.260, 120.290

STATUTORY AUTHORITY: KRS 117.015(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1) establishes the State Board of Elections as the independent agency of state government which shall administer the election laws of the state. KRS 120.095, 120.157, 120.185, 120.260, and 120.290 all authorize the post-election recounting of ballots cast. These same statutes are all largely without procedures for how such an event should take place. This administrative regulation establishes procedures for the recounting of ballots so that there may be an established standard throughout the Commonwealth.

Section 1. Definition. "Recount" means a post-election retallying of ballots cast in a primary, general, or special election, as

authorized under KRS 120.095, 120.157, 120.185, 120.260, or 120.290.

Section 2. Locations. Upon identifying that a recount will be taking place, an affected county board of elections shall identify a suitable location, within the county, where the recount can take place.

(1) A suitable location shall be one where all of the voting equipment and ballot boxes required for the recount can be housed in one location and there is ample space for the personnel required for the task and all authorized observers, who shall have a dedicated area within the location to witness the recount.

(2) If a recount is to occur pursuant to KRS 120.290, the Franklin County Clerk shall assist the Franklin Circuit Court in finding a location for the commencing of the recount should the Court find the courthouse at Frankfort unsuitable for the event.

Section 3. Recount Personnel.

(1) Pursuant to KRS 117.035(5), an affected county board of elections may employ a bipartisan staff sufficient to carry out the duties of the recount. Once a county board identifies that a recount will be taking place, the board shall immediately seek out citizens of the county who may wish to work for the county board on a temporary basis as recount officials.

(2) County boards shall recruit enough citizens of the county to work as recount officials so that the recount may be completed before any statutory deadline.

(a) Citizens hired to work as recount officials shall be registered voters of the county in which they desire to work.

(b) Recount officials shall be paid an hourly wage for their work during the entirety of the recount process. The hourly wage shall be set uniformly for all recount officials by the county board of elections at a rate that is both prevailing in the jurisdiction at the time for the type of work to be done and that is high enough to entice applicants qualified for such a short-term, temporary assignment.

(c) Before any recount official shall be allowed to work, the individual shall take the oath found in Section 228 of the Kentucky Constitution, which shall be administered by any officer authorized under KRS 62.020.

Section 4. Procedures as to Election Vendors.

(1) Upon identifying that a recount will be taking place, county clerks shall work with their voting equipment vendors to begin programming, distributing, and setting the voting equipment necessary for the recount.

(2) Election equipment shall be set to isolate the race or question subject to the recount and the straight-party option, if applicable.

Section 5. Initiating the Recount.

(1) Before recount proceedings may begin, on the day fixed for the recount, the county board of elections shall meet to confirm the integrity of the ballots subject to the recount.

(2) The confirmation of the integrity of the ballots shall be reflected in the recorded minutes of the meeting of the county board of elections.

(3) Absent a showing of clear and convincing evidence that the ballots have been purposefully disturbed and tampered with, the integrity of the ballots shall be proven.

Section 6. Securing the Integrity of the Recount.

(1) Before members of the recount teams shall be allowed to handle individual ballots, each member shall present their hands and fingernails to the members of the county board of elections for visual inspection. Before proceeding to handle ballots, county board of elections members shall confirm that each recount official's hands and fingernails are clean enough so as to not transfer any ink, lead, or other markings onto the ballots.

(2) Only red ink pens, a blank pad of paper, and manilla envelopes large enough to contain multiple ballots shall be allowed in any area in the direct proximity of voting equipment or ballots during the counting of ballots.

VOLUME 50, NUMBER 11– May 1, 2024

(3) The use of cell phones or other electronic devices shall not be permitted within the direct proximity of voting equipment or ballots. Any capturing of photographic or video images of ballots shall be prohibited.

(4) No food or drink shall be permitted in any area in the direct proximity of voting equipment or ballots without prior authorization from the county board of elections.

Section 7. Before Voting Equipment is Opened.

(1) The county board of elections or the county clerk shall split the recount officials into recount teams of two (2) so that each team contains individuals registered of differing political party affiliations.

(2) Each recount team shall be assigned to only one (1) piece of voting equipment at any one (1) time and no piece of voting equipment shall have more than one (1) recount team operating it at any one time.

(3) Before a piece of voting equipment is opened by a recount team, the information from the voting equipment's Machine Verification Form shall be transposed onto the Form SBE 82, Recount Tabulation Form.

Section 8. Opening the Voting Equipment.

(1) Once a recount team opens a piece of voting equipment, the seal number, beginning counter number, and lifetime counter number shall be checked to match the Machine Verification Form.

(2) Once the ballot box or tub containing the ballots is opened, the seal number shall be recorded on the Form SBE 82, Recount Tabulation Form.

(3) Every ballot from the ballot box or tub shall be removed and placed on a segregated table next to the voting equipment and the broken seal shall be placed inside the ballot box or tub. At no point shall ballots from one (1) ballot box or tub be comingled with any other materials, including ballots from another ballot box or tub. At no time shall ballots be left outside of a ballot box or tub unattended.

Section 9. Procedure to Recount Ballots.

(1) Every ballot removed from a ballot box or tub for a recount shall be scanned back through the piece of voting equipment from which the ballot box or tub was originally associated, one (1) ballot at a time. If a county is in possession of a separate piece of voting equipment designed and regularly used to count larger amounts of ballots, the use of such voting equipment shall be authorized.

(2) Scanned ballots shall be counted by the electronic voting equipment in accordance with 31 KAR 6:030, Section 4(1) and the cumulative totals for each slate of candidates shall be recorded on the Form SBE 82, Recount Tabulation Form as such.

(3) If a ballot does not scan through the piece of voting equipment on the first attempt, each member of the associated recount team shall attempt to scan the ballot one (1) additional time each. If, after three (3) unsuccessful attempts, a ballot does not scan, it shall be set aside for later adjudication.

(4) Once only those ballots set aside remain, they shall be adjudicated as one (1) of three (3) types: 1) an overvote, meaning that upon visual inspection of the ballot, more than one slate of candidates appears to have been selected by the voter; 2) an undervote, meaning that upon visual inspection, no slate of candidates appears to have been selected by the voter on the ballot; or 3) a damaged ballot, no longer capable of being scanned into the voting equipment because of damage sustained to the physical ballot, but clearly having a selection for only one (1) slate of candidates or that slate's straight-party option.

(5) The number of undervotes, overvotes, and damaged ballots shall be recorded on the Form SBE 82, Recount Tabulation Form as such.

(6) The recount officials shall place the cumulative number of undervotes in a manilla envelope, seal the envelope with tape, label it with the word "undervotes," and then sign it alongside the date and time of their signature. This procedure shall then be followed for envelopes labeled "overvotes" and "damaged ballots." If the cumulative number of undervotes, overvotes, or damaged ballots will not fit inside one (1) manilla envelope, multiple envelopes may be used.

(7) Once the undervotes, overvotes, and damaged ballots are placed in envelopes, the envelopes shall be placed back in the ballot box or tub on top of the ballots already recounted by the electronic voting equipment.

(8) Once a conclusive accounting has been reached for all ballots removed from the ballot box or tub, the voting equipment shall be secured with a seal of a color not previously used in the election and the serial number of the seal shall be recorded on the Form SBE 82, Recount Tabulation Form.

(9) The Form SBE 82, Recount Tabulation Form shall then be signed by the recount team members and all members of the county board of elections.

(10) Once this process is complete for one (1) piece of voting equipment, a recount team may move on to a new piece of voting equipment and begin the process of recounting the ballots found within.

(11) Once all ballots have been counted by the electronic voting equipment and all Form SBE 82, Recount Tabulation Forms have been completed, the county clerk shall scan and email all Form SBE 82, Recount Tabulation Forms to the State Board of Elections. For a recount conducted under KRS 120.157, the State Board of Elections shall examine the statewide Form SBE 82, Recount Tabulation Forms and tally the results submitted. If the tally of results submitted shows that the count of ballots by the electronic voting equipment did not result in a margin of victory of 0.25% or less, the State Board of Elections shall notify each county that their recount is complete. If the tally of results submitted shows that the count of ballots by the electronic voting equipment did result in a margin of victory of 0.25% or less, the State Board of Elections shall tally the total number of overvotes and damaged ballots reported on the submitted Form SBE 82, Recount Tabulation Forms. If the cumulative number of overvotes and damaged ballots is large enough to overcome the machine-established margin of victory, the State Board of Elections shall notify the counties that they are to meet immediately to count the overvotes and damaged ballots. If the cumulative number of overvotes and damaged ballots is not large enough to overcome the machine-established margin of victory, the State Board of Elections shall notify the counties that their recount is complete.

(12) Upon the need for a count of overvotes and damaged ballots, the county board of elections shall meet to remove all manila folders containing overvotes and damaged ballots. Overvotes and damaged ballots shall be adjudicated by the full county board of elections using the procedures described in 31 KAR 6:030, Section 4(2) and (3). Overvotes shall also be subject to the allowances of 31 KAR 6:030, Section 4(4).

(a) Each adjudicated ballot, shall, by majority vote of the county board of elections, result in a vote for either: 1) one (1) valid candidate, one (1) valid slate of candidates, or valid answer to a question; 2) one (1) valid write-in candidate or slate of candidates, or 3) no candidate, slate of candidates, or answer to a question. The adjudication of each ballot shall be recorded onto the Form SBE 82, Recount Tabulation Form.

(b) After overvotes and undervotes are adjudicated, they shall be placed, along with the original manila envelope, in a new manila envelope. The county board of elections shall seal the envelope with tape, label it as "overvotes," or "damaged ballots," accordingly, and then sign it alongside the date and time of their signature.

Section 10. Reporting of Recount Totals.

(1) Once every piece of voting equipment has been opened, all ballots have been recounted, and a conclusive recount total for each piece of equipment has been established, the county board of elections shall transfer the totals for each candidate or question from each Form SBE 82, Recount Tabulation Form onto a Form SBE 49, Official Count and Record of Election Totals.

(2) The same totals recorded onto the Form SBE 49, Official Count and Record of Election Totals shall also concurrently be input into an online portal belonging to the Secretary of State should such be available.

(3) The members of the county board of elections shall affix their signatures to the completed Form SBE 49, Official Count and Record of Election Totals, which shall mark the completion of the

VOLUME 50, NUMBER 11– May 1, 2024

recount.

(4) Once the Form SBE 49, Official Count and Record of Election Totals is signed, the county board of elections shall fax a copy the document to the office of the Secretary of State, no later than 4:00 p.m., local time, on the day following the completion of the county's recount. Each county clerk shall retain a copy of the completed Form SBE 49, Official Count and Record of Election Totals for their records and mail the original signed copy to the office of the Secretary of State.

Section 11. Reimbursement of Recount Costs. All costs associated with the recount proceedings, including but not limited to, personnel expenses and vendor charges, shall be recorded and documented by the county clerk.

Section 12. Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) "Recount Tabulation Form", Form SBE 82, 04/2024; and

(b) "Official Count and Record of Election Totals", Form SBE 49, 04/2024.

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

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 12, 2024

FILED WITH LRC: April 15, 2024 at 10:56 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this new administrative regulation shall be held on June 28, 2024, at 10:00 a.m. ET, at the office of the State Board of Elections. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 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: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the recounting of ballots so that there may be an established standard throughout the Commonwealth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary as KRS 120.095, 120.157, 120.185, 120.260, and 120.290 all authorize the post-election recounting of ballots cast but are all largely without procedures for how such an event should take place.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will allow for uniform recount procedures in each county should a recount be required under KRS 120.095, 120.157, 120.185, 120.260, or 120.290.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect candidates for elected office, qualified electors related to a constitutional convention, constitutional amendment, or statewide public question, vendors of electronic voting equipment, county clerks, county boards of election, the Secretary of State, and the State Board of Elections.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To comply with this administrative regulation, candidates for elected office, qualified electors related to a constitutional convention, constitutional amendment, or statewide public question, vendors of electronic voting equipment, county clerks, and county boards of elections will need to follow instructions setting forth procedures for a recount of ballots; the Secretary of State will need to determine whether or not to provide an online reporting tool for recount results; the State Board of Elections may need to determine if further recounting of ballots is necessary under KRS 120.157.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will cost candidates for elected office, qualified electors related to a constitutional convention, constitutional amendment, or statewide public question, vendors of electronic voting equipment, county clerks and county boards of election an amount that can only be determined once the scope of a recount is established and will cost the Secretary of State and the State Board of Elections no more funds than are already being expended.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will allow those impacted by a recount of ballots to know that a recount in one jurisdiction is being conducted under the same procedures as one in another jurisdiction, ensuring an equitable process.

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

(a) Initially: The State Board of Elections estimates that the implementation of this administrative regulation will cost candidates for elected office, qualified electors related to a constitutional convention, constitutional amendment, or statewide public question, vendors of electronic voting equipment, county clerks and county boards of election an amount that can only be determined once the scope of a recount is established and will cost the Secretary of State and the State Board of Elections no more funds than are already being expended.

(b) On a continuing basis: The State Board of Elections estimates that the implementation of this administrative regulation will cost candidates for elected office, qualified electors related to a constitutional convention, constitutional amendment, or statewide public question, vendors of electronic voting equipment, county clerks and county boards of election an amount that can only be determined once the scope of a recount is established and will cost the Secretary of State and the State Board of Elections no more funds than are already being expended.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds from the budgets of county fiscal courts, pursuant to KRS 117.345 and funds from the administrative budgets of the Secretary of State and the State Board of Elections will be used in the

VOLUME 50, NUMBER 11– May 1, 2024

respective implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Implementation of this administrative regulation can be achieved without an increase in fees or funding by the General Assembly, though with the recent passing of KRS 120.157, funding for mandatory statutory recounts should be considered in future legislative sessions.

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

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

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 117.015(1)(a), 120.095, 120.157, 120.185, 120.260, and 120.290 require and authorize the actions taken by this administrative regulation.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: This administrative regulation will affect the promulgating agency, the State Board of Elections, as well as the Secretary of State.

(a) Estimate the following for the first year:

Expenditures: The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended under the current statutory recount framework, as the expense of a recount is either borne by the requesting party or is to be paid as a necessary government expense for a mandatory recount pursuant to KRS 120.157.

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation will not generate any specific cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This administrative regulation will affect county clerks and county boards of election.

(a) Estimate the following for the first year:

Expenditures: The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended under the current statutory recount framework, as the expense of a recount is either borne by the requesting party or is to be paid as a necessary government expense for a mandatory recount pursuant to KRS 120.157.

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): This administrative regulation will affect candidates for elected office, qualified electors related to a constitutional convention, constitutional amendment, or statewide public question, and vendors of electronic voting equipment.

(a) Estimate the following for the first year:

Expenditures: The State Board of Elections expects that this administrative regulation amendment will cost no more to administer than is currently expended under the current statutory recount

framework, as the expense of a recount is either borne by the requesting party or is to be paid as a necessary government expense for a mandatory recount pursuant to KRS 120.157.

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation will not generate any specific cost savings for the regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The State board of Elections expects that this administrative regulation will have little to no fiscal impact on the regulated entities, outside those expenditures already undertaken.

(b) Methodology and resources used to determine the fiscal impact: This determination of this administrative regulation's fiscal impact is made by the listed contact person and other agency staff based on their collective experience with the subject matter.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) The State Board of Elections does not expect that this administrative regulation will result in a negative or adverse major economic impact to the entities identified in questions (2)-(4).

(b) The methodology and resources used to reach this conclusion: This conclusion is made by the listed contact person and other agency staff based on their collective experience with the subject matter.

**STATE BOARD OF ELECTIONS
(New Administrative Regulation)**

31 KAR 5:040. Questions regarding voter eligibility.

RELATES TO: KRS 61.826, 117.001, 117.015, 117.025, 117.035, 117.225, 117.245, 117.227, 117.228, 117.245

STATUTORY AUTHORITY: KRS 61.826, 117.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to properly administer the election laws of the state. KRS 117.035(4)(c) requires that county boards of election meet and stay in session on primary, regular election, and special election days to correct clerical errors, to rules on questions regarding voter registration, proof of identification, and the curing of signatures relative to mail-in absentee ballots. KRS 117.025(3)(d) requires the State Board of Elections to select the required format for any voter registration list provided to a county clerk. KRS 117.228 details the procedures for casting a ballot if a voter is unable to provide proof of identification or is otherwise known to an election officer and requires the State Board of Elections to prescribe and furnish forms that voters must complete in these circumstances. This administrative regulation establishes procedures for when a voter's eligibility is questioned and the forms that are to be completed when necessary.

Section 1. (1) A voter unable to provide proof of identification as required under KRS 117.225, and as defined under KRS 117.001(15), shall:

(a) Meet the requirements of KRS 117.228(1)(c) by executing SBE Form 71, Voter Affirmation Form; and

(b) Provide alternative proof of identification as required by KRS 117.228(2).

(2) A voter personally known to an election officer may cast a ballot in accordance with KRS 117.228(4) upon the election officer executing SBE Form 72, Election Officer Affirmation Form.

(3) Both the SBE 71 and SBE 72 shall be forwarded to the local Commonwealth's Attorney following the election.

VOLUME 50, NUMBER 11– May 1, 2024

Section 2. (1) If an individual presents themselves to an election officer to vote and is not found on the signature roster provided to the county under KRS 117.025(3)(b) or (3)(c) and is not a participant in the Safe at Home Program authorized under KRS 14.302, the individual may vote upon the following taking place:

(a) The individual shall provide to the election officer proof of identification as required by KRS 117.225, or the individual shall follow the procedures of KRS 117.228 if they are unable to provide proof of identification;

(b) The election officer shall contact the county clerk's office and verify that the information provided by the individual establishes that they are registered to vote at the location where the individual has presented themselves;

(c) The individual shall complete the Form SBE 32, Oath of Voter;

(d) The individual shall complete the Form SBE 01, Commonwealth of Kentucky Voter Registration Application;

(e) The individual shall sign the Form SBE 25, Supplemental Precinct Signature Roster;

(f) The election officer shall inform the individual that the Form SBE 32, Oath of Voter shall be forwarded to the local Commonwealth's Attorney following the election.

(2) If the election officer is unable to verify through the county clerk's office that the individual is properly registered to vote in the location where the individual has presented themselves, the election officer shall:

(a) Inform the individual of the location where they are properly registered vote, if known;

(b) Inform the individual of their ability to request a hearing before the county board of elections;

(c) Inform the individual of their ability to cast a provisional ballot for the federal elective office of President, Vice President, United States Senator, and United States House of Representative; and if an individual chooses to cast a provisional ballot for an applicable federal elective office, the election officer shall have the individual sign the Form SBE 35, Provisional Ballot Precinct Signature Roster.

(3) All Form SBE 25, Supplemental Precinct Signature Rosters and Form SBE 35, Provisional Ballot Precinct Signature Rosters, when used for the purposes described in this section, shall be completed digitally through an e-poll book unless there is an emergency condition that renders the e-poll book inoperable, in which case paper forms shall be used. Should such an emergency condition exist, the election officer shall record the circumstances of the emergency condition on the paper forms.

Section 3. During the days that voting may occur during any primary, regular election, and special election, including voting by mail-in absentee ballot, a county board of elections may elect to meet the requirements of KRS 117.035(4)(c) via a video teleconference subject to the mandates of KRS 61.826.

(1) Should a county board of elections elect to meet via video teleconference during a day in which voting may occur, the county clerk's office and each voting location in use in the county shall have technology available to every voter so that the voter may appear before the county board at no financial expense to the voter.

(2) If a county board of elections elects not to meet via video teleconference during a day in which voting may occur, a voter desiring to appear before the county board shall be provided with an option so that the voter may appear before the county board via teleconference, provided that the voter can make themselves available via the same teleconferencing technology the county board has chosen to utilize for such hearings.

Section 4. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Commonwealth of Kentucky Voter Registration Application", Form SBE 01, 04/2024;

(b) "Supplemental Precinct Signature Roster", Form SBE 25, 04/2024;

(c) "Oath of Voter", Form SBE 32, 04/2024;

(d) "Provisional Ballot Precinct Signature Roster", Form SBE 35, 04/2024;

(e) "Voter Affirmation Form", Form SBE 71, 04/2022;

(f) "Election Officer Affirmation Form", Form SBE 72, 04/2022.

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

KAREN SELLERS, Executive Director

APPROVED BY AGENCY: April 12, 2024

FILED WITH LRC: April 15, 2024 at 10:56 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this new administrative regulation shall be held on June 28, 2024, at 10:00 a.m. ET, at the office of the State Board of Elections. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 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: Taylor Brown, General Counsel, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Taylor Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for when a voter's eligibility is questioned and the forms that are to be completed when necessary.

(b) The necessity of this administrative regulation: This administrative regulation is necessary so that statewide uniform procedures exist when a voter's eligibility is questioned. KRS 117.035(4)(c) requires that county boards of election meet and stay in session on primary, regular election, and special election days to correct clerical errors, to rules on questions regarding voter registration, proof of identification, and the curing of signatures relative to mail-in absentee ballots. KRS 117.025(3)(d) requires the State Board of Elections to select the required format for any voter registration list provided to a county clerk. KRS 117.228 requires the State Board of Elections to prescribe and furnish forms that voters must complete if a voter is unable to provide proof of identification or is otherwise known to an election officer.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation allows for clear standards and procedures regarding situations where a voter's eligibility is questioned.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect voters in the Commonwealth who have their eligibility questioned,

VOLUME 50, NUMBER 11– May 1, 2024

as well as the county election officials who must determine their eligibility.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To comply with this administrative regulation, voters and county election officials will need to complete a form or attend a hearing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this administrative regulation will cost voters and county election officials no more funds than are already being expended.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new administrative regulation will benefit voters and county election officials by adding digital convenience to the voting experience through the already used e-poll book and the teleconferencing already authorized under KRS 61.826.

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

(a) Initially: The State Board of Elections anticipates this administrative regulation will cost no more funds than are already being expended.

(b) On a continuing basis: The State Board of Elections anticipates this administrative regulation will cost no more funds than are already being expended.

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

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

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

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

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 117.015(1)(a), 117.035(4)(c), KRS 117.025(3)(d), 117.228, 61.826 require and authorize the actions taken by this administrative regulation.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: This administrative regulation will affect the promulgating agency, the State Board of Elections.

(a) Estimate the following for the first year:

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

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation will not generate any specific cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This administrative regulation will affect county election officials.

(a) Estimate the following for the first year:

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

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation may save county election officials transportation costs should a voter desire a hearing under KRS 117.035(4)(c).

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): This administrative regulation will affect voters of the Commonwealth.

(a) Estimate the following for the first year:

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

Revenues: It is not expected or intended that this administrative regulation will generate any revenue.

Cost Savings: The State Board of Elections expects that this administrative regulation may save voters transportation costs should they desire a hearing under KRS 117.035(4)(c).

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The State Board of Elections does not anticipate expenditures, revenues, or cost savings to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The State board of Elections expects that this administrative regulation will have a minimal fiscal impact on the regulated entities.

(b) Methodology and resources used to determine the fiscal impact: This determination of this administrative regulation's fiscal impact is made by the listed contact person and other agency staff based on their collective experience with the subject matter.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) The State Board of Elections does not expect that this administrative regulation will result in a negative or adverse major economic impact to the entities identified in questions (2)-(4).

(b) The methodology and resources used to reach this conclusion: This conclusion is made by the listed contact person and other agency staff based on their collective experience with the subject matter.

GENERAL GOVERNMENT CABINET
Personnel Board
(Repealer)

101 KAR 1:396. Repeal of 101 KAR 1:395.

RELATES TO: KRS 61.371 - 61.379

STATUTORY AUTHORITY: KRS 61.379

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.379 directs the Personnel Board to adopt administrative regulations to carry out the provisions of KRS 61.371 to 61.379. Senate Bill 153 repealed KRS 61.379, thereby eliminating the Personnel Board's authority to promulgate regulations for restoration from military duty. This administrative regulation repeals 101 KAR 1:395.

Section 1. 101 KAR 1:395, Restoration from military duty, is hereby repealed.

VOLUME 50, NUMBER 11– May 1, 2024

GORDON A. ROWE, Jr., Executive Director

APPROVED BY AGENCY: April 15, 2024

FILED WITH LRC: April 15, 2024 at 9:40 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 28, 2024, at 9:30 a.m., ET., at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Gordon A. Rowe, Jr., Executive Director, Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 695-5799, email personnelboard@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gordon A. Rowe, Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does:

(b) The necessity of this administrative regulation: This regulation is necessary in order to carry out the provisions of KRS 61.371 to 61.377.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 13A, 61.377 directs the Board to adopt guidelines for restoration rights for employees returning from military duty.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will continue to provide employees returning from military duty restoration rights.

(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 repeal is strictly to be following KRS Chapter 18A.

(b) The necessity of the amendment to this administrative regulation: The repeal is necessary to be in compliance with KRS Chapter 18A.

(c) How the amendment conforms to the content of the authorizing statutes: This repeal conforms with KRS Chapter 18A. and KRS 61.377 by providing updates.

(d) How the amendment will assist in the effective administration of the statutes: This repeal provides clarity by correction.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all state agencies and prior military state employees returning from duty and their right to restoration.

(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 required to be taken by the entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be any cost by complying with the repeal of this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with the regulation, military state employees returning from duty have the right to be restored to their prior position.

(5) Provide an estimate of how much it will cost the

administrative body to implement this administrative regulation:

(a) Initially: There will be no cost to implement this repeal.

(b) On a continuing basis: There will be no ongoing cost by the repeal of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no need for a source of funding to implement and enforce this regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees will be established as a result of repealing this regulation.

(9) TIERING: Is tiering applied? No. This regulation repeals 101 KAR 001:395 which never had tiering because all military state employees were treated the same.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A. and KRS 61.371 to 61.377.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Personnel Board and all other state government agencies and military state employees.

(a) Estimate the following for the first year:

Expenditures: No expenditures will be generated.

Revenues: No revenues will be generated.

Cost Savings: No cost savings will be generated.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? N/A

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

(a) Estimate the following for the first year:

Expenditures: No expenditures will be generated.

Revenues: No revenues will be generated.

Cost Savings: No cost savings will be generated.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? N/A

(4) Identify additional regulated entities not listed in questions (2) or (3): N/A

(a) Estimate the following for the first year:

Expenditures: No expenditures will be generated.

Revenues: No revenues will be generated.

Cost Savings: No cost savings will be generated.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? N/A

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no fiscal impact to the repeal of this regulation.

(b) Methodology and resources used to determine the fiscal impact:

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) There is no negative or adverse economic impact as a result of the repeal of this regulation.

(b) The methodology and resources used to reach this conclusion:

BOARDS AND COMMISSIONS
Board of Pharmacy
(New Administrative Regulation)

201 KAR 2:465. Non-resident pharmacy applications and waivers.

RELATES TO: KRS 315.191(1)(a), (d), 315.0351, 201 KAR 2:050

STATUTORY AUTHORITY: KRS 315.191(1)(a), (d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a), (d) authorizes the board to promulgate administrative regulations and issue and renew permits for all pharmacies and require all persons who engage in the practice of the profession of pharmacy for a Kentucky resident to hold an active Kentucky pharmacist license. This administrative regulation establishes the requirements to obtain a non-resident pharmacy permit to engage in the practice of pharmacy in the Commonwealth.

Section 1. Inspection Requirements.

(1) Each pharmacy shall provide to the board and also maintain, in readily retrievable form, the record of a satisfactory inspection conducted within the previous twenty-four (24) month period by the licensing entity of the state where the pharmacy is located.

(2) If no such inspection record is readily available, the record of the satisfactory inspection conducted at the expense of the pharmacy within the previous twenty-four (24) months by a third-party recognized by the board to inspect may be accepted.

(3) If no such inspection has been performed within the previous twenty-four (24) months, the board shall conduct or contract with a third party recognized by the board to inspect the pharmacy, for which all costs shall be borne by the applicant.

Section 2. Pharmacist-in-Charge.

(1) The pharmacist-in-charge shall directly and timely respond to any lawful request for information from the board or law enforcement authorities.

(2) The pharmacist-in-charge shall be responsible for receiving and maintaining publications distributed by the board.

(3) The pharmacist-in-charge shall be responsible for answering the toll-free telephone service six (6) days a week and a minimum of forty (40) hours per week. The toll-free telephone number shall be present on the label of each prescription dispensed by the pharmacy to a Kentucky resident. If the pharmacist-in-charge is unavailable, a staff pharmacist with access to patient records may answer the call but the staff pharmacist shall notify the pharmacist-in-charge of the call and provide the pharmacist-in-charge with a callback number for the patient. If the staff pharmacist is unable to resolve the patient's question, the pharmacist-in-charge shall return the call of the patient within forty-eight (48) hours.

Section 3. Waiver.

(1) The board may grant a waiver from the permitting requirements of this section to any nonresident pharmacy which limits dispensing activity to isolated transactions.

(2) An isolated transaction is defined as a transaction in which dispensing is limited to an established patient of the dispensing pharmacy no more than three (3) times per calendar year.

Section 4. Applications.

(1) A prerequisite for receiving a permit as an out-of-state pharmacy is that the facility must be in good standing in the state where it is located and submit evidence consisting of the following:

(a) A copy of a valid license, permit or registration issued by the regulatory or licensing agency of the state in which the pharmacy is located; and

(b) A letter from the regulatory or licensing agency of the state in which the pharmacy is located that certifies the pharmacy is in good standing.

(2) Each applicant must disclose the following:

(a) Names and license numbers of all pharmacists and

pharmacist-managers dispensing prescription legend drugs to an ultimate user in Kentucky, the names and, if available, the license or registration numbers of all supportive personnel employed by the out-of-state pharmacy who assist pharmacists in such dispensing;

(b) Names, locations, titles, social security number and date of birth of all principal corporate officers or members, if incorporated; and

(c) If the pharmacy is owned by a partnership or sole proprietorship, the name, location, title, social security number, and date of birth of any partner or owner of the pharmacy.

(d) A report containing this information shall be made on an annual basis and within thirty (30) days of each change for any principal office, pharmacist manager, corporate officer, partner, or owner of the pharmacy.

(3) Each non-resident pharmacy shall develop and provide the Board with a policy and procedure manual that sets forth:

(a) Normal delivery protocols and times;

(b) The procedure to be followed if the patient's medication is not available at the out-of-state pharmacy, or if delivery will be delayed beyond normal delivery time;

(c) The procedure to be followed upon receipt of a prescription for an acute illness, which shall include a procedure for delivery of the medication to the patient from the out-of-state pharmacy at the earliest possible time, or an alternative that assures the patient the opportunity to obtain medication at the earliest possible time;

(d) The procedure to be followed when the out-of-state pharmacy is advised that the patient's medication has not been received within the normal delivery time and that the patient is out of medication and requires interim dosage until mail prescription drugs become available; and

(e) The procedure for shipping products pursuant to FDA approved and manufacturer guidelines.

(4) An applicant for an out-of-state pharmacy permit must designate a resident agent in Kentucky for service of process. Any such out-of-state pharmacy that does not so designate a resident agent shall be deemed to have appointed the Secretary of State of the State of Kentucky to be its true and lawful attorney upon whom process may be served. All legal process in any action or proceeding against such pharmacy arising from shipping, mailing or delivering prescription drugs in Kentucky shall be served on the resident agent. In addition, a copy of such service of process shall be mailed to the out-of-state pharmacy by certified mail, return receipt requested, at the address of the out-of-state pharmacy as designated on the registration form filed with the board. Any out-of-state pharmacy which does not register in this state, shall be deemed to have consented to service of process on the Secretary of State as sufficient service.

(5) Any entity who ships, mails, or delivers prescription drugs to Kentucky residents from more than one (1) out-of-state pharmacy shall register each pharmacy separately.

(6) An out-of-state pharmacy shall report to the disciplinary action taken by another state or jurisdiction against the pharmacy or pharmacy staff within thirty days of final case resolution.

(7) An applicant shall submit photographs of the exterior of the pharmacy building and working areas.

(8) A person who engages in the practice of the profession of pharmacy for a Kentucky resident shall hold an active Kentucky pharmacist license except under Section 3 of this administrative regulation.

CHRISTOPHER HARLOW, Executive Director

APPROVED BY AGENCY: April 15, 2024

FILED WITH LRC: April 15, 2024 at 10:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 25, 2024, at 10:00 a.m. Eastern Time via zoom teleconference. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written

VOLUME 50, NUMBER 11– May 1, 2024

request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: Christopher Harlow, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Christopher.harlow@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christopher Harlow

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 315.191(1)(a), (d) authorizes the board to promulgate administrative regulations and issue and renew permits for all pharmacies and require all persons who engage in the practice of the profession of pharmacy for a Kentucky resident to hold an active Kentucky pharmacist license. This administrative regulation establishes the requirements to obtain a non-resident pharmacy permit to engage in the practice of pharmacy in the Commonwealth.

(b) The necessity of this administrative regulation: This administration ensures the Board of Pharmacy has jurisdiction over pharmacies and pharmacists that are mailing and dispensing prescriptions to Kentucky patients.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 315.191(1)(a) authorizes the board to promulgate regulations controlling all matters set forth in KRS 315. KRS 315.0351 lays out requirements for non-resident pharmacy licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure that Kentucky patients are adequately protected per the mission of the Board of Pharmacy in KRS 315.005 and will provide clarity of requirements as listed in KRS 315.0351.

(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 impact pharmacies located outside of the Commonwealth seeking a non-resident pharmacy permit with the board to ship medications to patients of the Commonwealth. In the past 5 years, the Kentucky Board of Pharmacy has issued an average of 88 non-resident pharmacy permits 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: The non-resident pharmacists dispensing drugs into the Commonwealth will have to become licensed via the path, as provided for in an amendment to 201 KAR 2:030 and a \$50 fee as provided in 201 KAR 2:050.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It will cost non-resident pharmacists \$50 to become licensed in Kentucky plus the fee for the background check and NABP Verify.

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

entities identified in question (3): They will maintain licensure in Kentucky and provide services to Kentucky patients. (5) Provide an estimate of how much it will cost to implement this administrative regulation:

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

(a) Initially: It is built into the Board's operating costs and software.

(b) On a continuing basis: It is built into the Board's operating costs and software.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding source to enforce the regulation. This funding is used to estimate the biennial budget allocation request. The budget allocated to the board will be used to fund this administrative regulation.

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

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

(9) TIERING: Is tiering applied? All resident and non-resident pharmacies are treated uniformly regarding licensure in the Commonwealth.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.191(1)(a)(d)

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Board of Pharmacy

(a) Estimate the following for the first year:

Expenditures: \$146,922

Revenues: \$148,800

Cost Savings: N/A

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This is not anticipated to differ in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Only the Board of Pharmacy is impacted.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

(b) How will expenditures, revenues, or cost savings differ in subsequent years? N/A

(4) Identify additional regulated entities not listed in questions (2) or (3): Non-resident pharmacy applicants and permit holders.

(a) Estimate the following for the first year:

Expenditures: \$148,800

Revenues: N/A

Cost Savings: N/A

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This is not anticipated to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The estimate for the expenditure is based on the current data on the total number of non-resident pharmacists currently permitted by the board. Non-resident pharmacies account for approximately 3% of the total licenses, permit holders, and registrants of the board. Additional expenditure was estimated based on 0.5 FTE personnel costs. The revenue generated is based on the estimate for new non-resident pharmacy permit applications and renewals for the year.

(b) Methodology and resources used to determine the fiscal impact: Current and historical data was used to determine the fiscal impact.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) : This regulation will not have an overall negative or adverse major economic impact to the entities identified in questions (2) – (4).

(b) The methodology and resources used to reach this conclusion: The Board reviewed licensing data, current and historical to determine the fiscal impact.

**EDUCATION AND LABOR CABINET
Board of Education
Department of Education
(New Administrative Regulation)**

704 KAR 3:550. Minimum qualifications for paraprofessionals.

RELATES TO: 20 U.S.C. 6319(c), KRS 161.044, 161.011
STATUTORY AUTHORITY: KRS 161.044

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.044 requires the Kentucky Board of Education to promulgate administrative regulations governing the qualifications of teachers' aides in the common schools. The Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6319(c), outlines the minimum requirements for paraprofessionals in schools receiving Title I funds. This administrative regulation establishes the minimum qualifications for teachers' aides and paraprofessionals in the common schools.

Section 1. Definitions.

(1) "Classified employee" means the same as in KRS 161.011.

(2) "Paraprofessional" means a classified employee, regardless of school district-assigned job title, who performs instructional support duties which may include:

- (a) Providing one-on-one tutoring if such tutoring is scheduled at a time when a student would not otherwise receive instruction from a teacher;
- (b) Assisting with classroom management;
- (c) Providing instructional assistance in a computer laboratory;
- (d) Providing instructional support in a library or media center;
- (e) Acting as a translator; or
- (f) Providing instructional support services under the direct supervision of a teacher.

Section 2. Minimum Qualifications for a Paraprofessional.

(1) To qualify for a position as a paraprofessional in the common schools, an individual shall possess knowledge of basic subjects taught in the common schools, including arithmetic, grammar, spelling, language, and reading.

(2) Possession of the knowledge required in subsection one (1) of this section shall be demonstrated by the successful completion of a high school diploma or a high school equivalency diploma.

Section 3. Minimum Qualifications for Paraprofessionals in Title I Schools.

(1) To qualify for a position as a paraprofessional in a school that receives funding under Title I of the Elementary and Secondary Education Act of 1965, or its successor, an individual shall meet the requirements of Section 2 of this administrative regulation, and shall possess:

- (a) Two (2) years of study at an institution of higher education;
- (b) An associate's degree; or
- (c) A passing score on the state assessment required by Section 5 of this administrative regulation.

(2) Paraprofessionals who only serve as translators or who only conduct parental involvement activities are exempt from the requirements of this section.

Section 4. Local Education Agency Flexibility.

(1) Local education agencies may add required qualifications in

addition to those set forth in this administrative regulation for paraprofessional roles.

(2) Local education agencies shall adopt and implement policies to ensure that any classified employee that meets the definition of a paraprofessional in Section 1 of this administrative regulation meets the minimum qualification requirements of this administrative regulation regardless of locally created job titles.

Section 5. Criteria for the Statewide Paraprofessional Assessment. The Kentucky Department of Education shall make available a standardized paraprofessional assessment that evaluates an individual's knowledge of:

- (1) Correct oral and written usage of English;
- (2) Child guidance principles and practices;
- (3) Classroom procedures and conduct;
- (4) Basic instructional techniques;
- (5) School and classroom rules, policies and procedures;
- (6) Safe practices in classroom activities;
- (7) Reading and writing communication skills;
- (8) Interpersonal skills using tact, patience and courtesy; and
- (9) Record-keeping techniques.

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 KINNEY, Interim Commissioner of Education

SHARON PORTER ROBINSON, Chairperson

APPROVED BY AGENCY: April 15, 2024

FILED WITH LRC: April 15, 2024 at 11:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on June 26, 2024, at 10am in the State Board Room, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 2024.

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: This regulation establishes minimum criteria for teachers' aides and paraprofessionals as required by 161.044.

(b) The necessity of this administrative regulation: This regulation is required by KRS 161.044.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.044 requires the Kentucky Board of Education to promulgate regulations containing the minimum criteria for teachers' aides, more commonly called paraprofessionals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will clarify the minimum requirements for paraprofessionals and clarify when more stringent requirements and district flexibilities are applicable.

(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

VOLUME 50, NUMBER 11– May 1, 2024

regulation: This is not an amendment to an existing regulation.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment to an existing regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment to an existing regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment to an existing regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects local education agencies.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Local education agencies may have to update job requirements for paraprofessionals. Most local education agencies are already in compliance with this regulation and will not be required to take any further action.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation will not generate any additional costs for local education agencies.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Local education agencies will be in compliance with state and federal law with regards to the minimum requirements for paraprofessionals.

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

(a) Initially:

(b) On a continuing basis:

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation does not require funding for implementation or enforcement.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. The regulation applies equally to all school districts regardless of size. No disproportionate impact will result.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 6319(c), KRS 161.044, 161.011.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Department of Education; Office of Continuous Improvement and Support

(a) Estimate the following for the first year:

Expenditures: \$0.00

Revenues: \$0.00

Cost Savings: \$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This regulation does not result in any new expenditures, revenues, or cost savings.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Local Education Agencies.

(a) Estimate the following for the first year:

Expenditures: \$0.00

Revenues: \$0.00

Cost Savings: \$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This regulation does not result in any new expenditures, revenues, or cost savings.

(4) Identify additional regulated entities not listed in questions (2) or (3): This regulation does not impact any additional regulated entities.

(a) Estimate the following for the first year:

Expenditures: \$0.00

Revenues: \$0.00

Cost Savings: \$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This regulation does not result in any new expenditures, revenues, or cost savings.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This regulation does not result in any new expenditures, revenues, or cost savings.

(b) Methodology and resources used to determine the fiscal impact: This regulation does not result in any new expenditures, revenues, or cost savings.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This regulation will not have an overall negative or adverse economic impact on any identified entities.

(b) The methodology and resources used to reach this conclusion: This regulation will not have an overall negative or adverse economic impact on any identified entities.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. This regulation has been written to conform to 20 U.S.C. 6319(c), which established minimum federal requirements for paraprofessionals.

(2) State compliance standards. This regulation complies with the requirements of KRS 161.044.

(3) Minimum or uniform standards contained in the federal mandate. 20 U.S.C. 6319(c) requires paraprofessionals employed in schools receiving Title I funds to have two years of higher education, or an earned associates degree, or have passed a state approved competency exam.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation does not impose stricter or additional 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 regulation does not impose stricter or additional requirements than those required by the federal mandate.

**EDUCATION AND LABOR CABINET
Board of Education
Department of Education
(Repealer)**

780 KAR 2:031. Repeal of 780 KAR 2:010.

RELATES TO: KRS 156.802(3), 156.850

STATUTORY AUTHORITY: KRS 156.070, 156.802(3)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation repeals 780 KAR 2:010, however, all relevant authority for administrative functions in relation to the management, control, and operation of state-operated secondary area vocational education and technology centers is located in KRS 156.802(3). All the provisions of the Acts of Congress of the United States approved February 23, 1917, and all subsequent acts relating to vocational education, to impart knowledge and information needed by workers to enter into and make progress in their chosen

VOLUME 50, NUMBER 11– May 1, 2024

vocations is established in KRS 156.850. The administrative functions of the state-operated area technology centers can be found in KRS 156.802.

Section 1. 780 KAR 2:010, Steering and advisory committees for area technology centers primarily serving secondary students, is hereby repealed.

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, Chairperson

APPROVED BY AGENCY: April 15, 2024

FILED WITH LRC: April 15, 2024 at 11:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held June 26, 2024 at 10 a.m. Eastern Time, in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this meeting 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 want to submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 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: 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: This administrative regulation repeals 780 KAR 2:010.

(b) The necessity of this administrative regulation: KRS 156.802 requires that the Office of Career and Technical Education to have responsibility for all administrative functions of the state in relation to the management, control, and operation of state-operated area technology centers. 780 KAR 2:010 is no longer necessary.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation repeals 780 KAR 2:010 as the topics regulated are covered in the statutes, including KRS 156.802.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation repeals 780 KAR 2:010 as the topics regulated are covered in the statutes, including KRS 156.802.

(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 repeal of 780 KAR 2:010.

(b) The necessity of the amendment to this administrative regulation: This is a repeal of 780 KAR 2:010.

(c) How the amendment conforms to the content of the authorizing statutes: This is a repeal of 780 KAR 2:010.

(d) How the amendment will assist in the effective administration of the statutes: This is a repeal of 780 KAR 2:010.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state-operated area technology centers and the Office of Career and Technical Education will be affected by the repeal 780 KAR 2:010.

(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 action needed from the state-operated area technology centers or the Office of Career and Technical Education to implement this repeal.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This change to the administrative regulation requires no additional direct costs to the Kentucky Department of Education or the state-operated area technology centers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Statute establishes that the state-operated area technology centers will be under the management and control of the Office of Career and Technical Education, a part of the Kentucky Department of Education. The repeal of 780 KAR 2:010 will not impact this.

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

(a) Initially: No additional cost to the Kentucky Department of Education is anticipated.

(b) On a continuing basis: No additional cost to the Kentucky Department of education is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This is a repeal of 780 KAR 2:010. No funding is necessary to implement the repeal of 780 KAR 2:010.

(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 increased fees or funding are anticipated as a result of this regulation repeal.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation. This is a repeal of 780 KAR 2:010.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.802

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Department of Education

(a) Estimate the following for the first year:

Expenditures: \$0.00

Revenues: \$0.00

Cost Savings: \$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The repeal of this regulation does not result in any new expenditures, revenues, or cost savings.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Secondary state-operated area technology centers

(a) Estimate the following for the first year:

Expenditures: \$0.00

Revenues: \$0.00

Cost Savings: \$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The repeal of this regulation does not result in any new expenditures, revenues, or cost savings.

(4) Identify additional regulated entities not listed in questions (2) or (3): The repeal of this regulation does not impact any additional regulated entities.

(a) Estimate the following for the first year:

Expenditures: \$0.00

Revenues: \$0.00

Cost Savings: \$0.00

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The repeal of this regulation does not result in any new expenditures, revenues, or cost savings.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The repeal of this regulation does not result in any new expenditures, revenues, or cost savings.

(b) Methodology and resources used to determine the fiscal impact: The repeal of this regulation does not result in any new expenditures, revenues, or cost savings.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) The repeal of this regulation will not have an overall negative or adverse economic impact on any identified entities.

(b) The methodology and resources used to reach this conclusion: The repeal of this regulation will not have an overall negative or adverse economic impact on any identified entities.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(New Administrative Regulation)**

907 KAR 15:100. Crisis continuum of care.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 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 crisis services that will be available to people experiencing a crisis.

Section 1. General Requirements.

(1) The department shall facilitate and establish a continuum of care for individuals in behavioral or mental health crisis within the Commonwealth. The goal of the crisis continuum of care shall be to ensure that individuals have:

- (a) An entity to contact;
- (b) An entity or team to respond to the individual in crisis; and
- (c) A location, entity, community, service, or facility that can serve the individual in the least restrictive community setting.

(2) For the department to reimburse for a service covered under this administrative regulation, the service shall be:

- (a) Medically necessary;
- (b) Provided if a:

1. Crisis response service (CRS), by a community based behavioral health response provider that meets the requirements of Section 3 of this administrative regulation;

2. Twenty-three (23) hour crisis continuum of care observation and stabilization service (CCCOSS) that meet the requirements of Section 4 of this administrative regulation;

3. 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

4. Residential crisis stabilization 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

(c) Mediated or coordinated by a crisis continuum of care contracted administrator.

(d)

1. This administrative regulation shall not become operational

until a crisis continuum of care contracted administrator is contracted with the cabinet and has entered into a sufficient network of provider contracts, as determined by the department.

2. If necessary, the department and crisis continuum of care contracted administrator shall implement the administrative regulation on a region-by-region basis as sufficient networks of providers are contracted.

(3) Prior authorization shall not be required for a service provided pursuant to this administrative regulation.

Section 2. Crisis Continuum of Care Contracted Administrator (CCCCA) Requirements.

(1) Any provider providing services pursuant to Section 1, 3, 4, or 5 of this administrative regulation shall be contracted with the CCCCCA.

(2) A CCCCCA 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 a CCCCCA and a contracted provider relating to the coordination of continuing care for a recipient.

(3) A CCCCCA may establish a reimbursement structure that involves directly reimbursing providers of services under Section 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 CCCCCA and enforce contractual requirements to perform the purposes of the contract and this administrative regulation.

Section 3. Continuum of Care Crisis Response Service (CRS).

(1) A CRS shall include a dispatch:

(a) Of a behavioral health response team that is based in the community; and

(b) To the location of an individual experiencing a behavioral health crisis.

(2) A CRS 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 CRS 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) CRS 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 response team providing CRS shall consist of, at a minimum:

(a) A two (2) person team that shall actively participate in the crisis response;

(b) One (1) response team member physically at the location of the individual; and

2. Other members of the response team who may be available by telehealth or in the same physical location.

(c) One (1) behavioral health practitioner that is able to perform an assessment that is within the scope of their licensure.

(6) A CRS provider shall:

- (a) 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

VOLUME 50, NUMBER 11– May 1, 2024

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 CCCCA.

(d) Be provided by:

1. An approved behavioral health practitioner; or
2. An approved behavioral health practitioner under supervision.

Section 4. Crisis Continuum of Care Observation and Stabilization Services.

(1) A Crisis continuum of care observation and stabilization services (CCCOSS) provider shall:

(a)

1. Be licensed by the Office of Inspector General or registered with the department as a CCCOSS; or

2. Be licensed as a residential crisis stabilization unit; and

(b) Be contracted with the CCCCA.

(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, 365 days per 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 (4) of this section.

(e)

1. Possess accreditation within one (1) year by one (1) 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 crisis that cannot be safely accommodated within the individual's community; and

2. Needs extended care beyond outpatient services; and

(2) A CCCOSS 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 continuum of care observation and 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 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 CCCOSS 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) 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 CCCOSS 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.
- (g)
- 1. Withdrawal management services shall:
 - a. Be provided face-to-face for recipients with a substance use disorder or co-occurring disorders;
 - b. 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;
 - c. Be in accordance with the most current version of The ASAM Criteria for withdrawal management levels in an outpatient setting;
 - 2. 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
 - 3. 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.
 - (h) 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 paragraph (f) of this subsection;
 - (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 CCCCA.

(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) An assessment of a recipient shall be performed 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 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 CCCOSS 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 a CCCCA for:

(a)

1. A crisis response service;

2. A community crisis observation and stabilization service;

3. A behavioral health crisis transportation service provider; and

4. 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 C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: April 12, 2024

FILED WITH LRC: April 15, 2024 at 8:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 24, 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 June 17, 2024, five (5) workdays prior to

the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until June 30, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles and Jonathan Scott

(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 crisis services. This will involve implementing a crisis continuum of care contracted administrator, and providers who can provide crisis response services, community crisis observation and 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 a CCCCA for each region. The department will require staffing to correspond to a behavioral health crisis response team 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 CCCOSS.

(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

VOLUME 50, NUMBER 11– May 1, 2024

regulation or amendment: Regulated entities will need to contract or associate with CCCCA 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 behavioral health crisis response.

(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 6 of the 2024 Regular Session.

(b) On a continuing basis: The department shall meet its budget obligations pursuant to HB 6 of the 2024 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 IMPACT STATEMENT

(1) Identify each state statute, 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)

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Department for Medicaid Services, Health Policy Division.

(a) Estimate the following for the first year:

Expenditures: The department shall meet its budget obligations pursuant to HB 6 of the 2024 Regular Session.

Revenues: This administrative regulation is not expected to generate revenue for state or local government.

Cost Savings:

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The department anticipates expenditures and cost savings to be impacted by external factors such as the numbers of individuals experiencing behavioral health crises. This service is intended to assist in stabilizing a population of individuals who experience frequent behavioral health crises. If successful, a current behavioral health cost could be avoided.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Cities or counties where individuals experience behavioral health crises.

(a) Estimate the following for the first year:

Expenditures: N/A the service would be provided by regionally contracted entities.

Revenues: N/A direct payments will not be made to cities or counties.

Cost Savings: Jail and law enforcement resources may experience a reduction in utilization if a behavioral health crisis is diverted to a health care facility.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? A successful continuum of care should lessen usage of jails and law enforcement for individuals in behavioral health crisis.

(4) Identify additional regulated entities not listed in questions (2) or (3): DMS anticipates that the regulation will establish a new continuum of care for behavioral health providers.

(a) Estimate the following for the first year:

Expenditures: N/A the department will reimburse for services provided

Revenues: DMS anticipates that the entities may generate revenue from the new services available to be provided.

Cost Savings: N/A these services are not currently available or widely used.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? A successful continuum of care should lessen crises for certain behavioral health recipient populations.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation is anticipated to create cost savings by providing timely and comprehensive services to individuals in acute behavioral health crisis. The department anticipates that the services created and reimbursed pursuant to this administrative regulation will create a net neutral impact to the Medicaid budget as established pursuant to HB 6 of the 2024 Regular Session.

(b) Methodology and resources used to determine the fiscal impact: The department is mandated to complete an actuarial analysis and fiscal impact statement when proposing a service to the federal government. In addition, an actuary must assess and sign each rate established by the department.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) The administrative regulation will not have a major economic impact – as defined by KRS 13A.010 – on regulated entities.

(b) The methodology and resources used to reach this conclusion: Regulated entities will gain the ability to otherwise accommodate existing individuals who are experiencing a behavioral health crisis. In addition, regulated entities will gain the ability to receive reimbursement for helping to implement individuals into the behavioral health system and assisting with treatment.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396w-6

(2) State compliance standards. N/A

(3) Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396w-6 establishes a state plan option to establish intervention services for individuals undergoing a behavioral health crisis. 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..

VOLUME 50, NUMBER 11 – May 1, 2024

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of April 9, 2024

Call to Order and Roll Call

The April meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, April 9, 2024 at 1:00 p.m. in Room 149 of the Capitol Annex. Representative Derek Lewis, Co-Chair, called the meeting to order, and roll call was taken.

Present were:

Members: Senator Stephen West, Co-Chair; Representative Derek Lewis, Co-Chair; Senator Damon Thayer; and Representatives Randy Bridges and Daniel Grossberg.

LRC Staff: Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Anna Latek, and Carrie Nichols.

Guests: Mark Sipek, Personnel Board; Jane Alexander, Nathan Goldman, Board of Landscape Architects; Jeffrey Prather, Board of Nursing; Sara Boswell Janes, Board of Licensed Professional Counselors; Dave Dreves, Jenny Gilbert, Steven Fields, Department of Fish and Wildlife Resources; Dawn Baase, Johnna McHugh, Jay Nelson, Department for Natural Resources; Nathan Goens, Ed Jewell, Internal Investigations Branch; Sarah Peace, Lindsey Swartz, Department of Education; Michael Lawson, Jilnar Masri, Office of Data Analytics; David Lovely, Valerie Moore, Office of Inspector General; Justin Dearing, Jonathan Scott, Department for Medicaid Services; and Dr. Brittany Allen, Rachel Ratliff, Department for Behavioral Health, Developmental and Intellectual Disabilities.

The Administrative Regulation Review Subcommittee met on Tuesday, April 9, 2024, and submits this report:

GENERAL GOVERNMENT CABINET: Personnel Board

[201 KAR 001:325](#). Probationary periods. Mark Sipek, executive director, represented the board.

BOARDS AND COMMISSIONS: Board of Landscape Architects

[201 KAR 010:030](#). Code of ethics. Jane Alexander, executive director, and Nathan Goldman, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[201 KAR 010:040](#). Applications.

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, 5, and 7 through 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[201 KAR 010:050](#). Fees.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[201 KAR 010:070](#). Seals.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[201 KAR 010:080](#). Continuing education.

A motion was made and seconded to approve the following amendments: to amend Sections 4, 6, 7, and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Nursing

[201 KAR 020:370](#). Applications for licensure. Jeffrey Prather, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 4 to comply with the drafting and

formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[201 KAR 020:506](#). Nurse licensure compact.

Board of Licensed Professional Counselors

[201 KAR 036:100E](#). Counseling compact. Sara Boswell Janes, general counsel, represented the board.

[201 KAR 036:100](#). Counseling compact.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 2 to update the edition date of the rules; (2) to amend Section 2 to add and incorporate by reference a new rule, Chapter 4, Data System Reporting Requirements, adopted by the Counseling Compact Commission on January 10, 2024; (3) to amend Section 2 to list all of the rules adopted so far by the Counseling Compact Commission; and (4) to amend Section 2 to include a more direct Web site address to the Counseling Compact Rules. Without objection, and with agreement of the agency, the amendments were approved.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Fish

[301 KAR 001:140](#). Special commercial fishing permit for Kentucky and Barkley lakes. Dave Dreves, fisheries director; Jenny Gilbert, legislative liaison; and Steven Fields, staff attorney, represented the department.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[301 KAR 001:146](#). Commercial fishing gear.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[301 KAR 001:155](#). Commercial Fishing requirements.

[301 KAR 001:201](#). Taking of fish by traditional fishing methods.

Game

[301 KAR 002:178](#). Deer hunting on Wildlife Management Areas, state parks, other public lands, and federally controlled areas.

In response to a question by Co-Chair Lewis, Ms. Gilbert stated that cervid population density was calculated through a herd-health survey of Abomasal Parasite Counts (APCs) in white-tailed deer. The findings of the survey were presented at the December 2023 commission meeting and resulted in revising this administrative regulation to establish preference points for antlerless, rather than female, deer. Button bucks were sometimes left in the field, resulting in waste. One of the department's goals in adjusting preference points from female to antlerless deer was to incentivize harvesting these button bucks.

ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources

[416 KAR 001:001](#). Definitions for 416 KAR Chapter 1. Dawn Baase, environmental scientist consultant; Johnna McHugh, assistant director; and Jay Nelson, director, 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 Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[416 KAR 001:010](#). Administration of Kentucky Soil Erosion and Water Quality Cost-share Fund.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 3, 5, 6, 7, and 9 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 5(1) to clarify the basis for district review to determine applicant eligibility. Without objection, and with agreement of the agency, the amendments were approved.

[416 KAR 001:020](#). Equipment revolving loan program.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 and 6 through 9 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 3(8) to include the commission's standards for application approval; (3) to amend Section 5(2) to clarify that repayment terms for infrastructure shall be determined by the commission based on the district's financial ability to repay the loan; and (4) to amend Section 8(3)(a)1.a. to clarify that, in the case of equipment repossession, the commission's decision to lease the equipment to another person within the district shall be based on the proposed use of the equipment and the financial ability to repay the loan. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Internal Investigations Branch: Abuse Investigation

[500 KAR 013:020](#). Internal Investigations Branch. Nathan Goens, attorney, and Ed Jewell, branch manager, represented the branch.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 4, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND LABOR CABINET: Department of Education: Office of Instruction

[704 KAR 003:095](#). The use of a multitiered system of supports. Sarah Peace, policy advisor, and Lindsey Swartz, staff attorney, represented the department.

In response to questions by Co-Chair West, Ms. Peace stated that the department had statutory authority to make the changes in this proposed amendment pursuant to KRS 156.070, 156.160, and 158.305.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 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.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Data Analytics: Data Reporting and Public Use Data Sets

[900 KAR 007:030](#). Data reporting by health care providers. Michael Lawson, healthcare data administrator, and Jilnar Masri, executive director, represented the office.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 3 through 7, 9, 10, and 12 through 14 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[900 KAR 007:040](#). Release of public data sets for health facility and services data.

A motion was made and seconded to approve the following amendments: to amend Sections 4 and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of Inspector General: Health Services and Facilities

[902 KAR 020:048](#). Operation and services; nursing homes. David Lovely, acting inspector general, and Valerie Moore, policy specialist, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to change the reference to the registry from the caregiver misconduct registry to the Vulnerable Adult Maltreatment Registry; and (2) to amend Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[902 KAR 020:086](#). Operation and services; intermediate care facilities for individuals with intellectual disabilities.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 1, 3, and 4 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 3(12)(b) to change the caregiver misconduct registry to the Vulnerable Adult Maltreatment Registry. Without objection, and with agreement of the agency, the amendments were approved.

Department for Medicaid Services: Medicaid Services

[907 KAR 001:065](#). Payments for price-based nursing facility services. Justin Dearing, division director, and Jonathan Scott, Chief Legislative and Regulatory Officer, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 7, 10, and 12 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[907 KAR 001:479](#). Medical supplies, equipment, and appliances covered benefits and reimbursement.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to revise the definition for "Medicaid Program MSEA Fee Schedule" to add that the list is consistent with and informed by this administrative regulation and the applicable Centers for Medicare and Medicaid Services published DMEPOS Fee Schedule; (2) to amend Section 4 to clarify coverage requirements for enteral and oral nutritional supplements; and (3) to amend Section 8 to clarify reimbursement procedures for items that are manually priced. Without objection, and with agreement of the agency, the amendments were approved.

VOLUME 50, NUMBER 11 – May 1, 2024

Payment and Services

[907 KAR 003:066](#). Nonemergency medical transportation waiver services and payments.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Private Duty Nursing

[907 KAR 013:010](#). Private duty nursing service coverage provisions and requirements.

A motion was made and seconded to approve the following amendment: to **amend** the RELATES TO paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

[907 KAR 013:015](#). Private duty nursing service or supply provisions and requirements.

Department for Behavioral Health, Developmental and Intellectual Disabilities: Substance Abuse

[908 KAR 001:410](#). Recovery housing. Dr. Brittany Allen, director, and Rachael Ratliff, regulation coordinator, represented the department.

In response to questions by Co-Chair West, Dr. Allen stated that this administrative regulation mandated requirements for the operation of recovery housing facilities, including requirements for institutional rules, protection policies regarding access to medications, treatment access, support meetings for residents, and safety provisions. The department used, and was the affiliate for, the National Alliance for Recovery Residency to establish certification standards. Dr. Allen stated that these guidelines were previously established on a voluntary basis. Additional provisions would be promulgated by the agency to establish fines and disciplinary actions for violations.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 through 4 and 6 through 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred or removed from the April 9, 2024, 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.

BOARDS AND COMMISSIONS: Board of Dentistry

[201 KAR 008:533](#). Licensure of dentists.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Fish

[301 KAR 001:150](#). Waters open to commercial fishing.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Health Services and Facilities

[902 KAR 020:036](#). Operation and services; personal care homes.

Department for Medicaid Services

[907 KAR 001:044](#). Coverage provisions and requirements regarding community mental health center behavioral health services.

Behavioral Health

[907 KAR 015:005](#). Definitions for 907 KAR Chapter 015.

[907 KAR 015:090](#). Crisis continuum services provided or mediated by an administrative service organization.

Office of the Secretary: General

[915 KAR 001:001](#). Definitions for 915 KAR Chapter 1.

[915 KAR 001:030](#). Cultivator.

[915 KAR 001:040](#). Processor.

[915 KAR 001:050](#). Producer.

[915 KAR 001:060](#). Safety compliance facility.

[915 KAR 001:070](#). Dispensary.

[915 KAR 001:080](#). Transportation and delivery of medicinal cannabis.

[915 KAR 001:090](#). Advertising.

[915 KAR 001:100](#). Packaging and labeling of medicinal cannabis.

[915 KAR 001:110](#). Medicinal cannabis testing.

Department for Community Based Services: K-TAP, Kentucky Works, Welfare to Work, State Supplementation

[921 KAR 002:015](#). Supplemental programs for persons who are aged, blind, or have a disability.

Protection and Permanency: Child Welfare

[922 KAR 001:140](#). Permanency services.

[922 KAR 001:145](#). Subsidized permanent custody.

[922 KAR 001:495](#). Training requirements for foster parents, adoptive parents, and respite care providers for children in the custody of the cabinet.

[922 KAR 001:565](#). Service array for a relative or fictive kin caregiver.

Adult Services

[922 KAR 005:120](#). Vulnerable adult maltreatment registry and appeals.

The subcommittee adjourned at 1:30 p.m. The next meeting of this subcommittee was tentatively scheduled for May 14, 2024, at 1 p.m. in Room 149 of the Annex.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(10), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

None

CUMULATIVE SUPPLEMENT

Unless otherwise noted, information contained in these indexes relates only to administrative regulations printed in this, the 50th year of the *Administrative Register of Kentucky*, from July 2023 through June 2024.

Locator Index - Effective Dates

K - 2

Lists all administrative regulations published or continuing through the KRS Chapter 13A review process during this Register year. It also lists the page number on which each regulation is published, the effective date of the regulation after it has completed the review process, and other actions that may affect the regulation.

NOTE: Regulations listed with a “49 Ky.R.” notation are regulations that were originally published in last year’s issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the last *Register* year ended.

KRS Index

K - 13

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

K - 26

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year.

Technical Amendment Index

K - 27

A list of administrative regulations that have had technical, non-substantive amendments made during this *Register* year. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Because these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the *Administrative Register of Kentucky*; however, they are usually available for a short time on the Legislative Research Commission’s Web site.

Subject Index

K - 28

A general index of administrative regulations published during this *Register* year, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	Ky.R. Page No.	Effective Date	Regulation Number	Ky.R. Page No.	Effective Date
Administrative regulations published in previous Register years may appear in this index if a regulation had not completed the KRS Chapter 13A review process by the beginning of <i>Register</i> year 50. The "Register number" or "Ky.R. number" is listed the first time a regulation is published during that Register year. Once the regulation has been published in another Register year, the new Ky.R. number will appear next to the page number entry. To view versions of regulations published in prior Registers, please visit our online Administrative Registers of Kentucky .					
SYMBOL KEY:					
*	Statement of Consideration not filed by deadline		Replaced	1049	1-30-2024
**	Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))		101 KAR 002:210E	50 Ky.R. 772	9-15-2023
***	Withdrawn before being printed in Register		Replaced	857	4-2-2024
IJC	Interim Joint Committee		105 KAR 001:148E	50 Ky.R. 1014	10-11-2023
(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.		201 KAR 023:016E	49 Ky.R. 976	10-3-2022

EMERGENCY ADMINISTRATIVE REGULATIONS					
NOTE: Pursuant to KRS 13A.190, emergency regulations expire after 270 days (or 270 days plus the number of days an accompanying ordinary is extended) or upon replacement by an ordinary regulation, whichever occurs first. This index reflects the KRS Chapter 13A-established expiration dates. Other statutes or legislation may affect a regulation's actual end date.					
016 KAR 002:240E	50 Ky.R. 302	6-29-2023	Replaced	1049	1-30-2024
As Amended IJC	595	8-1-2023	505 KAR 001:140E	49 Ky.R. 1569	1-13-2023
Replaced	1038	12-11-2023	Am Comments	1888	3-6-2023
016 KAR 009:080E	49 Ky.R. 2200	4-26-2023	As Amended	2075	4-11-2023
As Amended	50 Ky.R. 596	8-8-2023	Replaced	50 Ky.R. 40	9-21-2023
Replaced	618	12-5-2023	505 KAR 001:200E	49 Ky.R. 2208	5-15-2023
016 KAR 009:100E	49 Ky.R. 2205	4-26-2023	Am Comments	50 Ky.R. 385	7-12-2023
As Amended	50 Ky.R. 599	8-8-2023	Replaced	660	12-5-2023
Replaced	621	12-5-2023	505 KAR 001:210E	49 Ky.R. 2211	5-15-2023
030 KAR 010:010E	50 Ky.R. 303	6-29-2023	Replaced	2434	3-5-2024
Replaced	1038	1-30-2024	505 KAR 001:220E	49 Ky.R. 2213	5-15-2023
030 KAR 010:020E	50 Ky.R. 305	6-29-2023	Replaced	2436	3-5-2024
Replaced	1039	1-30-2024	701 KAR 008:010E	49 Ky.R. 984	10-13-2022
030 KAR 010:030E	50 Ky.R. 307	6-29-2023	Replaced	1924	7-5-2023
Replaced	1040	1-30-2024	701 KAR 008:020E	49 Ky.R. 989	10-13-2022
030 KAR 010:040E	50 Ky.R. 309	6-29-2023	Replaced	1928	7-5-2023
Replaced	1040	1-30-2024	701 KAR 008:030E	49 Ky.R. 998	10-13-2022
030 KAR 010:050E	50 Ky.R. 311	6-29-2023	Replaced	1167	7-5-2023
Replaced	1041	1-30-2024	701 KAR 008:040E	49 Ky.R. 1001	10-13-2022
030 KAR 010:060E	50 Ky.R. 312	6-29-2023	Replaced	1935	7-5-2023
Replaced	1042	1-30-2024	701 KAR 008:050E	49 Ky.R. 1005	10-13-2022
030 KAR 010:070E	50 Ky.R. 314	6-29-2023	Replaced	1216	7-5-2023
Replaced	1042	1-30-2024	787 KAR 001:090E	49 Ky.R. 1571	12-22-2022
030 KAR 010:080E	50 Ky.R. 315	6-29-2023	Replaced	2096	8-1-2023
Replaced	1042	1-30-2024	787 KAR 001:100E	49 Ky.R. 1575	12-22-2022
030 KAR 010:090E	50 Ky.R. 317	6-29-2023	Replaced	2097	8-1-2023
Replaced	1042	1-30-2024	806 KAR 017:570E	49 Ky.R. 2215	5-15-2023
030 KAR 010:100E	50 Ky.R. 318	6-29-2023	As Amended	50 Ky.R. 601	8-8-2023
Replaced	1043	1-30-2024	Expired		12-5-2023
030 KAR 010:110E	50 Ky.R. 320	6-29-2023	807 KAR 005:001E	49 Ky.R. 734	9-14-2022
Replaced	1043	1-30-2024	Expired		6-11-2023
030 KAR 010:120E	50 Ky.R. 321	6-29-2023	809 KAR 001:002E	50 Ky.R. 339	7-10-2023
Replaced	1043	1-30-2024	Replaced	1502	4-2-2024
031 KAR 002:010E	50 Ky.R. 2147	4-15-2024	809 KAR 001:003E	50 Ky.R. 341	7-10-2023
031 KAR 003:041E	50 Ky.R. 2150	4-15-2024	Replaced	1505	4-2-2024
031 KAR 004:030E	50 Ky.R. 2152	4-15-2024	809 KAR 010:001E	50 Ky.R. 346	7-10-2023
031 KAR 004:196E	50 Ky.R. 582	8-15-2023	Am Comments	775	9-15-2023
Replaced	1251	3-5-2024	Replaced	1506	4-2-2024
031 KAR 004:220E	50 Ky.R. 2154	4-15-2024	809 KAR 010:002E	50 Ky.R. 349	7-10-2023
031 KAR 005:026E	50 Ky.R. 2158	4-15-2024	Am Comments	778	9-15-2023
031 KAR 005:040E	50 Ky.R. 2161	4-15-2024	Replaced	1509	4-2-2024
040 KAR 009:010E	49 Ky.R. 1563	1-6-2023	809 KAR 010:003E	50 Ky.R. 354	7-10-2023
Replaced	2272	7-24-2023	Am Comments	783	9-15-2023
040 KAR 009:020E	49 Ky.R. 1565	1-6-2023	Replaced	1512	4-2-2024
Replaced	2273	7-24-2023	809 KAR 010:004E	50 Ky.R. 358	7-10-2023
040 KAR 009:020E	49 Ky.R. 1565	1-6-2023			
Replaced	2273	7-24-2023			
101 KAR 001:365E	50 Ky.R. 324	7-11-2023			

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
Am Comments	786	9-15-2023	Amended	50 Ky.R. 853	
Replaced	1515	4-2-2024	As Amended	1466	1-11-2024
809 KAR 010:005E	50 Ky.R. 362	7-10-2023	011 KAR 015:040		
Replaced	1518	4-2-2024	Amended	50 Ky.R. 69	12-11-2023
809 KAR 010:006E	50 Ky.R. 369	7-10-2023	011 KAR 015:090		
Am Comments	791	9-15-2023	Amended	50 Ky.R. 2240	
Replaced	1523	4-2-2024	011 KAR 015:110		
809 KAR 010:007E	50 Ky.R. 375	7-10-2023	Amended	50 Ky.R. 71	
Reprint	1246	12-1-2023	As Amended	1035	12-11-2023
Replaced	1528	4-2-2024	Amended	50 Ky.R. 2245	
809 KAR 010:008E	50 Ky.R. 377	7-10-2023	013 KAR 005:010	50 Ky.R. 486	
Replaced	1529	4-2-2024	As Amended	1036	12-11-2023
810 KAR 003:010E	50 Ky.R. 379	7-10-2023	013 KAR 005:020	50 Ky.R. 488	
Replaced	1531	4-2-2024	As Amended	1037	12-11-2023
810 KAR 004:010E	49 Ky.R. 2048	3-29-2023	016 KAR 002:120		
Withdrawn		7-11-2023	Amended	50 Ky.R. 1930	
900 KAR 005:020E	49 Ky.R. 1880	3-15-2023	016 KAR 002:160		
Am Comments	2256	5-11-2023	Amended	50 Ky.R. 1934	
Expired		1-8-2024	016 KAR 002:240	50 Ky.R. 490	
900 KAR 006:075E	49 Ky.R. 1882	3-15-2023	As Amended	1038	12-11-2023
Am Comments	2257	5-11-2023	016 KAR 004:020		
Expired		1-8-2024	Amendment	50 Ky.R. 1557	
900 KAR 006:080E	50 Ky.R. 11	5-19-2023	As Amended	2004	
Replaced	177	12-13-2023	016 KAR 004:030		
900 KAR 014:010E	49 Ky.R. 2052	3-29-2023	Amended	50 Ky.R. 1937	
Replaced	2164	9-27-2023	016 KAR 004:060		
902 KAR 020:490E	49 Ky.R. 1576	12-29-2022	Amended	49 Ky.R. 1810	9-5-2023
Replaced	2307	6-21-2023	016 KAR 005:060		
902 KAR 045:190E	50 Ky.R. 584	8-1-2023	Amended	50 Ky.R. 715	3-5-2024
Am Comments	1021	10-13-2023	016 KAR 009:080		
As Amended	1456	12-13-2023	Amended	49 Ky.R. 2334	
Expired		4-27-2024	As Amended	50 Ky.R. 618	12-5-2023
902 KAR 055:015E	49 Ky.R. 2054	3-23-2023	016 KAR 009:100		
Replaced	50 Ky.R. 2171	10-25-2023	Amended	49 Ky.R. 2339	
907 KAR 001:038E	49 Ky.R. 2057	4-12-2023	As Amended	50 Ky.R. 621	12-5-2023
As Amended	2261	5-9-2023	017 KAR 003:020		
Replaced	2174	1-2-2024	Amended	49 Ky.R. 1469	
907 KAR 001:126E	49 Ky.R. 2062	4-12-2023	As Amended	1898	6-21-2023
As Amended	2263	5-9-2023	017 KAR 006:020	50 Ky.R. 984	
Replaced	2185	1-2-2024	Am Comments	1700	
907 KAR 001:632E	49 Ky.R. 2069	4-12-2023	017 KAR 006:030	50 Ky.R. 986	
As Amended	2268	5-9-2023	Am Comments	1702	
Am Comments	50 Ky.R. 14	6-13-2023	030 KAR 006:011		
Replaced	709	1-2-2024	Repealed	50 Ky.R. 492	1-30-2024
907 KAR 009:010E	50 Ky.R. 1017	10-4-2023	030 KAR 006:012	50 Ky.R. 492	1-30-2024
Replaced	1194	2-16-2024	030 KAR 007:011	50 Ky.R. 2110	
907 KAR 020:010E	49 Ky.R. 2234	5-15-2023	030 KAR 010:010	50 Ky.R. 493	
Replaced	50 Ky.R. 695	9-27-2023	As Amended	1038	1-30-2024
907 KAR 020:045E	49 Ky.R. 2237	5-15-2023	030 KAR 010:020	50 Ky.R. 494	
Replaced	50 Ky.R. 697	9-27-2023	As Amended	1039	1-30-2024
907 KAR 020:075E	49 Ky.R. 2240	5-15-2023	030 KAR 010:030	50 Ky.R. 496	
Replaced	50 Ky.R. 698	9-27-2023	As Amended	1040	1-30-2024
907 KAR 020:100E	49 Ky.R. 2243	5-15-2023	030 KAR 010:040	50 Ky.R. 498	
Replaced	50 Ky.R. 700	9-27-2023	As Amended	1040	1-30-2024
908 KAR 002:300E	50 Ky.R. 592	7-31-2023	030 KAR 010:050	50 Ky.R. 500	
Am Comments	1030	10-12-2023	As Amended	1041	1-30-2024
Replaced	1549	1-18-2024	030 KAR 010:060	50 Ky.R. 501	
922 KAR 001:360E	49 Ky.R. 2248	5-15-2023	As Amended	1042	1-30-2024
Am Comments	50 Ky.R. 387	7-13-2023	030 KAR 010:070	50 Ky.R. 502	
Replaced	844	1-11-2024	As Amended	1042	1-30-2024
			030 KAR 010:080	50 Ky.R. 504	
			As Amended	1042	1-30-2024
			030 KAR 010:090	50 Ky.R. 505	
			As Amended	1042	1-30-2024
			030 KAR 010:100	50 Ky.R. 506	
			As Amended	1043	1-30-2024
			030 KAR 010:110	50 Ky.R. 508	
			As Amended	1043	1-30-2024
			030 KAR 010:120	50 Ky.R. 509	
			As Amended	1043	1-30-2024

ORDINARY ADMINISTRATIVE REGULATIONS

011 KAR 004:080			030 KAR 010:100	50 Ky.R. 506	
Amended	50 Ky.R. 2238		As Amended	1043	1-30-2024
011 KAR 005:001			030 KAR 010:110	50 Ky.R. 508	
Amended	50 Ky.R. 66		As Amended	1043	1-30-2024
As Amended	1034	12-11-2023	030 KAR 010:120	50 Ky.R. 509	
011 KAR 008:030			As Amended	1043	1-30-2024

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
031 KAR 002:010 Amended	50 Ky.R. 22447		As Amended	50 Ky.R. 622	12-5-2023
031 KAR 003:041	50 Ky.R. 2319		101 KAR 002:095 Amended	49 Ky.R. 1966	
031 KAR 004:031	50 Ky.R. 2321		As Amended	50 Ky.R. 628	12-5-2023
031 KAR 004:196 Amended	50 Ky.R. 717		101 KAR 002:180 Repealed	49 Ky.R. 2030	12-5-2023
As Amended	1251	3-5-2024	101 KAR 002:181(r)	49 Ky.R. 2030	12-5-2023
031 KAR 004:220	50 Ky.R. 2323		101 KAR 002:210 Amended	50 Ky.R. 857	4-2-2024
031 KAR 005:026 Amended	50 Ky.R. 2250		101 KAR 003:045 Amended	49 Ky.R. 1968	
031 KAR 005:040	50 Ky.R. 2326		As Amended	50 Ky.R. 629	12-5-2023
032 KAR 001:020 Amended	50 Ky.R. 73		104 KAR 001:010 Amended	50 Ky.R. 78	
As Amended	798	1-2-2024	104 KAR 001:040 Amended	50 Ky.R. 80	
032 KAR 001:030 Amended	50 Ky.R. 74		104 KAR 001:050 Amended	50 Ky.R. 82	
As Amended	798	1-2-2024	104 KAR 001:080 Amended	50 Ky.R. 84	
032 KAR 001:045 Repealed	50 Ky.R. 231	1-2-2024	104 KAR 001:100 Amended	50 Ky.R. 86	
032 KAR 001:046 As Amended	50 Ky.R. 231	1-2-2024	105 KAR 001:001 Amended	49 Ky.R. 1535	
032 KAR 001:050 Amended	50 Ky.R. 76		As Amended	1899	7-5-2023
As Amended	799	1-2-2024	Amended	50 Ky.R. 2259	
032 KAR 001:070 Repealed	50 Ky.R. 231	1-2-2024	105 KAR 001:120 Amended	50 Ky.R. 2262	
032 KAR 002:020 Amended	50 Ky.R. 401		105 KAR 001:148 As Amended	50 Ky.R. 1207	
As Amended	1044	1-30-2024	As Amended	1653	
032 KAR 002:030 Amended	50 Ky.R. 403		105 KAR 001:190 Amended	50 Ky.R. 2265	
As Amended	1045	1-30-2024	105 KAR 001:215 Amended	50 Ky.R. 1168	
032 KAR 002:040 Amended	50 Ky.R. 405		Am Comments	1704	
As Amended	1046	1-30-2024	As Amended	1865	
032 KAR 002:050 Amended	50 Ky.R. 407	1-30-2024	105 KAR 001:220 Amended	49 Ky.R. 2342	
032 KAR 002:060 Amended	50 Ky.R. 409		As Amended	50 Ky.R. 633	12-5-2023
As Amended	1048	1-30-2024	105 KAR 001:270 Amended	50 Ky.R. 1173	
032 KAR 002:220 Repealed	50 Ky.R. 511	1-30-2024	As Amended	1654	
032 KAR 002:221(r)	50 Ky.R. 511	1-30-2024	105 KAR 001:365 Amended	49 Ky.R. 1537	
032 KAR 002:230 As Amended	50 Ky.R. 512	1-30-2024	As Amended	1900	7-5-2023
032 KAR 004:020	50 Ky.R. 232		105 KAR 001:390 As Amended	49 Ky.R. 317	9-27-2022
040 KAR 009:010 As Amended	49 Ky.R. 1707	7-24-2023	Amendment	50 Ky.R. 1558	
040 KAR 009:020 As Amended	49 Ky.R. 1709	7-24-2023	As Amended	2004	
040 KAR 010:010	50 Ky.R. 2111		105 KAR 001:411 Amended	50 Ky.R. 2276	
045 KAR 001:030 Amended	49 Ky.R. 1473	7-5-2023	105 KAR 001:457 As Amended	50 Ky.R. 514	1-30-2024
045 KAR 001:040 Amended	49 Ky.R. 1958		105 KAR 001:455 As Amended	50 Ky.R. 1614	
As Amended	50 Ky.R. 19	10-3-2023	105 KAR 001:470 As Amended	50 Ky.R. 1622	
101 KAR 001:325 Amended	50 Ky.R. 1736		106 KAR 001:131 Amendment	50 Ky.R. 1563	
101 KAR 001:335 Amended	50 Ky.R. 2253		As Amended	2017	
101 KAR 001:345 Amended	50 Ky.R. 2255		106 KAR 004:020 As Amended	800	10-25-2023
101 KAR 001:365 Amended	50 Ky.R. 411		109 KAR 017:010 As Amended	49 Ky.R. 2031	
As Amended	1049	1-30-2024	201 KAR 001:050 Amended	50 Ky.R. 19	9-26-2023
101 KAR 001:375 Amended	50 Ky.R. 2257		As Amended	49 Ky.R. 2347	
101 KAR 001:396(r)	50 Ky.R. 2328		201 KAR 001:190 Amended	50 Ky.R. 801	1-2-2024
101 KAR 002:034 Amended	49 Ky.R. 1960		As Amended	49 Ky.R. 1639	
				2076	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
As Amended IJC Amended	50 Ky.R. 19 1360	6-22-2023	As Amended 201 KAR 010:030	1871	3-21-2024
As Amended 201 KAR 001:200	1869 50 Ky.R. 1625		Amended 201 KAR 010:040	50 Ky.R. 1744	
As Amended 201 KAR 002:015	2020		Amended 201 KAR 010:050	50 Ky.R. 1745	
Amended 201 KAR 002:020	50 Ky.R. 2282		Amended 201 KAR 010:070	50 Ky.R. 1748	
Amended 201 KAR 002:030	50 Ky.R. 88 1053	12-13-2023	Amended 201 KAR 010:080	50 Ky.R. 1749	
Amended 201 KAR 002:040	50 Ky.R. 2284		Amended 201 KAR 016:510	50 Ky.R. 1750	
Amended 201 KAR 002:050	50 Ky.R. 719	12-13-2023	Amended 201 KAR 016:512	50 Ky.R. 721	
Amended 201 KAR 002:076	50 Ky.R. 90 825		Am Comments 1291		
Amended 201 KAR 002:105	1054 2287	12-13-2023	As Amended 1469		4-2-2024
Amended 201 KAR 002:165	50 Ky.R. 91 802	10-25-2023	Amended 201 KAR 016:514	50 Ky.R. 724	
Amended 201 KAR 002:205	50 Ky.R. 95 1054	12-13-2023	Am Comments 1294		
Amended 201 KAR 002:220	50 Ky.R. 1178	2-16-2024	As Amended 1471		4-2-2024
Amended 201 KAR 002:225	50 Ky.R. 99 1057	12-13-2023	Amended 201 KAR 016:516	50 Ky.R. 726	
Amended 201 KAR 002:240	50 Ky.R. 101 1058	12-13-2023	Am Comments 1297		
Amended 201 KAR 002:320	50 Ky.R. 103 1059	12-13-2023	As Amended 1473		4-2-2024
Amended 201 KAR 002:340	50 Ky.R. 104 1059	12-13-2023	Amended 201 KAR 016:550	49 Ky.R. 1473	
Amended 201 KAR 002:380	50 Ky.R. 108 1062	12-13-2023	As Amended 1903		7-5-2023
Amended 201 KAR 002:390	49 Ky.R. 625 1451		Amended 50 Ky.R. 413		
Amended 201 KAR 002:465	1755 2078	6-21-2023	Am Comments 1301		
Amended 201 KAR 005:002	50 Ky.R. 110 1063	12-13-2023	As Amended 1475		4-2-2024
Amended 201 KAR 005:005	49 Ky.R. 1371 1943		Amended 201 KAR 016:552	49 Ky.R. 1540	
Amended 201 KAR 005:055	2080	6-21-2023	As Amended 1905		7-5-2023
Amended 201 KAR 006:060	50 Ky.R. 989 1468	1-18-2024	Amended 50 Ky.R. 416		
Amended 201 KAR 008:533	49 Ky.R. 1974 1974		Am Comments 1304		4-2-2024
Amended 201 KAR 008:563	50 Ky.R. 22 3029	7-24-2023	As Amended 1476		
Amended 201 KAR 009:067	49 Ky.R. 1859 2273		Amended 201 KAR 016:560	49 Ky.R. 1475	
Am Comments 1709	50 Ky.R. 1739 1863		As Amended 1907		7-5-2023
	2276	7-24-2023	Amended 50 Ky.R. 419		
			Am Comments 1307		
			As Amended 1478		4-2-2024
			Amended 49 Ky.R. 1543		
			As Amended 1908		7-5-2023
			Amended 49 Ky.R. 1480		
			Amended 49 Ky.R. 1478		
			As Amended 1909		7-5-2023
			Amended 49 Ky.R. 1480		
			As Amended 50 Ky.R. 518		7-5-2023
			Am Comments 1309		
			As Amended 1479		4-2-2024
			Amended 50 Ky.R. 520		
			Am Comments 1312		
			As Amended 1481		4-2-2024
			Amended 50 Ky.R. 522		
			Am Comments 1314		
			As Amended 1482		4-2-2024
			Amended 201 KAR 019:225		
			Amended 49 Ky.R. 2349		
			As Amended 50 Ky.R. 636		12-5-2023
			Amended 201 KAR 020:056		
			Amended 50 Ky.R. 859		1-18-2024
			Amended 201 KAR 020:057		
			Amended 50 Ky.R. 862		
			Am Comments 1712		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
As Amended	1874	3-21-2024	201 KAR 022:053		
201 KAR 020:065			Amended	50 Ky.R. 877	1-18-2024
Amended	50 Ky.R. 867	3-21-2024	201 KAR 022:170		
201 KAR 020:067	50 Ky.R. 990		Amended	49 Ky.R. 1483	
Am Comments	1717		As Amended	1910	6-21-2023
As Amended	1878	3-21-2024	Amended	50 Ky.R. 423	12-13-2023
201 KAR 020:215			201 KAR 023:016	49 Ky.R. 1214	
Amended	50 Ky.R. 871		Withdrawn		6-28-2023
As Amended	1881	3-21-2024	201 KAR 023:051	49 Ky.R. 1374	
201 KAR 020:220			Am Comments	1803	
Amended	50 Ky.R. 874		As Amended	1910	
As Amended	1484	1-18-2024	201 KAR 023:055		
201 KAR 020:225			Amended	50 Ky.R. 424	
Amended	50 Ky.R. 1363		As Amended	1486	1-11-2024
As Amended	1884	3-21-2024	201 KAR 023:160	50 Ky.R. 524	
201 KAR 020:240			As Amended	1487	
Amended	49 Ky.R. 2351	9-27-2023	As Amended	1661	
201 KAR 020:320			201 KAR 023:170	50 Ky.R. 527	
Amended	50 Ky.R. 2092		As Amended	1488	
201 KAR 020:360			As Amended	2021	
Amended	49 Ky.R. 1812		201 KAR 027:005		
As Amended	2280	7-24-2023	Amended	50 Ky.R. 113	
Amended	50 Ky.R. 2095		As Amended	804	1-2-2024
201 KAR 020:370			201 KAR 027:008		
Amended	50 Ky.R. 1753		Amended	50 Ky.R. 115	
201 KAR 020:390			As Amended	804	1-2-2024
Amended	49 Ky.R. 1815		201 KAR 027:011		
As Amended	2282	7-24-2023	Amended	50 Ky.R. 119	
201 KAR 020:411			As Amended	806	1-2-2024
Amended	49 Ky.R. 1642		201 KAR 027:012		
As Amended	2082	6-21-2023	Amended	50 Ky.R. 126	1-2-2024
201 KAR 020:472			201 KAR 027:016		
Amended	49 Ky.R. 1645		Amended	50 Ky.R. 128	
As Amended	2084	6-21-2023	As Amended	811	1-2-2024
201 KAR 020:476			201 KAR 036:005		
Amended	49 Ky.R. 1649		Amended	50 Ky.R. 880	
As Amended	2087	6-21-2023	Am Comments	1548	
201 KAR 020:478			As Amended	1663	2-16-2024
Amended	49 Ky.R. 1652		201 KAR 036:030		
Am Comments	2316		Amended	50 Ky.R. 882	
As Amended	50 Ky.R. 23	7-24-2023	As Amended	1664	2-16-2024
201 KAR 020:506			201 KAR 036:040		
Amended	50 Ky.R. 1754		Amended	50 Ky.R. 886	
201 KAR 020:620			As Amended	1667	2-16-2024
Amended	50 Ky.R. 419		201 KAR 036:045		
As Amended	1065	12-13-2023	Amended	50 Ky.R. 893	
201 KAR 020:700			As Amended	1673	2-16-2024
Amended	49 Ky.R. 2424		201 KAR 036:050		
Am Comments	50 Ky.R. 826		Amended	50 Ky.R. 895	
As Amended	1658	3-21-2024	As Amended	1674	2-16-2024
201 KAR 021:025			201 KAR 036:060		
Amended	49 Ky.R. 1976	9-27-2023	Amended	50 Ky.R. 898	
201 KAR 021:041			As Amended	1675	2-16-2024
Amended	49 Ky.R. 1978		201 KAR 036:065		
Am Comments	50 Ky.R. 50		Amended	50 Ky.R. 901	
As Amended	638	9-27-2023	Am Comments	1550	
201 KAR 021:042			As Amended	1677	2-16-2024
Amended	49 Ky.R. 1981		201 KAR 036:070		
Am Comments	50 Ky.R. 52		Amended	50 Ky.R. 903	
As Amended	639	9-27-2023	As Amended	1678	2-16-2024
201 KAR 021:075			201 KAR 036:072		
Amended	49 Ky.R. 1983	9-27-2023	Amended	50 Ky.R. 908	
201 KAR 021:095			As Amended	1681	2-16-2024
Amended	49 Ky.R. 1985		201 KAR 036:075		
As Amended	50 Ky.R. 640	9-27-2023	Amended	50 Ky.R. 910	
201 KAR 021:105	49 Ky.R. 2032		Am Comments	1552	
As Amended	50 Ky.R. 641	9-27-2023	As Amended	1682	2-16-2024
201 KAR 022:045			201 KAR 036:090		
Amended	49 Ky.R. 2353		Amended	50 Ky.R. 912	
As Amended	50 Ky.R. 642	9-27-2023	Am Comments	1554	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
As Amended	1683	2-16-2024	301 KAR 002:122		
201 KAR 036:100	50 Ky.R. 1798		Amended	50 Ky.R. 2101	
202 KAR 002:020	50 Ky.R. 529		301 KAR 002:132		
As Amended	1066	1-30-2024	Amended	50 Ky.R. 1939	
202 KAR 006:090			301 KAR 002:144		
Amended	50 Ky.R. 2098		Amended	49 Ky.R. 1654	
202 KAR 007:030			As Amended	2089	6-8-2023
Amended	50 Ky.R. 1180		301 KAR 002:172		
As Amended	1683	2-16-2024	Amended	50 Ky.R. 438	
202 KAR 007:201			As Amended	1262	2-22-2024
Amended	49 Ky.R. 1484		301 KAR 002:178		
As Amended	1911	6-21-2023	Amended	50 Ky.R. 1768	
202 KAR 007:301			301 KAR 002:222		
Amended	49 Ky.R. 1488		Amended	49 Ky.R. 1987	
As Amended	1913	6-21-2023	As Amended	50 Ky.R. 27	7-20-2023
202 KAR 007:330			301 KAR 002:245	49 Ky.R. 1545	
Amended	49 Ky.R. 1492		As Amended	1919	6-8-2023
As Amended	1916	6-21-2023	301 KAR 002:300		
202 KAR 007:401			Amended	49 Ky.R. 1656	
Amended	49 Ky.R. 1497	6-21-2023	As Amended	2090	6-8-2023
As Amended	1684		301 KAR 003:030		
202 KAR 007:410	50 Ky.R. 1209	2-16-2024	Amended	50 Ky.R. 1944	
202 KAR 007:510			301 KAR 003:120		
Amended	49 Ky.R. 2355		Amended	49 Ky.R. 1516	
As Amended	50 Ky.R. 644	9-27-2023	As Amended	1920	6-8-2023
202 KAR 007:550			301 KAR 003:130	50 Ky.R. 1986	
Amended	50 Ky.R. 426		301 KAR 004:021	50 Ky.R. 1437	
As Amended	1251	12-13-2023	301 KAR 004:110		
202 KAR 007:555			Amended	49 Ky.R. 1822	
Amended	50 Ky.R. 135		As Amended	2284	6-8-2023
As Amended	816	10-25-2023	301 KAR 005:001		
202 KAR 007:601			Amended	49 Ky.R. 1659	6-8-2023
Amended	49 Ky.R. 1506	6-21-2023	Amended	50 Ky.R. 1365	
301 KAR 001:001	49 Ky.R. 2034		As Amended	1885	
As Amended	50 Ky.R. 25	7-20-2023	301 KAR 005:010		
Amendment	2289		Amended	49 Ky.R. 1661	
301 KAR 001:115			As Amended	2092	6-8-2023
Amended	50 Ky.R. 433		Amended	50 Ky.R. 1367	
As Amended	1256	2-22-2024	As Amended	1885	
301 KAR 001:122			301 KAR 005:020		
Amended	50 Ky.R. 140		Amended	49 Ky.R. 1662	
Am Comments	830	11-16-2023	As Amended	2093	6-8-2023
301 KAR 001:125			Amended	50 Ky.R. 1368	
Amended	50 Ky.R. 436		As Amended	1886	
As Amended	1258	2-22-2024	301 KAR 005:022		
301 KAR 001:140			Amended	49 Ky.R. 1664	
Amended	50 Ky.R. 1756		As Amended	2094	6-8-2023
301 KAR 001:146			Amendment	50 Ky.R. 2296	
Amended	50 Ky.R. 1758		301 KAR 005:040		
301 KAR 001:150			Amended	50 Ky.R. 2103	
Amended	50 Ky.R. 1761		301 KAR 005:200		
301 KAR 001:152			Amended	50 Ky.R. 1371	
Amended	50 Ky.R. 2292		As Amended	1887	
301 KAR 001:155			301 KAR 005:210	50 Ky.R. 2113	
Amended	50 Ky.R. 1568		301 KAR 006:001		
301 KAR 001:201			Amended	49 Ky.R. 2128	
Amended	50 Ky.R. 142	10-19-2023	As Amended	50 Ky.R. 650	9-21-2023
Amended	1763		301 KAR 006:020		
301 KAR 001:410			Amended	49 Ky.R. 2130	
Amended	50 Ky.R. 147	10-19-2023	As Amended	50 Ky.R. 650	9-21-2023
301 KAR 002:015			301 KAR 011:020	49 Ky.R. 2427	
Amended	49 Ky.R. 1818		As Amended	50 Ky.R. 652	9-21-2023
As Amended	2284	6-8-2023	302 KAR 002:010	50 Ky.R. 1438	
301 KAR 002:030			As Amended	1889	3-13-2024
Amended	50 Ky.R. 1182	2-22-2024	302 KAR 016:010		
301 KAR 002:083			Amended	50 Ky.R. 151	
Amended	50 Ky.R. 731		As Amended	820	10-19-2023
As Amended	1259	2-22-2024	302 KAR 016:020		
301 KAR 002:090			Amended	50 Ky.R. 153	
Amended	1819	6-8-2023	As Amended	820	10-19-2023

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
302 KAR 016:030			Am Comments		1910
Amended	50 Ky.R. 154		As Amended		2048
As Amended	821	10-19-2023	401 KAR 103:020	50 Ky.R. 1218	
302 KAR 016:070			Am Comments		1914
Repealed	50 Ky.R. 822	10-19-2023	As Amended		2050
302 KAR 016:071	50 Ky.R. 235		401 KAR 103:030	50 Ky.R. 1221	
As Amended	822	10-19-2023	Am Comments		1917
302 KAR 016:072	50 Ky.R. 236		As Amended		2051
As Amended	822	10-19-2023	416 KAR 001:001	50 Ky.R. 1799	
302 KAR 016:111			416 KAR 001:010		
Amended	50 Ky.R. 156	10-19-2023	Amended	50 Ky.R. 1775	
302 KAR 016:150	50 Ky.R. 1440		416 KAR 001:020	50 Ky.R. 1801	
As Amended	1889	3-13-2024	500 KAR 002:020		
302 KAR 022:150			Amended	49 Ky.R. 2002	
Amended	50 Ky.R. 158		Am Comments	50 Ky.R. 54	
Am Comments	1080		As Amended	50 Ky.R. 653	12-5-2023
As Amended	1262	3-5-2024	500 KAR 003:010		
302 KAR 033:010	50 Ky.R. 238		Amended	49 Ky.R. 2132	
As Amended	822	10-19-2023	As Amended	50 Ky.R. 656	12-5-2023
302 KAR 045:020	50 Ky.R. 1627		500 KAR 003:020		
As Amended	2022		Amended	49 Ky.R. 2134	
401 KAR 042:250			As Amended	50 Ky.R. 656	12-5-2023
Amended	50 Ky.R. 735		500 KAR 013:020		
As Amended	1490	2-22-2024	Amended	50 Ky.R. 1185	
401 KAR 045:010			Am Comments		1729
Amended	50 Ky.R. 914		501 KAR 002:060		
As Amended	2023		Amended	50 Ky.R. 1946	
401 KAR 045:020			501 KAR 003:010		
Amended	50 Ky.R. 916		Amended	50 Ky.R. 1948	
As Amended	2024		501 KAR 003:040		
401 KAR 045:025			Amended	50 Ky.R. 1950	
Amended	50 Ky.R. 919		501 KAR 003:060		
As Amended	2025		Amended	50 Ky.R. 1952	
401 KAR 045:030			501 KAR 003:080		
Amended	50 Ky.R. 921		Amended	50 Ky.R. 1954	
As Amended	2026		501 KAR 003:090		
401 KAR 045:040			Amended	50 Ky.R. 1956	
Amended	50 Ky.R. 926		501 KAR 003:100		
As Amended	2030		Amended	50 Ky.R. 1958	
401 KAR 045:050			501 KAR 003:140		
Amended	50 Ky.R. 929		Amended	50 Ky.R. 1960	
As Amended	2032		501 KAR 006:040		
401 KAR 045:080			Amended	49 Ky.R. 1353	
Amended	50 Ky.R. 932		Am Comments		1805
As Amended	2034		As Amended		1923
401 KAR 045:100					7-5-2023
Amended	50 Ky.R. 935		501 KAR 006:150		
As Amended	2035		Amended	49 Ky.R. 1824	
401 KAR 045:105	50 Ky.R. 994		Am Comments	50 Ky.R. 59	
Am Comments	1721		As Amended		659
As Amended	2040				12-5-2023
401 KAR 045:140			501 KAR 007:010		
Amended	50 Ky.R. 942		Amended	50 Ky.R. 1962	
As Amended	2043		501 KAR 007:040		
401 KAR 045:160			Amended	50 Ky.R. 1964	
Amended	50 Ky.R. 944		501 KAR 007:080		
Am Comments	1725		Amended	50 Ky.R. 1966	
As Amended	2044		501 KAR 007:090		
401 KAR 045:250			Amended	50 Ky.R. 1967	
Amended	50 Ky.R. 948		501 KAR 013:010		
As Amended	2047		Amended	50 Ky.R. 1969	
401 KAR 051:010			501 KAR 016:310		
Amended	50 Ky.R. 166	11-16-2023	Amended	49 Ky.R. 2363	
401 KAR 058:040			Am Comments	50 Ky.R. 832	
Amended	49 Ky.R. 1996		As Amended		1271
As Amended	50 Ky.R. 34	7-20-2023	503 KAR 001:140		
401 KAR 103:005	50 Ky.R. 1212		Amended	50 Ky.R. 442	
Am Comments	1908		As Amended		1272
As Amended	2047		505 KAR 001:010		
401 KAR 103:010	50 Ky.R. 1215		Amended	49 Ky.R. 2365	
			Am Comments	50 Ky.R. 834	3-5-2024
			505 KAR 001:100		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
Amended	49 Ky.R. 2370		Amended	50 Ky.R. 1189	
Am Comments	50 Ky.R. 839	3-5-2024	As Amended	1686	
505 KAR 001:110			701 KAR 005:110		
Amended	50 Ky.R. 170	3-5-2024	Amended	50 Ky.R. 745	
505 KAR 001:120			As Amended	1278	3-5-2024
Amended	49 Ky.R. 1668		701 KAR 008:010		
Am Comments	2318		Amended	49 Ky.R. 1153	
As Amended	50 Ky.R. 40	10-3-2023	As Amended	1924	7-5-2023
505 KAR 001:140			701 KAR 008:020		
Amended	49 Ky.R. 1670		Amended	49 Ky.R. 1158	
Am Comments	2320		As Amended	1928	7-5-2023
As Amended	50 Ky.R. 40	9-21-2023	701 KAR 008:030		
505 KAR 001:180			Amended	49 Ky.R. 1167	7-5-2023
Amended	49 Ky.R. 2373	3-5-2024	701 KAR 008:040		
505 KAR 001:185			Amended	49 Ky.R. 1170	
Am Comments	50 Ky.R. 841	3-5-2024	As Amended	1935	7-5-2023
505 KAR 001:200			701 KAR 008:050	49 Ky.R. 1216	7-5-2023
As Amended	50 Ky.R. 660	12-5-2023	702 KAR 003:330	50 Ky.R. 1279	
505 KAR 001:210			As Amended	1687	2-15-2024
505 KAR 001:220	49 Ky.R. 2434	3-5-2024	702 KAR 003:340	50 Ky.R. 755	3-5-2024
505 KAR 001:230			702 KAR 007:065		
As Amended	50 Ky.R. 661	12-5-2023	Amended	50 Ky.R. 173	
505 KAR 001:240			As Amended	1067	12-11-2023
505 KAR 001:250	50 Ky.R. 240	3-5-2024	702 KAR 007:125		
Am Comments	1087	3-5-2024	Amended	50 Ky.R. 747	
505 KAR 001:260			As Amended	1279	3-5-2024
Am Comments	1089	3-5-2024	703 KAR 005:270		
505 KAR 001:270			Amended	49 Ky.R. 1832	
Am Comments	1091	3-5-2024	Am Comments	50 Ky.R. 61	7-18-2023
505 KAR 001:280			704 KAR 003:095		
Am Comments	1093	3-5-2024	Amendment	50 Ky.R. 1572	
505 KAR 001:290			704 KAR 003:303		
505 KAR 001:300	50 Ky.R. 250	3-5-2024	Amended	49 Ky.R. 1521	7-5-2023
505 KAR 001:310			704 KAR 003:550	50 Ky.R. 2332	
Am Comments	1095	3-5-2024	704 KAR 007:140		
505 KAR 001:320			Amended	50 Ky.R. 2300	
505 KAR 001:330	50 Ky.R. 256	3-5-2024	704 KAR 008:060		
Am Comments	1098	3-5-2024	Amended	49 Ky.R. 1523	9-5-2023
505 KAR 001:340			704 KAR 008:120	49 Ky.R. 1547	
Amended	50 Ky.R. 259		As Amended	1938	7-5-2023
Am Comments	1100	3-5-2024	705 KAR 004:231		
505 KAR 001:350			Amended	50 Ky.R. 1191	
Amended	50 Ky.R. 261		As Amended	1688	2-15-2024
Am Comments	1101	3-5-2024	707 KAR 001:002		
505 KAR 001:360			Amended	49 Ky.R. 1525	
Amended	50 Ky.R. 263		As Amended	1938	7-5-2023
Am Comments	1103	3-5-2024	739 KAR 002:060		
505 KAR 001:370			Amended	49 Ky.R. 2007	
Amended	50 Ky.R. 265	3-5-2024	As Amended	50 Ky.R. 41	9-26-2023
505 KAR 001:380			739 KAR 002:160	50 Ky.R. 2115	
Amended	50 Ky.R. 268		780 KAR 002:031(r)	50 Ky.R. 2333	
Am Comments	1105	3-5-2024	780 KAR 003:030		
505 KAR 001:390			Amended	50 Ky.R. 2302	
Amended	50 Ky.R. 270		780 KAR 003:035		
Am Comments	1107	3-5-2024	Amended	50 Ky.R. 2304	
505 KAR 001:400			780 KAR 003:100		
Amended	50 Ky.R. 272		Amended	50 Ky.R. 2305	
Am Comments	1109	3-5-2024	780 KAR 003:120		
505 KAR 001:410			Amended	50 Ky.R. 2308	
Amended	50 Ky.R. 276		780 KAR 003:130		
Am Comments	1113	3-5-2024	Amended	50 Ky.R. 2310	
505 KAR 001:420			780 KAR 006:010		
Amended	50 Ky.R. 278		Amended	50 Ky.R. 2312	
Am Comments	1115	3-5-2024	780 KAR 006:020		
601 KAR 012:080			Amended	50 Ky.R. 2314	
As Amended	1628		787 KAR 001:090		
601 KAR 014:050			Amended	49 Ky.R. 1672	
Amended	49 Ky.R. 1826	7-18-2023	As Amended	2096	8-1-2023
601 KAR 023:040			787 KAR 001:100		
603 KAR 005:155	50 Ky.R. 1988		Amended	49 Ky.R. 1675	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
As Amended	2097	8-1-2023	Amended	50 Ky.R. 458	
803 KAR 030:010			Am Comments	1120	3-5-2024
Amended	49 Ky.R. 1836		810 KAR 002:100	49 Ky.R. 2439	
As Amended	2285	9-5-2023	Am Comments	50 Ky.R. 708	
806 KAR 003:250	49 Ky.R. 1549		As Amended	1527	4-2-2024
As Amended	1942	7-5-2023	810 KAR 003:010		
806 KAR 006:072	49 Ky.R. 1710		Amended	50 Ky.R. 462	
As Amended	2098		Am Comments	1354	
As Amended	50 Ky.R. 43		As Amended	1527	4-2-2024
As Amended IJC	662	8-1-2023	810 KAR 004:001		
806 KAR 009:400	50 Ky.R. 531		Amended	50 Ky.R. 467	
As Amended	1070	1-30-2024	As Amended	1282	3-5-2024
806 KAR 017:290			810 KAR 004:010		
Amended	50 Ky.R. 449		Amended	50 Ky.R. 470	
As Amended	1070	1-30-2024	As Amended	1284	3-5-2024
806 KAR 017:590			810 KAR 004:030		
Amended	50 Ky.R. 950		Amended	50 Ky.R. 473	
As Amended	1498	4-2-2024	Am Comments	1125	
807 KAR 005:078	50 Ky.R. 2118		As Amended	1286	3-5-2024
808 KAR 001:170			810 KAR 004:040		
Amended	49 Ky.R. 1184		Amended	50 Ky.R. 477	
As Amended	2291	9-5-2023	As Amended	1288	3-5-2024
808 KAR 010:260			810 KAR 004:070		
Amended	50 Ky.R. 2316		Amended	50 Ky.R. 1374	
808 KAR 010:440			As Amended	1890	
Amended	49 Ky.R. 1676		810 KAR 004:090		
As Amended	2100	8-1-2023	Amended	49 Ky.R. 2375	
808 KAR 010:450			As Amended	50 Ky.R. 665	12-5-2023
Amended	49 Ky.R. 1679		810 KAR 007:030		
As Amended	2102	8-1-2023	Amended	49 Ky.R. 2377	
808 KAR 010:501	50 Ky.R. 998		As Amended	50 Ky.R. 665	12-5-2023
As Amended	1690		810 KAR 007:040		
808 KAR 016:010	49 Ky.R. 1713		Amended	49 Ky.R. 2011	
As Amended	2104		As Amended	50 Ky.R. 45	10-3-2023
As Amended IJC	50 Ky.R. 664	8-1-2023	Amended	50 Ky.R. 2105	
808 KAR 016:020	49 Ky.R. 1716		810 KAR 007:060		
As Amended	2105	8-1-2023	Amended	49 Ky.R. 2381	
809 KAR 001:002	50 Ky.R. 533		As Amended	50 Ky.R. 668	12-5-2023
Am Comments	1317		810 KAR 008:020		
As Amended	1499	4-2-2024	Amended	49 Ky.R. 2016	12-5-2023
809 KAR 001:003	50 Ky.R. 535		815 KAR 004:030		
Am Comments	1320		Amended	49 Ky.R. 2138	
As Amended	1500	4-2-2024	As Amended	50 Ky.R. 670	12-5-2023
809 KAR 010:001	50 Ky.R. 540		815 KAR 007:130	49 Ky.R. 2153	
Am Comments	1324		As Amended	50 Ky.R. 672	9-26-2023
As Amended	1503	4-2-2024	815 KAR 008:010		
809 KAR 010:002	50 Ky.R. 543		Amended	49 Ky.R. 2141	12-5-2023
Am Comments	1327		815 KAR 010:060		
As Amended	1505	4-2-2024	Amended	49 Ky.R. 2145	
809 KAR 010:003	50 Ky.R. 547		As Amended	50 Ky.R. 673	9-26-2023
Am Comments	1332		815 KAR 007:120		
As Amended	1509	4-2-2024	Amended	50 Ky.R. 1976	
809 KAR 010:004	50 Ky.R. 551		815 KAR 007:125		
Am Comments	1335		Amended	50 Ky.R. 1978	
As Amended	1511	4-2-2024	815 KAR 020:030		
809 KAR 010:005	50 Ky.R. 555		Amended	49 Ky.R. 2148	12-5-2023
Am Comments	1340		815 KAR 025:020		
As Amended	1515	4-2-2024	Amended	49 Ky.R. 2151	
809 KAR 010:006	50 Ky.R. 561		As Amended	50 Ky.R. 676	9-26-2023
Am Comments	1346		815 KAR 025:060		
As Amended	1520	4-2-2024	Amended	49 Ky.R. 2156	
809 KAR 010:007	50 Ky.R. 567		As Amended	50 Ky.R. 679	12-5-2023
Am Comments	352		815 KAR 035:060		
As Amended	1525	4-2-2024	Amended	49 Ky.R. 2160	
809 KAR 010:008	50 Ky.R. 569		As Amended	50 Ky.R. 681	12-5-2023
As Amended	1526	4-2-2024	820 KAR 001:005		
810 KAR 002:020			Amended	49 Ky.R. 1683	
Amended	50 Ky.R. 455		As Amended	2107	8-1-2023
Am Comments	1117	3-5-2024	820 KAR 001:025		
810 KAR 002:070			Amended	49 Ky.R. 1686	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
As Amended	2109	8-1-2023	Amended	50 Ky.R. 212	
820 KAR 001:130			Am Comments	1154	12-13-2023
Amended	49 Ky.R. 1689		902 KAR 100:165		
As Amended	2110	8-1-2023	Amended	50 Ky.R. 215	
900 KAR 005:020			Am Comments	1156	12-13-2023
Amended	49 Ky.R. 2024		902 KAR 100:185	50 Ky.R. 282	
Am Comments	50 Ky.R. 395		Am Comments	1161	12-13-2023
As Amended	1894		902 KAR 100:195		
As Amended	2053	3-21-2024	Amended	50 Ky.R. 284	
900 KAR 006:075			Am Comments	1163	12-13-2023
Amended	49 Ky.R. 2026		902 KAR 100:200		
Am Comments	50 Ky.R. 396		Amended	50 Ky.R. 286	
As Amended	1894	3-21-2024	Am Comments	1165	12-13-2023
900 KAR 006:080			906 KAR 001:190		
Amended	50 Ky.R. 177	12-13-2023	Amended	50 Ky.R. 970	
900 KAR 007:030			As Amended	1691	2-16-2024
Amended	50 Ky.R. 1379		906 KAR 001:210		
900 KAR 007:040			Amended	49 Ky.R. 2385	
Amended	50 Ky.R. 1382		As Amended	50 Ky.R. 694	9-27-2023
900 KAR 014:010			907 KAR 001:025		
Amended	49 Ky.R. 2164	9-27-2023	Amended	50 Ky.R. 220	10-25-2023
902 KAR 004:120			907 KAR 001:038		
Amended	50 Ky.R. 952		Amended	49 Ky.R. 2174	1-2-2024
As Amended	1531	1-11-2024	907 KAR 001:044		
902 KAR 020:018			Amended	50 Ky.R. 1409	
Amended	49 Ky.R. 2166	9-27-2023	Am Comments	1920	
902 KAR 020:036			907 KAR 001:061		
Amendment	50 Ky.R. 1576		Amended	50 Ky.R. 1414	
900 KAR 020:048			As Amended	2053	
Amended	50 Ky.R. 1385		907 KAR 001:065		
Am Comments	2063		Amended	50 Ky.R. 1779	
900 KAR 020:086			907 KAR 001:082		
Amended	50 Ky.R. 1396		Amended	48 Ky.R. 3092	
Am Comments	2074		Am Comments	49 Ky.R. 838	
902 KAR 020:300			As Amended	2113	6-21-2023
Amended	50 Ky.R. 179	12-13-2023	907 KAR 001:126	49 Ky.R. 2185	1-2-2024
902 KAR 020:470	49 Ky.R. 1219		907 KAR 001:479		
Am Comments	1807	6-21-2023	Amended	50 Ky.R. 1786	
902 KAR 020:480	49 Ky.R. 1380		907 KAR 001:632		
Am Comments	1946		Amended	49 Ky.R. 2178	
As Amended	2295		Am Comments	50 Ky.R. 709	1-2-2024
As Amended IJC	50 Ky.R. 683	7-25-2023	907 KAR 003:066		
902 KAR 020:490	49 Ky.R. 1719		Amended	50 Ky.R. 1417	
Am Comments	2125		907 KAR 003:190	49 Ky.R. 1868	9-27-2023
As Amended	2307	6-21-2023	907 KAR 003:310	50 Ky.R. 571	
902 KAR 020:500	50 Ky.R. 280	10-25-2023	Am Comments	1354	
902 KAR 045:065			As Amended	1544	1-18-2024
Amended	50 Ky.R. 955		907 KAR 009:010		
As Amended	1533	1-18-2024	Amended	50 Ky.R. 1194	
902 KAR 045:070			As Amended	1695	2-16-2024
Amended	50 Ky.R. 962		907 KAR 013:010		
As Amended	1538	1-18-2024	Amended	50 Ky.R. 1793	
902 KAR 055:015			907 KAR 013:015		
Amended	49 Ky.R. 2171	10-25-2023	Amended	50 Ky.R. 1795	
902 KAR 055:110			907 KAR 015:005		
Amended	49 Ky.R. 1357		Amended	50 Ky.R. 1419	
As Amended	2111	6-21-2023	Am Comments	1925	
902 KAR 100:019			907 KAR 015:090	50 Ky.R. 1630	
Amended	50 Ky.R. 182		907 KAR 015:100	50 Ky.R. 2335	
Am Comments	1129	12-13-2023	907 KAR 020:010		
902 KAR 100:040			Amended	49 Ky.R. 2388	
Amended	50 Ky.R. 194		As Amended	50 Ky.R. 695	9-27-2023
Withdrawn		10-11-2023	907 KAR 020:045		
902 KAR 100:050			Amended	49 Ky.R. 2391	
Amended	50 Ky.R. 199		As Amended	50 Ky.R. 697	9-27-2023
Am Comments	1141	12-13-2023	907 KAR 020:075		
902 KAR 100:058			Amended	49 Ky.R. 2393	
Amended	50 Ky.R. 205		As Amended	50 Ky.R. 698	9-27-2023
Am Comments	1147	12-13-2023	907 KAR 020:100		
902 KAR 100:065			Amended	49 Ky.R. 2396	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
As Amended	50 Ky.R. 700	9-27-2023	Am Comments	2233	
908 KAR 001:410	50 Ky.R. 1441		922 KAR 001:580		
Am Comments	2086		Amended	50 Ky.R. 481	
908 KAR 002:300	50 Ky.R. 756		As Amended	1074	1-11-2024
Am Comments	1357		922 KAR 002:100		
As Amended	1546	1-18-2024	Amended	50 Ky.R. 1423	
910 KAR 001:170			As Amended	1896	3-14-2024
Amendment	50 Ky.R. 1584		922 KAR 002:165		
As Amended	2055		Amended	50 Ky.R. 1433	
910 KAR 001:180			As Amended	1905	3-14-2024
Amended	49 Ky.R. 1841		922 KAR 002:180		
As Amended	2309	6-21-2023	Amended	49 Ky.R. 2417	
910 KAR 001:270			As Amended	50 Ky.R. 703	9-27-2023
Amended	50 Ky.R. 1978		922 KAR 002:245	49 Ky.R. 2434	
910 KAR 003:030			As Amended	50 Ky.R. 1078	1-11-2024
Amended	49 Ky.R. 2401	9-27-2023	922 KAR 002:255	49 Ky.R. 2437	
911 KAR 001:090	49 Ky.R. 1391		Am Comments	50 Ky.R. 850	1-11-2024
As Amended	1801	3-9-2023	922 KAR 002:280		
915 KAR 001:001	50 Ky.R. 1805		Amended	50 Ky.R. 978	2-20-2024
915 KAR 001:030	50 Ky.R. 1808		922 KAR 005:070		
915 KAR 001:040	50 Ky.R. 1815		Amendment	50 Ky.R. 1606	
915 KAR 001:050	50 Ky.R. 1821		As Amended	2059	
915 KAR 001:060	50 Ky.R. 1823		922 KAR 005:120		
915 KAR 001:070	50 Ky.R. 1829		Amendment	50 Ky.R. 1610	
915 KAR 001:080	50 Ky.R. 1836				
915 KAR 001:090	50 Ky.R. 1839				
915 KAR 001:100	50 Ky.R. 1842				
915 KAR 001:110	50 Ky.R. 1845				
915 KAR 002:001	50 Ky.R. 2122				
915 KAR 002:010	50 Ky.R. 2124				
915 KAR 002:020	50 Ky.R. 2128				
915 KAR 002:030	50 Ky.R. 2130				
915 KAR 002:040	50 Ky.R. 2132				
921 KAR 001:400					
Amended	49 Ky.R. 2408	9-27-2023			
921 KAR 001:410					
Amended	50 Ky.R. 1198	2-20-2024			
921 KAR 001:420					
Amended	50 Ky.R. 751	1-11-2024			
921 KAR 002:015					
Amendment	50 Ky.R. 1589				
921 KAR 003:020					
Amended	50 Ky.R. 226	10-25-2023			
921 KAR 003:027					
Amended	50 Ky.R. 1202				
As Amended	1697	2-20-2024			
921 KAR 003:095	50 Ky.R. 288				
As Amended	823	10-25-2023			
921 KAR 003:100	50 Ky.R. 1226	2-20-2027			
922 KAR 001:100					
Amended	49 Ky.R. 1847				
Am Comments	2322	7-25-2023			
922 KAR 001:140					
Amendment	50 Ky.R. 1595				
Am. Comments	2223				
922 KAR 001:145	50 Ky.R. 1635				
Am Comments	2226				
922 KAR 001:330					
Amended	49 Ky.R. 1851				
Am Comments	2326	7-25-2023			
922 KAR 001:360					
Amended	49 Ky.R. 2411				
Am Comments	50 Ky.R. 844	1-11-2024			
922 KAR 001:495					
Amendment	50 Ky.R. 1599				
Am Comments	2229				
922 KAR 001:520	50 Ky.R. 975				
Am Comments	1733	3-14-2024			
922 KAR 001:565					
Amendment	50 Ky.R. 1603				

KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
2.015	922 KAR 001:140	15A.0652	505 KAR 001:100
	922 KAR 001:145		505 KAR 001:110
	922 KAR 001:565		505 KAR 001:185
12.245	201 KAR 036:072		505 KAR 001:200
12.255	201 KAR 036:072		505 KAR 001:240
12.355	202 KAR 007:410		505 KAR 001:250
12.357	201 KAR 036:072		505 KAR 001:260
13B	101 KAR 001:365		505 KAR 001:270
	201 KAR 036:030		505 KAR 001:280
	202 KAR 007:550		505 KAR 001:290
	301 KAR 001:152		505 KAR 001:300
	301 KAR 003:130		505 KAR 001:310
	503 KAR 001:140		505 KAR 001:320
	780 KAR 003:120		505 KAR 001:330
	900 KAR 007:030		505 KAR 001:340
	902 KAR 045:190E		505 KAR 001:350
	915 KAR 002:010		505 KAR 001:360
	922 KAR 001:580		505 KAR 001:370
	922 KAR 002:100		505 KAR 001:380
	922 KAR 005:070		505 KAR 001:390
	922 KAR 005:120		505 KAR 001:400
13B.010	921 KAR 001:410		505 KAR 001:410
	921 KAR 001:420		505 KAR 001:420
13B.010 – 13B170	105 KAR 001:215	15A.067	505 KAR 001:100
13B.080 – 13B160	902 KAR 004:120		505 KAR 001:010
13B.100 – 13B.070	105 KAR 001:457		505 KAR 001:110
13B.170	921 KAR 001:420		505 KAR 001:185
15.055	921 KAR 001:410		505 KAR 001:250
15.180	040 KAR 010:010		505 KAR 001:260
15.242	040 KAR 010:010		505 KAR 001:270
15.243	040 KAR 010:010		505 KAR 001:280
15.330	503 KAR 001:140		505 KAR 001:300
15.380	503 KAR 001:140		505 KAR 001:310
15.382	503 KAR 001:140		505 KAR 001:320
15.384	503 KAR 001:140		505 KAR 001:330
15.392	503 KAR 001:140		505 KAR 001:340
15.394	503 KAR 001:140		505 KAR 001:350
15.396	503 KAR 001:140		505 KAR 001:360
15.3971	503 KAR 001:140		505 KAR 001:370
15.400	503 KAR 001:140		505 KAR 001:390
15.408	503 KAR 001:140		505 KAR 001:400
15.420	105 KAR 001:390		505 KAR 001:420
15.440	503 KAR 001:140	15A.160	505 KAR 001:200
15.540	503 KAR 001:140	16.010	105 KAR 001:390
15.565	503 KAR 001:140	16.505	105 KAR 001:190
15.580	503 KAR 001:140		105 KAR 001:270
15A.020	500 KAR 013:020		105 KAR 001:390
15A.065	505 KAR 001:010		105 KAR 001:411
	505 KAR 001:100		105 KAR 001:455
	505 KAR 001:110	16.505 – 16.652	105 KAR 001:001
	505 KAR 001:185		105 KAR 001:215
	505 KAR 001:200		105 KAR 001:470
	505 KAR 001:240	16.568	105 KAR 001:190
	505 KAR 001:250	16.576	105 KAR 001:190
	505 KAR 001:260		105 KAR 001:411
	505 KAR 001:270	16.577	105 KAR 001:190
	505 KAR 001:280	16.578	105 KAR 001:190
	505 KAR 001:290		105 KAR 001:270
	505 KAR 001:300	16.582	105 KAR 001:190
	505 KAR 001:310		105 KAR 001:455
	505 KAR 001:320	16.583	105 KAR 001:190
	505 KAR 001:330	16.587	105 KAR 001:457
	505 KAR 001:340	16.601	105 KAR 001:457
	505 KAR 001:350	16.645	105 KAR 001:190
	505 KAR 001:360	17.165	910 KAR 001:270
	505 KAR 001:370		922 KAR 001:580
	505 KAR 001:380	18A.005	101 KAR 001:325
	505 KAR 001:390	18A.020	101 KAR 001:345
	505 KAR 001:400	18A.075	101 KAR 001:335
	505 KAR 001:410		101 KAR 001:345
	505 KAR 001:420		101 KAR 001:365

KRS SECTION	REGULATION	KRS SECTION	REGULATION
18A.0751	101 KAR 001:375	61.600	105 KAR 001:190
	101 KAR 001:325	61.605	105 KAR 001:190
	101 KAR 001:335	61.610	105 KAR 001:190
	101 KAR 001:345		105 KAR 001:455
	101 KAR 001:365	61.615	105 KAR 001:190
	101 KAR 001:375		105 KAR 001:455
18A.030	101 KAR 002:210		105 KAR 001:457
	101 KAR 002:210	61.621	105 KAR 001:190
18A.095	101 KAR 001:345	61.625	105 KAR 001:190
	101 KAR 001:365		105 KAR 001:270
	101 KAR 001:375	61.635	105 KAR 001:190
18A.111	101 KAR 001:325		105 KAR 001:270
18A.225	101 KAR 002:210	61.637	105 KAR 001:190
	101 KAR 002:210		105 KAR 001:390
18A.2254	101 KAR 002:210	61.640	105 KAR 001:190
36.390	106 KAR 004:020		105 KAR 001:270
36.392	106 KAR 004:020		105 KAR 001:455
36.394	106 KAR 004:020	61.645	105 KAR 001:148
36.396	106 KAR 004:020	61.661	105 KAR 001:190
39A.020	902 KAR 020:500	61.663	105 KAR 001:190
39A.350	902 KAR 020:500	61.665	105 KAR 001:455
39A.350-39A.366	201 KAR 008:533		105 KAR 001:457
39A.356	902 KAR 020:500	61.675	105 KAR 001:148
39A.358	902 KAR 020:500		105 KAR 001:390
39E.010	106 KAR 001:131	61.580	105 KAR 001:190
39E.040	106 KAR 001:131	61.583	105 KAR 001:190
39E.050	106 KAR 001:131	61.685	105 KAR 001:148
39E.080	106 KAR 001:131		105 KAR 001:455
39E.120	106 KAR 001:131	61.690	105 KAR 001:190
39E.130	106 KAR 001:131		105 KAR 001:270
39E.190	106 KAR 001:131	61.691	105 KAR 001:190
39E.200	106 KAR 001:131		105 KAR 001:455
39E.210	106 KAR 001:131		105 KAR 001:457
39E.220	106 KAR 001:131	61.701	105 KAR 001:411
39E.990	106 KAR 001:131	61.702	105 KAR 001:390
40.310	017 KAR 006:020		105 KAR 001:411
	017 KAR 006:030	61.805 – 61.850	702 KAR 007:065
40.350	017 KAR 006:030	61.870 – 61.884	810 KAR 002:100
40.560	017 KAR 006:020		302 KAR 002:010
	017 KAR 006:030		900 KAR 007:040
40.600	017 KAR 006:020	61.872	922 KAR 005:070
42.190	739 KAR 002:160	61.878	401 KAR 042:250
45.570	702 KAR 003:340	64.840	301 KAR 005:020
45.A	702 KAR 003:340	65.7621	202 KAR 006:090
45.237 – 45.241	922 KAR 001:565	65.7627	202 KAR 006:090
45.345	301 KAR 005:020	65.7629	202 KAR 006:090
61.286	031 KAR 005:040	65.7631	202 KAR 006:090
61.371-61.379	101 KAR 001:396	65.7635	202 KAR 006:090
61.505	105 KAR 001:390	65.7639	202 KAR 006:090
	105 KAR 001:455	65.7643	202 KAR 006:090
	105 KAR 001:457	65.944	702 KAR 003:340
61.505	105 KAR 001:190	65.946	702 KAR 003:340
	105 KAR 001:270	67.750	030 KAR 007:011
	105 KAR 001:411	67.767	030 KAR 007:011
61.510	105 KAR 001:190	67.900	501 KAR 007:010
	105 KAR 001:270		501 KAR 013:010
	105 KAR 001:390	67A.028	501 KAR 003:010
	105 KAR 001:411		501 KAR 007:010
	105 KAR 001:455	67B.020	501 KAR 003:010
61.510 – 61.705	105 KAR 001:001		501 KAR 007:010
	105 KAR 001:215	70.291 – 70.293	105 KAR 001:390
	105 KAR 001:470	72.020	202 KAR 007:410
61.520	105 KAR 001:148	72.025	501 KAR 003:090
61.522	105 KAR 001:148		501 KAR 007:090
61.542	105 KAR 001:190	78.510	105 KAR 001:190
	105 KAR 001:455		105 KAR 001:270
61.559	105 KAR 001:190		105 KAR 001:390
61.565	105 KAR 001:148		105 KAR 001:411
	105 KAR 001:390		105 KAR 001:455
61.590	105 KAR 001:190	78.510 – 78.852	105 KAR 001:001
	105 KAR 001:390		105 KAR 001:215
61.592	105 KAR 001:455		105 KAR 001:470
61.595	105 KAR 001:190	78.510 – 78.990	105 KAR 001:120
61.597	105 KAR 001:190	78.545	105 KAR 001:190

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	105 KAR 001:270	117.275	031 KAR 002:010
	105 KAR 001:390		031 KAR 004:030
	105 KAR 001:455	117.285	031 KAR 002:010
78.5510	105 KAR 001:457	117.295	031 KAR 005:026
78.5512	105 KAR 001:190	117.355	031 KAR 004:030
78.5514	105 KAR 001:190	117.365	031 KAR 005:026
78.5516	105 KAR 001:190	117.375	031 KAR 002:010
78.5518	105 KAR 001:190	117.377	031 KAR 002:010
	105 KAR 001:190	117.379	031 KAR 002:010
	105 KAR 001:455	117.381	031 KAR 002:010
	105 KAR 001:457	117.383	031 KAR 002:010
78.5522	105 KAR 001:190	117.385	031 KAR 002:010
78.5524	105 KAR 001:190	117.387	031 KAR 002:010
	105 KAR 001:455	117.389	031 KAR 002:010
78.5526	105 KAR 001:190	117.391	031 KAR 002:010
78.5528	105 KAR 001:190	117.393	031 KAR 002:010
	105 KAR 001:455	118.015	031 KAR 002:010
	105 KAR 001:457	118.215	031 KAR 002:010
78.5532	105 KAR 001:190	118.425	031 KAR 004:030
	105 KAR 001:455	118.770	031 KAR 002:010
	105 KAR 001:457	118A.010	031 KAR 002:010
78.5534	105 KAR 001:457	119.005	031 KAR 002:010
78.5536	105 KAR 001:411		040 KAR 010:010
78.5540	105 KAR 001:190	119.307	031 KAR 004:030
	105 KAR 001:390	120.095	031 KAR 004:220
78.625	105 KAR 001:390	120.157	031 KAR 004:220
78.635	105 KAR 001:390	120.185	031 KAR 004:220
78.640	105 KAR 001:190	120.260	031 KAR 004:220
78.652	105 KAR 001:190	120.290	031 KAR 004:220
95.022	105 KAR 001:390	121.015	032 KAR 001:050
95A.200	739 KAR 002:160		032 KAR 002:221
95A.210	739 KAR 002:160	121.120	032 KAR 002:020
95A.220	739 KAR 002:160		032 KAR 002:221
95A.240	739 KAR 002:160	121.135	032 KAR 002:060
96A.095	907 KAR 003:066		032 KAR 002:230
116.025	031 KAR 002:010	121.140	032 KAR 002:020
116.045	031 KAR 003:041		032 KAR 002:030
116.0452	031 KAR 003:041		032 KAR 002:040
116.065	031 KAR 002:010		032 KAR 002:050
	031 KAR 003:041	121.160	032 KAR 001:020
116.165	031 KAR 003:041	121.170	032 KAR 001:050
117.001	031 KAR 005:026	121.172	032 KAR 001:046
	031 KAR 005:040	121.180	032 KAR 001:020
117.015	031 KAR 005:040		032 KAR 001:030
117.025	031 KAR 005:026		032 KAR 001:046
	031 KAR 005:040		032 KAR 002:221
117.035	031 KAR 005:040	131.570	921 KAR 001:410
	040 KAR 010:010	132.010	815 KAR 007:120
117.066	031 KAR 004:196	136.392	739 KAR 002:160
117.075	031 KAR 002:010	142.361	907 KAR 001:065
117.085	031 KAR 002:010	142.363	907 KAR 001:025
	031 KAR 004:030		907 KAR 001:065
	031 KAR 005:026	146.200 – 146.990	401 KAR 045:030
117.086	031 KAR 004:030	150.010	301 KAR 001:001
	031 KAR 005:026		301 KAR 001:140
117.0861	031 KAR 005:026		301 KAR 001:146
117.087	031 KAR 005:026		301 KAR 001:150
117.125	031 KAR 002:010		301 KAR 001:152
117.145	031 KAR 002:010		301 KAR 001:155
	031 KAR 005:026		301 KAR 001:201
117.155	031 KAR 002:010		301 KAR 001:125
117.165	031 KAR 002:010		301 KAR 001:410
117.175	031 KAR 002:010		301 KAR 002:083
117.195	031 KAR 002:010		301 KAR 002:132
117.205	031 KAR 002:010		301 KAR 002:172
117.225	031 KAR 005:026		301 KAR 002:178
	031 KAR 005:040		301 KAR 003:030
117.227	031 KAR 005:040	150.0241	301 KAR 003:130
117.228	031 KAR 005:026	150.025	301 KAR 001:001
	031 KAR 005:040		301 KAR 001:146
117.235	031 KAR 004:030		301 KAR 003:030
117.245	031 KAR 005:040		301 KAR 003:130
117.255	031 KAR 002:010		301 KAR 004:021
	031 KAR 004:030		301 KAR 005:022

KRS SECTION	REGULATION	KRS SECTION	REGULATION
150.120	301 KAR 001:146	150.620	301 KAR 001:201
	301 KAR 001:150		301 KAR 001:410
	301 KAR 001:155	150.660	301 KAR 005:022
150.170	301 KAR 001:001	150.720	301 KAR 005:720
	301 KAR 001:125	150.725	301 KAR 002:083
	301 KAR 001:150	150.740	301 KAR 002:083
	301 KAR 001:152	150.990	301 KAR 001:146
	301 KAR 001:170		301 KAR 001:150
	301 KAR 001:155		301 KAR 001:152
	301 KAR 001:201		301 KAR 001:155
	301 KAR 001:410		301 KAR 001:201
	301 KAR 002:030		301 KAR 001:410
	301 KAR 002:132		301 KAR 002:020
	301 KAR 002:178		301 KAR 002:122
	301 KAR 003:030		301 KAR 002:132
	301 KAR 005:210		301 KAR 002:172
	301 KAR 005:200		301 KAR 002:178
150.175	301 KAR 001:146		301 KAR 003:030
	301 KAR 001:150	150.730 – 150.735	302 KAR 022:150
	301 KAR 001:152	154A.130	011 KAR 015:090
	301 KAR 001:201	156.010	011 KAR 015:090
	301 KAR 001:410	156.029	705 KAR 004:231
	301 KAR 003:030	156.070	701 KAR 005:110
	301 KAR 005:010		702 KAR 003:340
	301 KAR 005:020		702 KAR 007:065
	301 KAR 005:200		704 KAR 003:095
	301 KAR 005:210		780 KAR 006:010
150.177	301 KAR 002:172	156.160	704 KAR 003:095
150.180	301 KAR 001:122	156.488	704 KAR 003:095
	301 KAR 002:132	156.496	922 KAR 001:565
	301 KAR 002:172	156.802	705 KAR 004:231
	301 KAR 005:022		780 KAR 002:031
150.183	301 KAR 005:022	156.808	780 KAR 003:030
150.195	301 KAR 005:001		780 KAR 003:035
150.235	301 KAR 001:125		780 KAR 003:100
	301 KAR 001:410		780 KAR 003:120
	301 KAR 005:040		780 KAR 003:130
150.240	301 KAR 005:022		780 KAR 006:010
150.275	301 KAR 005:022		780 KAR 006:020
150.280	301 KAR 005:022	156.820	780 KAR 003:120
150.290	301 KAR 001:115		780 KAR 003:130
	301 KAR 002:083	156.828	708 KAR 003:035
	301 KAR 005:290	156.830	780 KAR 003:100
150.320	301 KAR 003:030	156.832	780 KAR 003:120
150.340	301 KAR 001:201	156.850	780 KAR 002:031
	301 KAR 002:122	157.200	016 KAR 004:020
	301 KAR 002:178	157.250	016 KAR 004:020
150.360	301 KAR 002:122	157.320	702 KAR 007:125
	301 KAR 003:030	157.350	702 KAR 007:125
150.370	301 KAR 002:122	157.390	016 KAR 002:120
	301 KAR 002:178	157.650	701 KAR 005:110
	301 KAR 003:030	157.655	701 KAR 005:110
150.411	301 KAR 002:172	157.660	701 KAR 005:110
150.412	301 KAR 002:030	157.665	701 KAR 005:110
150.445	301 KAR 001:146	158.007	011 KAR 015:090
	301 KAR 001:150	158.030	702 KAR 007:125
	301 KAR 001:152	158.070	702 KAR 007:125
	301 KAR 001:155	158.070	704 KAR 003:095
	301 KAR 001:410	158.100	702 KAR 007:125
150.450	301 KAR 001:140	158.135	922 KAR 001:495
	301 KAR 001:146	158.140	704 KAR 007:140
	301 KAR 001:150	158.240	702 KAR 007:125
	301 KAR 001:152	158.305	704 KAR 003:095
	301 KAR 001:155	158.441	105 KAR 001:390
	301 KAR 005:022	158.645	704 KAR 003:095
150.485	301 KAR 001:115	158.6451	704 KAR 003:095
	301 KAR 001:125	158.6453	704 KAR 003:095
	301 KAR 005:022	158.6459	704 KAR 003:095
150.520	301 KAR 005:022	158.791	704 KAR 003:095
150.525	301 KAR 005:022	159.010	702 KAR 007:125
150.600	301 KAR 004:021	159.030	702 KAR 007:125
	301 KAR 005:022		922 KAR 002:100
150.603	301 KAR 005:022	159.035	702 KAR 007:125
	301 KAR 005:040	159.140	702 KAR 007:125

KRS SECTION	REGULATION	KRS SECTION	REGULATION
159.170	702 KAR 007:125	194A.005	908 KAR 002:300
160.160	701 KAR 005:110	194A.705	201 KAR 020:700
	702 KAR 003:340	194.540	201 KAR 020:620
160.380	702 KAR 007:065	194.705	902 KAR 020:300
160.445	702 KAR 007:065	194A.005	902 KAR 100:040
161.011	704 KAR 003:550		902 KAR 100:050
161.020	016 KAR 004:020		902 KAR 100:058
161.020	016 KAR 002:120		902 KAR 100:065
	016 KAR 002:160		902 KAR 100:185
	016 KAR 002:240		902 KAR 100:195
	016 KAR 004:030		902 KAR 100:200
161.028	016 KAR 002:120		908 KAR 002:300
	016 KAR 002:160	194A.005	922 KAR 001:140
	016 KAR 004:020		922 KAR 001:495
	016 KAR 004:030		922 KAR 001:565
	016 KAR 005:060	194A.025	907 KAR 015:005
161.030	016 KAR 002:120	194A.050	922 KAR 002:100
	016 KAR 002:160	194A.060	907 KAR 001:044
	016 KAR 004:020		910 KAR 001:270
	016 KAR 004:030		922 KAR 005:120
	016 KAR 005:060	194A.540	201 KAR 020:215
161.044	704 KAR 003:550		201 KAR 020:225
161.100	016 KAR 002:120		201 KAR 020:320
161.102	016 KAR 002:120		201 KAR 036:030
161.124	016 KAR 004:030	194A.700	902 KAR 020:048
161.126	016 KAR 004:030	194A.700	902 KAR 020:036
161.135	016 KAR 004:030	194A.705	902 KAR 020:036
161.200	702 KAR 007:125		902 KAR 020:048
161.212	702 KAR 003:330		902 KAR 020:086
161.1211	016 KAR 002:120	196.030	501 KAR 016:310
161.1221	016 KAR 002:120	196.035	501 KAR 002:060
162.1002	907 KAR 001:479		501 KAR 003:100
164.002	011 KAR 015:090		501 KAR 016:310
164.0401	013 KAR 005:010	196.173	501 KAR 003:060
	013 KAR 005:020	196.280	505 KAR 001:420
164.0402	013 KAR 005:010	196.070	501 KAR 016:310
	013 KAR 005:020	196.180	501 KAR 045:310
164.0403	013 KAR 005:010	197.020	501 KAR 002:060
164.0404	013 KAR 005:020		501 KAR 003:100
164.518	011 KAR 004:080	197.045	501 KAR 002:060
164.530	910 KAR 001:270		505 KAR 001:420
164.740	011 KAR 008:030	198A.740 – 198A.750	202 KAR 002:020
164.740 – 164.785	011 KAR 005:001	198B.010	815 KAR 007:120
164.744	011 KAR 004:080		815 KAR 007:125
	011 KAR 008:030	198B.040	815 KAR 007:120
164.748	011 KAR 004:080		815 KAR 007:125
164.753	011 KAR 004:080	198B.050	815 KAR 007:120
	011 KAR 008:030		815 KAR 007:125
164.7535	011 KAR 004:080	198B.060	815 KAR 007:120
164.769	011 KAR 004:080		815 KAR 007:125
	011 KAR 008:030	198B.080	815 KAR 007:120
164.772	301 KAR 002:030		815 KAR 007:125
	301 KAR 002:083	198B.260	815 KAR 007:120
164.780	011 KAR 004:080		815 KAR 007:125
164.785	011 KAR 004:080	198B.650-198B.689	501 KAR 013:010
164.7871	011 KAR 015:090	198B.990	815 KAR 007:120
164.7871 – 164.7885	011 KAR 015:110		815 KAR 007:125
164.7881	011 KAR 015:040	199.011	922 KAR 001:145
164.7890	011 KAR 004:080		922 KAR 001:360
164.7894	011 KAR 004:080		922 KAR 001:495
164.952	105 KAR 001:390		922 KAR 001:565
176.010	603 KAR 005:155		922 KAR 002:100
176.050	603 KAR 005:155	199.011	922 KAR 001:140
177.106	603 KAR 005:155	199.462	922 KAR 001:140
177.830	603 KAR 005:155		922 KAR 001:565
177.990	603 KAR 005:155	199.464	922 KAR 001:495
186.018	922 KAR 002:100	199.470 – 199.590	922 KAR 001:565
186.020	922 KAR 002:100	199.555	922 KAR 001:140
186.412	601 KAR 012:080	199.557	922 KAR 001:140
186.4122	601 KAR 012:080	199.640 – 199.680	922 KAR 001:360
186A.017	601 KAR 023:040	199.801	922 KAR 001:140
189.125	922 KAR 002:100		922 KAR 001:360
191.881-888	922 KAR 002:165	199.894	922 KAR 002:100
194A	921 KAR 002:015	199.8943	922 KAR 002:165

KRS SECTION	REGULATION	KRS SECTION	REGULATION
199.895	922 KAR 002:100		902 KAR 020:086
199.8951	922 KAR 002:100		902 KAR 020:300
199.896	922 KAR 002:100	210	908 KAR 002:300
199.897	922 KAR 002:100	210.366	201 KAR 036:030
199.898	922 KAR 002:100	210.410	908 KAR 002:300
199.8982	922 KAR 002:100	210.770-210.795	910 KAR 001:270
200.080 – 200.120	505 KAR 001:100	211.180	902 KAR 100:185
	505 KAR 001:110		902 KAR 100:195
	505 KAR 001:185		902 KAR 100:200
	505 KAR 001:200		902 KAR 004:120
	505 KAR 001:240	211.185	908 KAR 002:300
	505 KAR 001:250	211.332	201 KAR 036:045
	505 KAR 001:260	211.334	201 KAR 036:045
	505 KAR 001:270	211.336	201 KAR 036:045
	505 KAR 001:280	211.338	201 KAR 036:045
	505 KAR 001:290	211.689	902 KAR 004:120
	505 KAR 001:300	211.842 – 11.852	902 KAR 100:019
	505 KAR 001:310		902 KAR 100:040
	505 KAR 001:320		902 KAR 100:050
	505 KAR 001:330		902 KAR 100:058
	505 KAR 001:340		902 KAR 100:065
	505 KAR 001:350		902 KAR 100:165
	505 KAR 001:360		902 KAR 100:185
	505 KAR 001:370		902 KAR 100:195
	505 KAR 001:380		902 KAR 100:200
	505 KAR 001:390	211.990	902 KAR 100:019
	505 KAR 001:400		902 KAR 100:040
	505 KAR 001:410		902 KAR 100:050
	505 KAR 001:420		902 KAR 100:058
202A.011	907 KAR 001:044		902 KAR 100:065
202A.011	902 KAR 020:036		902 KAR 100:165
	921 KAR 002:015		902 KAR 100:185
202A.051	922 KAR 005:070		902 KAR 100:195
202B.010	907 KAR 001:025		902 KAR 100:200
202B.100	922 KAR 005:070	212.132	105 KAR 001:148
205.140	922 KAR 005:120	214.010	922 KAR 002:100
205.200	921 KAR 003:020	214.036	922 KAR 002:100
205.201	910 KAR 001:170	216.380	907 KAR 001:065
205.203	910 KAR 001:170	216.510	201 KAR 020:700
205.211	922 KAR 001:565	216.2920	900 KAR 007:030
205.245	921 KAR 002:015		900 KAR 007:040
205.455 – 205.460	910 KAR 001:170	216.2925	900 KAR 007:030
205.510	907 KAR 015:005	216.2927	900 KAR 007:030
205.520	907 KAR 001:061		900 KAR 007:040
	907 KAR 001:479	216.2929	900 KAR 007:040
	907 KAR 003:066	216.510 – 216.525	902 KAR 020:036
	907 KAR 009:010		902 KAR 020:048
	907 KAR 013:010		902 KAR 020:086
	907 KAR 013:015		902 KAR 020:300
	907 KAR 015:090	216.530	902 KAR 020:036
	907 KAR 015:100	216.532	902 KAR 020:036
205.560	907 KAR 001:479		902 KAR 020:048
205.622	907 KAR 001:044		902 KAR 020:086
205.6333	907 KAR 001:479		902 KAR 020:300
205.712	105 KAR 001:190	216.535	902 KAR 020:300
205.712 – 205.795	921 KAR 001:410	216.537	902 KAR 020:048
205.720	921 KAR 001:420	216.540	902 KAR 020:048
205.750	921 KAR 001:420		902 KAR 020:300
205.755	921 KAR 001:420	216.543	902 KAR 020:300
205.795	921 KAR 001:420	216.545	902 KAR 020:300
205.2005	921 KAR 003:027	216.547	902 KAR 020:300
205.8451	907 KAR 001:044	216.555 – 216.567	902 KAR 020:036
	907 KAR 001:061	216.570 – 216.597	902 KAR 020:036
	907 KAR 015:005	216.765	902 KAR 020:036
209	922 KAR 005:070	216.765	921 KAR 002:015
	922 KAR 005:120	216.785 – 216.793	902 KAR 020:036
209.020	921 KAR 002:015	216.789	902 KAR 020:048
209.030	902 KAR 020:036		902 KAR 020:086
	902 KAR 020:048	216.793	902 KAR 020:048
	902 KAR 020:086		902 KAR 020:086
	902 KAR 020:300	216.597	902 KAR 020:036
	910 KAR 001:270	216A.080	902 KAR 020:036
209.032	902 KAR 020:036		902 KAR 020:048
	902 KAR 020:048		902 KAR 020:086

KRS SECTION	REGULATION	KRS SECTION	REGULATION
216B	921 KAR 002:015	218B.050	201 KAR 009:067
216B.010	902 KAR 020:036	22.1-400	401 KAR 042:250
216B.040	902 KAR 020:036	224.01	401 KAR 045:025
216B.042	902 KAR 020:036	224.01-110	401 KAR 045:030
216B.045 – 216B.130	902 KAR 020:036	224.10	401 KAR 045:020
216B.450	705 KAR 004:231		401 KAR 045:030
216B.455	705 KAR 004:231		401 KAR 045:040
216B.990	902 KAR 020:036		401 KAR 045:050
216B.010	900 KAR 006:075		401 KAR 045:080
216B.010 – 216B.130	900 KAR 006:020		401 KAR 045:100
216B.015	900 KAR 006:075		401 KAR 045:105
	900 KAR 006:080		401 KAR 045:140
	902 KAR 100:185		401 KAR 045:160
216B.020	900 KAR 006:080	224.1-010	401 KAR 045:010
216B.040	900 KAR 006:075	224.1-405	401 KAR 042:250
216B.061	900 KAR 006:080	224.10	401 KAR 042:020
216B.062	900 KAR 006:075		401 KAR 045:025
216B.090	900 KAR 006:075		401 KAR 045:030
216B.095	900 KAR 006:075		401 KAR 045:040
216B.115	900 KAR 006:075		401 KAR 045:050
216B.178	900 KAR 006:020		401 KAR 045:080
216B.455	900 KAR 006:075		401 KAR 045:100
216B.990	900 KAR 006:075		401 KAR 045:105
	900 KAR 006:080		401 KAR 045:140
217.015	201 KAR 002:225		401 KAR 045:160
	902 KAR 045:190E	224.10-100	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	224.10-285	401 KAR 103:005
217.0	902 KAR 045:190E		401 KAR 103:010
217.055	201 KAR 002:076		401 KAR 103:020
217.065	201 KAR 002:076		401 KAR 103:030
217.177	201 KAR 016:550	224.10-410	401 KAR 042:250
217.215	201 KAR 002:165	224.10-420	401 KAR 042:250
217.280-217.390	501 KAR 003:100	224.10-430	401 KAR 042:250
	501 KAR 013:010	224.10-440	401 KAR 042:250
218	915 KAR 001:100	224.10-470	401 KAR 042:250
218A.205	201 KAR 002:020	224.20-100	401 KAR 051:010
	201 KAR 002:050	224.20-110	401 KAR 051:010
	201 KAR 020:056	224.20-120	401 KAR 051:010
	201 KAR 005:005	224.40	401 KAR 045:020
218A.010	201 KAR 020:065		401 KAR 045:025
218A.170	201 KAR 020:065		401 KAR 045:030
218A.171 – 218A.172	201 KAR 020:057		401 KAR 045:040
218A.202	201 KAR 020:057		401 KAR 045:050
	915 KAR 002:030		401 KAR 045:080
218A.205	201 KAR 008:533		401 KAR 045:100
	902 KAR 020:300		401 KAR 045:105
	201 KAR 020:050		401 KAR 045:140
	201 KAR 020:057		401 KAR 045:160
	201 KAR 020:215		401 KAR 045:250
	201 KAR 002:050	224.43-345	401 KAR 103:005
218B	915 KAR 001:001		401 KAR 103:010
	915 KAR 001:030		401 KAR 103:020
	915 KAR 001:040		401 KAR 103:030
	915 KAR 001:050	224.46	401 KAR 045:020
	915 KAR 001:060		401 KAR 045:040
	915 KAR 001:070		401 KAR 045:050
	915 KAR 001:080		401 KAR 045:080
	915 KAR 001:090		401 KAR 045:140
	915 KAR 001:110		401 KAR 045:160
	915 KAR 002:001	224.50	401 KAR 045:020
	915 KAR 002:010		401 KAR 045:025
	915 KAR 002:020		401 KAR 045:030
	915 KAR 002:030		401 KAR 045:040
	915 KAR 002:040		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

KRS SECTION	REGULATION	KRS SECTION	REGULATION
224.60-120	401 KAR 042:250		810 KAR 002:100
224.60-130	401 KAR 042:250		810 KAR 003:010
224.60-135	401 KAR 042:250		810 KAR 004:030
224.60-140	401 KAR 042:250		810 KAR 004:040
224.60-150	401 KAR 042:250		810 KAR 004:070
224.70	401 KAR 045:020		810 KAR 007:040
	401 KAR 045:030	230.280	810 KAR 003:010
	401 KAR 045:105	230.290	810 KAR 003:010
224.90	401 KAR 045:090		810 KAR 004:030
224.99	401 KAR 045:020	230.300	810 KAR 003:010
	401 KAR 045:030	230.310	810 KAR 004:030
	401 KAR 045:040	230.320	810 KAR 004:030
	401 KAR 045:080	230.770	810 KAR 007:040
	401 KAR 045:105	230.802	810 KAR 007:040
	401 KAR 045:140	230.811	810 KAR 003:010
	401 KAR 045:160	230.817	810 KAR 003:010
227.300	815 KAR 007:120	237.110	301 KAR 002:172
227.550	815 KAR 007:120		921 KAR 001:410
229.011	201 KAR 027:005	246.030	302 KAR 022:150
229.021	201 KAR 027:012		302 KAR 045:020
229.025	201 KAR 027:008	246.650	302 KAR 045:020
	201 KAR 027:011	246.660	302 KAR 045:020
	201 KAR 027:016	246.990	302 KAR 045:020
229.031	201 KAR 027:005	247.232	302 KAR 016:020
	201 KAR 027:011		302 KAR 016:030
	201 KAR 027:012	247.233	302 KAR 016:072
	201 KAR 027:016		302 KAR 016:111
229.035	201 KAR 027:008	247.234	301 KAR 001:410
229.055	201 KAR 027:011		302 KAR 016:020
	201 KAR 027:016		302 KAR 016:030
229.065	201 KAR 027:008		302 KAR 016:050
229.071	201 KAR 027:012	247.236	302 KAR 016:020
229.081	201 KAR 027:012		302 KAR 016:030
229.091	201 KAR 027:012	251.355	302 KAR 033:010
229.111	201 KAR 027:005	251.375	302 KAR 033:010
	201 KAR 027:011	251.380	302 KAR 033:010
	201 KAR 027:016	251.470	302 KAR 033:010
229.131	201 KAR 027:005	251.990	302 KAR 033:010
	201 KAR 027:011	257.020	302 KAR 022:150
	201 KAR 027:016	257.030	302 KAR 022:150
229.155	201 KAR 027:005	257.080	201 KAR 016:701
	201 KAR 027:011		302 KAR 022:150
	201 KAR 027:016	257.160	201 KAR 016:560
229.171	201 KAR 027:005	257.990	302 KAR 022:150
	201 KAR 027:008	258	201 KAR 016:550
	201 KAR 027:011	258.043	201 KAR 016:701
	201 KAR 027:012	258.065	201 KAR 016:701
	201 KAR 027:016	260.020	302 KAR 045:020
230	809 KAR 001:002	260.030	302 KAR 045:020
	809 KAR 010:001	260.850	902 KAR 045:190E
	809 KAR 010:002	273	922 KAR 001:580
	809 KAR 010:002	273.2	921 KAR 003:095
	809 KAR 010:003	273.10	921 KAR 003:095
	809 KAR 010:003	278	807 KAR 005:078
	809 KAR 010:004	278.700-716	401 KAR 103:005
	809 KAR 010:004		401 KAR 103:010
	809 KAR 010:005		401 KAR 103:020
	809 KAR 010:006		401 KAR 103:030
	809 KAR 010:006	281.010	907 KAR 003:066
	809 KAR 010:007	281.605	907 KAR 003:066
	809 KAR 010:008	281.635	907 KAR 003:066
230.210	810 KAR 004:001	281.872	907 KAR 003:066
230.215	810 KAR 002:020	281.875	907 KAR 003:066
	810 KAR 002:070	292.310	808 KAR 010:260
	810 KAR 003:010	292.330	808 KAR 010:501
	810 KAR 004:010	292.331	808 KAR 010:260
	810 KAR 004:030	292.337	808 KAR 010:260
	810 KAR 004:040	292.410	808 KAR 010:501
	810 KAR 004:070	292.411	808 KAR 010:501
	810 KAR 007:040	292.412	808 KAR 010:501
230.240	810 KAR 002:020	292.500	808 KAR 010:260
	810 KAR 004:030	301	201 KAR 016:550
230.260	810 KAR 002:020	302.32	921 KAR 001:420
	810 KAR 002:070	302.38	921 KAR 001:420

KRS SECTION	REGULATION	KRS SECTION	REGULATION
302.51 – 302.54	921 KAR 001:420		922 KAR 002:100
303.72	921 KAR 001:420		922 KAR 001:495
304.1-050	806 KAR 017:290	314.021	201 KAR 020:320
	806 KAR 017:590	314.041	201 KAR 020:225
304.2-100	806 KAR 017:290		201 KAR 020:320
304.2-230	806 KAR 017:290		201 KAR 020:370
304.2-310	806 KAR 017:290	314.042	908 KAR 002:300
304.39-110	915 KAR 001:080		201 KAR 020:057
304.9-020	806 KAR 009:400		201 KAR 020:065
	806 KAR 017:590		201 KAR 020:067
304.9-055	806 KAR 017:590		201 KAR 020:215
304.9-430	806 KAR 009:400		201 KAR 020:225
304.9-433	806 KAR 009:400		201 KAR 020:370
304.9-435	806 KAR 009:400	314.051	201 KAR 020:225
304.9-440	806 KAR 009:400		201 KAR 020:370
304.14-135	900 KAR 007:030	314.071	201 KAR 020:225
304.17A-005	806 KAR 017:290		201 KAR 020:370
304.17A-1631	806 KAR 017:290	314.073	201 KAR 020:215
304.17A-168	806 KAR 017:290		201 KAR 020:220
304.17A-505	806 KAR 017:290		201 KAR 020:225
304.17A-535	806 KAR 017:290	314.075	201 KAR 020:225
304.17A-600	806 KAR 017:290	314.085	201 KAR 020:067
304.17A-607	806 KAR 017:290		201 KAR 020:225
304.17A-617	806 KAR 017:290	314.089	201 KAR 020:067
304.17A-621 – 304.17A-631	806 KAR 017:290	314.091	201 KAR 020:056
304.17A-732	806 KAR 017:590		201 KAR 020:057
	907 KAR 015:005		201 KAR 020:091
304.40-075	201 KAR 008:533		201 KAR 020:225
309.080	908 KAR 002:300		201 KAR 020:370
309.130	907 KAR 015:005	314.103	201 KAR 020:056
	908 KAR 002:300		201 KAR 020:225
309.460	907 KAR 003:310		201 KAR 020:370
309.462	907 KAR 003:310	314.109	201 KAR 020:056
309.464	907 KAR 003:310		201 KAR 020:225
310.021	902 KAR 020:036	314.111	201 KAR 020:320
	902 KAR 020:048		201 KAR 020:360
310.031	902 KAR 020:036	314.131	201 KAR 020:220
	902 KAR 020:048		201 KAR 020:320
	902 KAR 020:086	314.161	201 KAR 020:056
311	201 KAR 027:008	314.175	201 KAR 020:056
311.571	908 KAR 002:300	314.193	201 KAR 020:057
311.592	201 KAR 009:067	314.195	201 KAR 020:057
311.646	922 KAR 002:100	314.400 – 314.414	201 KAR 020:620
311.840	907 KAR 015:005	314.475	201 KAR 020:370
311.840 – 311.862	908 KAR 002:300		201 KAR 020:506
311A.025	202 KAR 007:410	314.991	201 KAR 020:215
311A.030	202 KAR 007:550	315.010	201 KAR 002:015
	202 KAR 007:555		201 KAR 002:040
311A.050 – 311A.100	202 KAR 007:410		201 KAR 002:105
311A.120 – 311A.135	202 KAR 007:410		201 KAR 002:220
311A.142	202 KAR 007:410		201 KAR 002:225
311A.145	202 KAR 007:030		201 KAR 002:320
311A.170	202 KAR 007:410		201 KAR 002:340
311A.180	202 KAR 007:550	315.020	201 KAR 002:040
311A.185	202 KAR 007:410		201 KAR 002:076
311A.190	202 KAR 007:410		201 KAR 002:205
	202 KAR 007:550		201 KAR 002:225
	202 KAR 007:555		201 KAR 002:320
311.595	201 KAR 009:067		201 KAR 002:340
311.599	201 KAR 009:067	315.035	201 KAR 002:050
311.720	922 KAR 001:495		201 KAR 002:076
311.840	922 KAR 001:495		201 KAR 002:225
313.010	201 KAR 008:533		201 KAR 002:240
313.030	201 KAR 008:533		201 KAR 002:340
313.254	201 KAR 005:533		201 KAR 002:050
314.011	201 KAR 020:056		902 KAR 020:048
	201 KAR 020:057		902 KAR 020:086
	201 KAR 020:065	315.036	201 KAR 002:320
	201 KAR 020:067	315.0351	201 KAR 002:050
	201 KAR 020:215		201 KAR 002:076
	201 KAR 020:220		201 KAR 002:205
	201 KAR 020:320		201 KAR 002:465
	902 KAR 020:036	315.036	201 KAR 002:050
	907 KAR 015:005	315.040	201 KAR 002:220

KRS SECTION	REGULATION	KRS SECTION	REGULATION
315.050	201 KAR 002:020		201 KAR 016:514
	201 KAR 002:030	321.201	201 KAR 016:510
	201 KAR 002:040	321.211	201 KAR 016:510
	201 KAR 002:050		201 KAR 016:510
315.060	201 KAR 002:050	321.207	201 KAR 016:514
315.065	201 KAR 002:015		201 KAR 016:550
315.110	201 KAR 002:050		201 KAR 016:552
315.120	201 KAR 002:015		201 KAR 016:560
	201 KAR 002:050	321.208	201 KAR 016:514
315.121	201 KAR 002:015	321.235	201 KAR 016:512
	201 KAR 002:105		201 KAR 016:516
	201 KAR 002:220		201 KAR 016:552
315.191	105 KAR 001:457		201 KAR 016:510
	201 KAR 002:030		201 KAR 016:514
	201 KAR 002:040	321.351	201 KAR 016:550
	201 KAR 002:050		201 KAR 016:552
	201 KAR 002:076		201 KAR 016:560
	201 KAR 002:205	321.441	201 KAR 016:702
	201 KAR 002:220		201 KAR 016:750
	201 KAR 002:225		201 KAR 016:512
	201 KAR 002:320	321.442	201 KAR 016:512
	201 KAR 002:340	321.443	201 KAR 016:702
	201 KAR 002:390		201 KAR 016:750
	201 KAR 002:465	323A.040	201 KAR 010:040
315.210	201 KAR 002:030		201 KAR 010:050
315.300	201 KAR 002:205	323A.050	201 KAR 010:040
315.335	201 KAR 002:205		201 KAR 010:050
315.350	201 KAR 002:105	323A.060	201 KAR 010:040
315.400	201 KAR 002:105		201 KAR 010:050
	201 KAR 002:320	323A.070	201 KAR 010:040
	201 KAR 002:390		201 KAR 010:050
315.402	201 KAR 002:050	323A.080	201 KAR 010:070
	201 KAR 002:105	323A.100	201 KAR 010:050
315.404	201 KAR 002:105		201 KAR 010:080
	201 KAR 002:320	323A.110	201 KAR 010:030
315.406	201 KAR 002:105	323A.210	201 KAR 010:080
315.408	201 KAR 002:105	325.240	201 KAR 001:200
315.410	201 KAR 002:105	325.261	201 KAR 001:190
315.4102	201 KAR 002:390	325.270	201 KAR 001:190
315.4104	201 KAR 002:390	327.040	201 KAR 022:053
315.4106	201 KAR 002:390	327.070	201 KAR 022:053
315.4108	201 KAR 002:390	327.300	201 KAR 022:170
315.4110	201 KAR 002:390	333.030	902 KAR 020:048
315.412	201 KAR 002:105	334A.030	016 KAR 002:120
319.050	908 KAR 002:300	334A.033	016 KAR 002:120
319.053	907 KAR 015:005	334A.035	016 KAR 002:120
319.056	907 KAR 015:005	334A.050	016 KAR 002:120
	908 KAR 002:300	334A.060	016 KAR 002:120
319.064	907 KAR 015:005	335B	201 KAR 016:560
	908 KAR 002:300		201 KAR 036:070
319C.010	907 KAR 015:005		201 KAR 036:072
	908 KAR 002:300	335.070	201 KAR 023:055
320	809 KAR 010:001	335.080	201 KAR 023:160
320.220	201 KAR 005:005		907 KAR 015:005
320.250	201 KAR 005:005		908 KAR 002:300
320.270	201 KAR 005:005	335.090	201 KAR 023:160
321	302 KAR 022:150	335.100	201 KAR 023:160
321.175	201 KAR 016:701		907 KAR 015:005
	201 KAR 016:702		908 KAR 002:300
	201 KAR 016:750	335.158	201 KAR 023:170
321.181	201 KAR 016:701	335.300	907 KAR 015:005
	201 KAR 016:552		908 KAR 002:300
321.185	201 KAR 016:701	335.500	907 KAR 015:005
321.187	201 KAR 016:701		908 KAR 002:300
321.188	201 KAR 016:701		201 KAR 036:005
321.190	201 KAR 016:510		201 KAR 036:060
	201 KAR 016:512		201 KAR 036:065
	201 KAR 016:501		201 KAR 036:070
	201 KAR 016:051	335.500 – 335.599	201 KAR 036:030
	201 KAR 016:702	335.505	201 KAR 036:045
	201 KAR 016:750		201 KAR 036:060
321.193	201 KAR 016:702		201 KAR 036:065
	201 KAR 016:510	335.515	201 KAR 036:072
321.200	201 KAR 016:701		201 KAR 036:090

KRS SECTION	REGULATION	KRS SECTION	REGULATION
335.525	201 KAR 036:060		501 KAR 003:090
	201 KAR 036:065		501 KAR 003:140
	201 KAR 036:070		501 KAR 007:010
335.527	201 KAR 036:070		501 KAR 007:040
335.535	201 KAR 036:005		501 KAR 007:080
	201 KAR 036:072		501 KAR 007:090
	201 KAR 036:075		501 KAR 013:010
	201 KAR 036:535	441.047	501 KAR 003:090
335.540	201 KAR 036:040		501 KAR 003:140
	201 KAR 036:050	441.055	501 KAR 003:010
335.545	201 KAR 036:050		501 KAR 003:040
	201 KAR 036:090		501 KAR 003:060
	201 KAR 036:090		501 KAR 003:080
335.560	201 KAR 036:100E		501 KAR 003:090
	201 KAR 036:100		501 KAR 003:100
339.500-335.599	739 KAR 002:160		501 KAR 003:140
342.640	902 KAR 020:500		501 KAR 007:010
344.010	104 KAR 001:080		501 KAR 007:040
344.010 – 344.500	104 KAR 001:050		501 KAR 007:080
344.030	101 KAR 001:365		501 KAR 007:090
	780 KAR 003:120		501 KAR 013:010
344.040	104 KAR 001:040	441.075	501 KAR 002:060
344.050	104 KAR 001:040	441.115	501 KAR 003:040
	104 KAR 001:100	441.510	501 KAR 002:060
344.060	104 KAR 001:040	441.560	501 KAR 003:090
	104 KAR 001:100		501 KAR 007:090
344.070	104 KAR 001:040		501 KAR 013:010
344.120	104 KAR 001:100	446.440	202 KAR 007:410
344.130	104 KAR 001:100	514	921 KAR 002:015
344.190	104 KAR 001:010	508.125	902 KAR 045:070
344.360 – 344.385	104 KAR 001:080	527.070	922 KAR 002:100
344.500	104 KAR 001:100	527.100	922 KAR 001:140
344.600 – 344.680	104 KAR 001:080		922 KAR 001:565
344.990	104 KAR 001:050	527.110	922 KAR 001:140
363.610	302 KAR 045:020		922 KAR 001:565
363.900 – 363.908	302 KAR 016:071	532.100	501 KAR 002:060
369.101 – 369.120	907 KAR 001:044		501 KAR 013:010
387	915 KAR 002:010	600 – 645	505 KAR 001:100
	922 KAR 001:565		505 KAR 001:110
387.010	902 KAR 045:065		505 KAR 001:185
	905 KAR 045:070		505 KAR 001:200
387.025	922 KAR 001:140		505 KAR 001:240
387.540	922 KAR 005:070		505 KAR 001:250
400.203	907 KAR 001:044		505 KAR 001:260
403.270 – 403.355	922 KAR 001:145		505 KAR 001:270
	922 KAR 001:565		505 KAR 001:280
405.024	922 KAR 001:565		505 KAR 001:290
405.060	921 KAR 001:410		505 KAR 001:300
405.520	921 KAR 001:420		505 KAR 001:310
407.5101	921 KAR 001:420		505 KAR 001:320
415.208	907 KAR 001:044		505 KAR 001:330
422.317	907 KAR 001:044		505 KAR 001:340
424.57	907 KAR 001:479		505 KAR 001:350
424.260	702 KAR 003:340		505 KAR 001:360
424.290	031 KAR 002:010E		505 KAR 001:370
	031 KAR 002:010		505 KAR 001:380
431	907 KAR 001:044		505 KAR 001:390
431.17	907 KAR 001:044		505 KAR 001:400
431.52	907 KAR 001:044		505 KAR 001:410
431.213 – 431.270	501 KAR 045:310		505 KAR 001:420
431.215	501 KAR 002:060	600.020	922 KAR 001:140
434.840 – 434.860	907 KAR 001:044		922 KAR 001:145
438.305	902 KAR 045:190E		922 KAR 001:360
439.265	505 KAR 001:420		922 KAR 001:495
439.267	505 KAR 001:420		922 KAR 001:565
439.600	505 KAR 001:310		922 KAR 001:580
440.70	907 KAR 001:479	605.100	922 KAR 001:145
440.230	907 KAR 001:479	605.110	505 KAR 001:260
441.005	501 KAR 003:010	605.120	922 KAR 001:565
	501 KAR 013:010	605.130	922 KAR 001:145
441.045	501 KAR 002:060	610.110	922 KAR 001:140
	501 KAR 003:010		922 KAR 001:565
	501 KAR 003:040	610.110	922 KAR 001:145
	501 KAR 003:060	610.125	922 KAR 001:140

KRS SECTION	REGULATION	KRS SECTION	REGULATION
610.127	922 KAR 001:145		907 KAR 001:065
620.020	922 KAR 001:140		907 KAR 001:479
	201 KAR 020:215		907 KAR 003:066
	201 KAR 020:620		907 KAR 015:005
	922 KAR 001:360	45 C.F.R.	902 KAR 020:048
	922 KAR 002:100		902 KAR 020:086
620.010	922 KAR 001:140		907 KAR 001:044
620.020	201 KAR 020:320		907 KAR 001:061
	922 KAR 001:565		907 KAR 001:479
	922 KAR 001:580		910 KAR 001:270
	922 KAR 002:100		921 KAR 001:410
620.030	902 KAR 020:086		921 KAR 001:420
	922 KAR 002:100		921 KAR 003:027
620.045	922 KAR 001:580		922 KAR 001:140
620.050	922 KAR 001:580		922 KAR 001:145
620.060	922 KAR 001:140		922 KAR 002:100
620.090	922 KAR 001:140	47 C.F.R.	202 KAR 006:090
	922 KAR 001:145	49 C.F.R.	922 KAR 002:100
	922 KAR 001:565	50 C.F.R.	301 KAR 001:001
620.140	922 KAR 001:140		302 KAR 045:020
	922 KAR 001:145		401 KAR 045:030
	922 KAR 001:565		921 KAR 003:020
620.142	922 KAR 001:565	7 U.S.C.	401 KAR 045:100
620.170	922 KAR 001:145		921 KAR 003:027
	922 KAR 001:565		202 KAR 006:090
625.040	922 KAR 001:140	9 U.S.C.	106 KAR 004:020
625.090	922 KAR 001:140	10 U.S.C.	201 KAR 027:008
7 C.F.R.	921 KAR 003:020	15 U.S.C.	201 KAR 027:011
	921 KAR 003:095		921 KAR 001:410
	921 KAR 003:027	16 U.S.C.	401 KAR 045:030
	921 KAR 003:100	20 U.S.C.	011 KAR 004:080
	922 KAR 002:100		016 KAR 004:020
9 C.F.R.	302 KAR 022:150		704 KAR 003:550
10 C.F.R.	902 KAR 100:040		705 KAR 004:231
	902 KAR 100:050		702 KAR 007:065
	902 KAR 100:058		921 KAR 003:027
	902 KAR 100:065		922 KAR 002:100
	902 KAR 100:165	21 U.S.C.	201 KAR 020:065
	902 KAR 100:185		201 KAR 002:076
	902 KAR 100:195		921 KAR 003:027
	902 KAR 100:200	25 U.S.C.	922 KAR 001:140
16 C.F.R.	302 KAR 016:071	26 U.S.C.	105 KAR 001:120
	922 KAR 002:100		105 KAR 001:190
20 C.F.R.	921 KAR 002:015		105 KAR 001:390
21 C.F.R.	105 KAR 001:457		105 KAR 001:411
	902 KAR 020:036		105 KAR 001:457
	902 KAR 020:048		301 KAR 005:200
	902 KAR 020:086		908 KAR 001:410
26 C.F.R.	105 KAR 001:390	29 U.S.C.	105 KAR 001:120
28 C.F.R.	104 KAR 001:100		907 KAR 015:005
	902 KAR 045:065		921 KAR 003:020
	902 KAR 045:070	38 U.S.C.	921 KAR 003:020
29 C.F.R.	104 KAR 001:040	42 U.S.C.	104 KAR 001:040
	104 KAR 001:050		105 KAR 001:411
	202 KAR 007:550		401 KAR 051:010
	202 KAR 007:555		501 KAR 003:010
	902 KAR 020:048		705 KAR 004:231
	902 KAR 020:086		902 KAR 020:048
34 C.F.R.	902 KAR 045:065		902 KAR 020:086
	505 KAR 001:185		902 KAR 100:040
	902 KAR 020:086		902 KAR 100:050
	902 KAR 045:070		902 KAR 100:065
31 C.F.R.	921 KAR 001:410		902 KAR 100:185
34 C.F.R.	011 KAR 004:080		902 KAR 100:195
	016 KAR 002:120		902 KAR 100:200
	016 KAR 002:160		907 KAR 001:025
	016 KAR 004:020		907 KAR 001:044
40 C.F.R.	302 KAR 016:071		907 KAR 001:061
	401 KAR 042:250		907 KAR 001:065
	401 KAR 051:010		907 KAR 003:066
42 C.F.R.	902 KAR 020:086		907 KAR 015:100
	902 KAR 020:300		908 KAR 001:410
	907 KAR 001:025		921 KAR 003:020
	907 KAR 001:044		921 KAR 001:410

KRS SECTION REGULATION

KRS SECTION

REGULATION

	921 KAR 001:420
	921 KAR 003:027
	922 KAR 001:360
	922 KAR 002:100
	922 KAR 002:165
42 U.S.C.	922 KAR 001:140
42 U.S.C.	922 KAR 001:140
42 U.S.C.	601 KAR 012:080
42 U.S.C.	922 KAR 005:120
42 U.S.C.	201 KAR 020:065
42 U.S.C.	907 KAR 015:090
42 U.S.C.	907 KAR 015:090
42 U.S.C.	922 KAR 005:120
42 U.S.C.	922 KAR 005:120
42 U.S.C.	922 KAR 001:140
42 U.S.C.	922 KAR 001:140
42 U.S.C.	910 KAR 001:170
42 U.S.C.	921 KAR 002:215
42 U.S.C.	922 KAR 001:565
42 U.S.C.	922 KAR 001:565
42 U.S.C.	922 KAR 001:495
42 U.S.C.	922 KAR 001:145
	922 KAR 001:565
42 U.S.C.	922 KAR 001:495
	922 KAR 001:565
47 U.S.C.	202 KAR 006:090
Ky Acts ch. 78 (2023)	902 KAR 045:190E
Ky Acts ch. 172	030 KAR 010:010
	030 KAR 010:020
	030 KAR 010:030
	030 KAR 010:040
	030 KAR 010:050
	030 KAR 010:060
	030 KAR 010:070
	030 KAR 010:080
	030 KAR 010:090
	030 KAR 010:100
	030 KAR 010:110
	030 KAR 010:120
Ky Acts ch. 173 (2005)	907 KAR 001:061
Ky Acts ch. 335	401 KAR 045:080
Ky Constitution s. 99,152	501 KAR 003:010
	501 KAR 007:010

CERTIFICATION LETTER SUMMARIES

Regulation Number	Letter Filed Date	Action
106 KAR 001:131	12-01-2023	To be amended; filing deadline 06-01-2025
201 KAR 002:045	11/6/2023	To be amended, filing deadline 05-06-2025
201 KAR 023:055	09-06-2023	To be amended, amendment filed 6-28-2023
201 KAR 023:070	04-05-2024	To be amended, filing deadline 10-5-2025
201 KAR 039:001	03-07-2024	To be amended; filing deadline 9-7-2025
201 KAR 039:030	03-07-2024	To be amended; filing deadline 9-7-2025
201 KAR 039:050	03-07-2024	To be amended; filing deadline 9-7-2025
201 KAR 039:070	03-07-2024	To be amended, filing deadline 9-7-2025
301 KAR 002:122	07-14-2023	To be amended, filing deadline 1-4-2025
301 KAR 003:015	03-20-2024	To be amended, filing deadline 9-2-2025
301 KAR 005:040	08-03-2023	To be amended, filing deadline 2-3-2025
705 KAR 004:231	10-11-2023	To be amended, amendment filed 10-11-2023
907 KAR 017:040	04-17-2024	Remain in Effect without Amendment
908 KAR 003:060	04-17-2024	Remain in Effect without Amendment
921 KAR 001:410	10-11-2023	To be amended, amendment filed 10-9-2023
921 KAR 001:420	10-11-2023	To be amended, amendment 8-14-2023
921 KA R001:430	04-17-2024	Remain in Effect without Amendment
922 KA R005:120	03-11-2024	To be amended, amendment filed 12-8-2023
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 before finalized versions of the technically amended regulations are available. To view regulations on the Legislative Research Commission Web site go to <https://apps.legislature.ky.gov/law/kar/titles.htm>.

- ‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).
- † - A nonsubstantive change was made by the Compiler pursuant to KRS 13A.040(9).

Regulation Number	Date Corrected	Regulation Number	Date Corrected
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		
922 KAR 002:280	03-11-2024		

SUBJECT INDEX

Note: Items in *italics* are separate headings within the Subject Index.

911 SERVICES

Permitted disbursements CMRS fund; 202 KAR 006:090

ACCOUNTANCY

Board of Accountancy Scholarship Funding; 201 KAR 001:200
Examination sections, applications, procedures; 201 KAR 001:190
License application; 201 KAR 001:050

ADULT SERVICES

Adult protective services; 922 KAR 005:070
Vulnerable adult maltreatment registry and appeals; 922 KAR 005:120

AIR QUALITY

National Ambient Air Quality Standards
Attainment status designations; 401 KAR 051:010

AGING AND INDEPENDENT LIVING

Older Americans Act supportive services for the elderly; 910 KAR 001:170

AGRICULTURE

Amusement Rides
Business registration and permit; 302 KAR 016:010
Inspection; 302 KAR 016:020
Notification of occurrence; 302 KAR 016:072
Operation; 302 KAR 016:020
Permits; violations, civil penalties, revocations; 302 KAR 016:111
Qualification and registration of persons designated to perform amusement safety inspections; 302 KAR 016:150
Repeal of 302 KAR 016:070; 302 KAR 016:071
Section stop order; 302 KAR 016:030
Violations not immediately correctable; 302 KAR 016:030
General
Public records access of the Department of Agriculture; 302 KAR 002:010
Ginseng
Ginseng Growers Pilot Program; 302 KAR 045:020
Grain
Dealers; 302 KAR 033:010
Warehouse operators; 302 KAR 033:010
Livestock, Fish, and Poultry
Cervids; 302 KAR 022:150

ATHLETICS

See also headings for specific sports
School Terms, Attendance and Operation
Agent designation to manage middle and high school interscholastic athletics; 702 KAR 007:065

ATTORNEY GENERAL, OFFICE OF

Elections
Uniform procedure/timeline for conducting independent inquiries; 040 KAR 010:010

BEHAVIORAL HEALTH

Behavioral Health
Problem gambling assistance account; 908 KAR 002:300
Substance Abuse
Recovery housing; 908 KAR 001:410

BOARDS AND COMMISSIONS

See list below for other possible, specific subject headings:
911 Services (202 KAR Chapter 006)
Accountancy (201 KAR Chapter 001)
Alcohol and Drug Counselors (201 KAR Chapter 022)
Applied Behavior Analysis (201 KAR Chapter 043)
Architects (201 KAR Chapter 019)
Barbering (201 KAR Chapter 014)
Chiropractic Examiners (201 KAR Chapter 021)

Dentistry (201 KAR Chapter 008)
Dietitians and Nutritionists (201 KAR Chapter 033)
Durable Medical Equipment (201 KAR Chapter 047)
Embalmers and Funeral Directors (201 KAR Chapter 015)
Examiners of Psychology (201 KAR Chapter 026)
Fire Commission (739 KAR Chapter 002)
Geologists, Professional (201 KAR Chapter 031)
Landscape Architects (201 KAR Chapter 010)
Licensed Professionals (201 KAR Chapter 036)
Long-Term Care Administrators (201 KAR Chapter 006)
Massage Therapy (201 KAR Chapter 042)
Medical Imaging and Radiation Therapy (201 KAR Chapter 046)
Medical Licensure (201 KAR Chapter 009)
Nursing (201 KAR Chapter 020)
Optometric Examiners (201 KAR Chapter 005)
Pharmacy (201 KAR Chapter 002)
Physical Therapy (201 KAR Chapter 022)
Public Service Commission (807 KAR Chapter 5)
Real Estate Commission (201 KAR Chapter 011)
Speech-Language Pathology and Audiology (201 KAR Chapter 017)
Social Work (201 KAR Chapter 023)
Veterinary Examiners (201 KAR Chapter 016)

BOXING AND WRESTLING

Definitions; 201 KAR 027:005
Fees; 201 KAR 027:008
License requirements; 201 KAR 027:008
Shows, exhibitions:
Boxing; 201 KAR 027:011
Kickboxing; 201 KAR 027:011
Mixed martial arts; 201 KAR 027:016
Wrestling; 201 KAR 027:012

BUILDINGS AND CONSTRUCTION

Enforcement:
Kentucky Building Code; 815 KAR 007:120
Kentucky Residential Code; 815 KAR 007:125

CANNABIS/CANNABINOIDS

Medical Licensure
Standards and procedures for medicinal cannabis practitioners; 201 KAR 009:067
Medicinal Cannabis Program
General
Advertising; 915 KAR 001:090
Cultivator; 915 KAR 001:030
Definitions; 915 KAR 001:001
Dispensary; 915 KAR 001:070
Packaging and labeling; 915 KAR 001:100
Processor; 915 KAR 001:040
Producer; 915 KAR 001:050
Safety compliance facility; 915 KAR 001:060
Testing, quality control; 915 KAR 001:110
Transportation and delivery; 915 KAR 001:080
Patients, Caregivers & Practitioners
Certifications, written; 915 KAR 002:030
Definitions; 915 KAR 002:001
Publication, lists of varieties of medical cannabis; 915 KAR 002:040
Registry identification cards, procedures; 915 KAR 002:010
Supply; limits & equivalency formulas; 915 KAR 002:020
Nursing
Professional standards; 201 KAR 020:067
Public Health: Food and Cosmetics
Hemp-derived products; packaging/labelling; 902 KAR 045:190E

CERTIFICATE OF NEED

Emergency circumstances; 900 KAR 006:080
Nonsubstantive review; 900 KAR 006:075

CHILD SUPPORT

SUBJECT INDEX

Collection and enforcement; 921 KAR 001:410
Distribution; 921 KAR 004:420

CHILD WELFARE

Advocacy centers; standards; 922 KAR 001:580
Child care; private placement; 922 KAR 001:360
Permanency services; 922 KAR 001:140
Service array for relative or fictive kin caregiver; 922 KAR 001:565
Subsidized permanent custody; 922 KAR 001:145
Training requirements for foster parents, adoptive parents, and respite care providers for children in the custody of the cabinet; 922 KAR 001:495

COMMUNITY BASED SERVICES

Aging Services (KAR Title 910)
Child Welfare (922 KAR Chapter 001)
Child Support (922 KAR Chapter 001)
Daycare (922 KAR Chapter 002)
K-TAP, Kentucky Works, Welfare to Work, State Supplementation (921 KAR Chapter 002)
Supplemental Nutrition Assistance Program (921 KAR Chapter 003)

CORRECTIONS

Class D and Class C Felons
Housing procedures for Class C & D felons; 501 KAR 002:060
Jail Standards: Full-service Facilities
Definitions; 501 KAR 003:010
Food services; 501 KAR 003:100
Medical services, full-service jails; 501 KAR 003:090
Personnel, full-service jails; 501 KAR 003:040
Prisoner rights while in custody; 501 KAR 003:140
Sanitation, hygiene in full-service jails; 501 KAR 003:080
Security, control; 501 KAR 003:060
Jail Standards: Life Safety Facilities
Life safety issues; 501 KAR 013:010
Jail Standards: Restricted Custody Center Facilities
Definitions; 501 KAR 007:010
Medical services, restricted custody centers; 501 KAR 007:090
Personnel, restricted custody centers; 501 KAR 007:040
Sanitation, hygiene in restricted custody centers; 501 KAR 007:080

COUNSELING

Compact; 201 KAR 036:100

DAYCARE

Certification of family child-care homes; 922 KAR 002:100
Employee Child Care Assistance Partnership; 922 KAR 002:165

DENTISTRY

See: Boards and Commissions, Dentistry
Licensure; 201 KAR 008:533

EDUCATION

See also: Athletics
Higher Education Assistance Authority (KAR Title 011)
Postsecondary Education (KAR Title 013)

Board of Education

Appeals and hearings; 780 KAR 003:120
Appointments; 780 KAR 003:030
Approval of school district lease agreements; 702 KAR 003:340
Classification plan; 780 KAR 006:010
Compensation plan; 780 KAR 006:020
Diplomas: authentic high school to honorably discharged World War II, Korea, Vietnam veterans; 704 KAR 007:140
Employee evaluations; 780 KAR 003:035
Employee grievances; 780 KAR 003:130
Minimum qualifications; paraprofessionals; 704 KAR 003:550
Pupil attendance; 702 KAR 007:125
Office of Chief State School Officer
Use of local monies to reduce unmet technology need; 701 KAR 005:110
Office of District Support Services

Liability insurance; 702 KAR 003:330
Office of Instruction
The use of a multitiered system of supports; 704 KAR 003:095
Office of Special Instructional Services
General program standards for secondary career and technical education programs; 705 KAR 004:231
Repeal of 780 KAR 002:010; 780 KAR 002:031

EDUCATION PROFESSIONAL STANDARDS

Certification Procedures
Emergency certification & out-of-field teaching; 016 KAR 002:120
Probationary certificates, teachers of exceptional children; 016 KAR 002:160
Requirements, teachers of exceptional children; 016 KAR 004:020
Educator Preparation
Literacy certification programs requirements; 016 KAR 005:060
Out of state educator preparation; 016 KAR 004:030
Teaching Certificates
Interim certificate; 016 KAR 002:240

ELECTIONS

See also: Election Finance (032 KAR Chapter 001)
Attorney General, Office of (040 KAR Chapter 10)
State Board of Elections (KAR Title 031)

ELECTION FINANCE

Practice and Procedure
Advisory opinions; 032 KAR 002:060
Complaints; internally-generated matters; 032 KAR 002:020
Conciliation; 032 KAR 002:050
General provisions; 032 KAR 002:020
Investigatory procedures; 032 KAR 002:040
Records requests; 032 KAR 002:230
Repeal of 032 KAR 002:220; 032 KAR 002:221
Reports and Forms
Campaign finance statements; 032 KAR 1:030
Campaign treasurer; 032 KAR 1:020
Political organization registration; 032 KAR 1:050
Repeal of 032 KAR 001:045 & 070; 032 KAR 001:046
Spending intent; 032 KAR 1:020

EMERGENCY MEDICAL SERVICES

See also: 911 Services Board (201 KAR Chapter 006)
Advanced practice paramedics; 202 KAR 007:410
Equipment standards; 202 KAR 007:550
Fees of the board; 202 KAR 007:030
Ground agencies; 202 KAR 007:555
Vehicle standards; 202 KAR 007:550

ENERGY AND ENVIRONMENT

Conservation (Soil and Water)
Definitions; 416 KAR 001:001
Equipment revolving loans; 416 KAR 001:020
Soil Erosion, Water Quality cost-share fund; 416 KAR 001:010
Public Service Commission
Alternative rate adjustments for electric cooperatives; 807 KAR 005:078

ENVIRONMENTAL PROTECTION

Merchant Electric Generating Facilities (MEGF)
Decommissioning standards; 401 KAR 103:020
Definitions; 401 KAR 103:005
Financial requirements; 401 KAR 103:030
Notification and transfer procedures; 401 KAR 103:010
Special Waste
Conditions applicable to all permits; 401 KAR 045:140
Definitions; 401 KAR 045:010
Financial requirements; bonds for facilities; 401 KAR 045:080
Land application of biosolids; 401 KAR 045:105
Landfarming and composting of; 401 KAR 045:100
Modification, transfer, revocation of permits; 401 KAR 045:040
Obtaining a site or facility permit; 401 KAR 045:030

SUBJECT INDEX

Permit fees; 401 KAR 042:250
Permit review and determination timetables; 401 KAR 045:025
Public information procedures for site or facility permits; 401 KAR 045:050
Surface and groundwater monitoring and corrective action for sites or facilities; 401 KAR 045:160
Types of permits; 401 KAR 045:020
Underground Storage Tanks
Petroleum Storage Tank Environmental Assurance Fund reimbursement; 401 KAR 042:250

FINANCIAL INSTITUTIONS

Examination requirement for individuals advising the public on securities, broker-dealers and agents; 808 KAR 010:260
Required forms, fees, filing procedures, and recordkeeping requirements for persons operating pursuant to KRS 292.411 and KRS 292.412, the Kentucky Intrastate Crowdfunding Exemption; and notice filing requirements for federal crowdfunding offerings; 808 KAR 010:501

FIRE COMMISSION

Reimbursement for line-of-duty stress injury treatment; 739 KAR 002:160

FISH AND WILDLIFE RESOURCES

Fish
Aquatic species, prohibited; 301 KAR 001:122
Aquatic organisms; propagation; 301 KAR 001:115
Commercial Fishing
Gear; 301 KAR 001:146
Open waters; 301 KAR 001:150
Permits, Kentucky & Barkley lakes; 301 KAR 001:140
Requirements; 301 KAR 001:155
Definitions; 301 KAR 001:001
Harvest and sale of invasive carp; 301 KAR 001:152
Fishing methods:
Non-traditional; 301 KAR 001:410
Traditional; 301 KAR 001:201
Transportation of fish; 301 KAR 001:125
Game
Commercial guide license; 301 KAR 002:030
Deer hunting:
Seasons, zones, requirements; 301 KAR 002:172
Wildlife management areas, state parks, public lands, federally-controlled areas; 301 KAR 002:178
Captive cervids; holding transportation of; 301 KAR 002:083
Elk hunting:
Seasons, permits, zones; requirements; 301 KAR 002:132
Seasons, methods and limits for small game; 301 KAR 002:122
Waterfowl; hunting on public lands; 301 KAR 002:222
Hunting and Fishing
Licensing, year-round season for wildlife; 301 KAR 003:030
Public use of conservation camp properties sanctioned by dept; 301 KAR 003:130
Licensing
Definitions; 301 KAR 005:001
License agent applications and agreements; 301 KAR 005:010
License agent requirements; responsibilities; 301 KAR 005:020
License, tag and permit fees; 301 KAR 005:022
Migratory Bird Harvest Information Program; 301 KAR 005:040
Special agency fundraising permits; 301 KAR 005:210
Special commission permits for incorporated nonprofit wildlife conservation organizations; 301 KAR 005:200
Wildlife
Repeal of 301 KAR 004:020 and 050; 301 KAR 004:021

FOOD AND COSMETICS

Hemp-derived products; packaging/labelling; 902 KAR 045:190E
Piercing, 902 KAR 045:070
Tattooing; 902 KAR 045:065

FOOD STAMPS

Supplemental Nutritional Assistance Program (921 KAR

Chapter 003)

GAMBLING

See Sports Wagering (KAR Title 809)

HEALTH AND FAMILY SERVICES

Aging and Independent Living (KAR Title 910)
Behavioral Health (KAR Title 908)
Certificate of Need (900 KAR Chapter 6)
Medicaid Services (KAR Title 907)
State Health Plan (900 KAR Chapter 5)

HEMP

See Cannabis/Cannabinoids

HIGHER EDUCATION ASSISTANCE AUTHORITY

Financial Aid
Student aid applications; 011 KAR 004:080
Grant Programs
Definitions; 011 KAR 005:001
Kentucky Educational Excellence Scholarship Program
Program administration; 011 KAR 015:090
Award determination procedure; 011 KAR 015:040
Qualified workforce training program; 011 KAR 015:110
Registered apprenticeship program; 011 KAR 015:110
Teacher Scholarship Loan Program
Teacher scholarships; 011 KAR 008:030

HORSE RACING COMMISSION

See also: Sports Wagering (KAR Title 809)

Flat and Steeplechase Racing
Declarations; 810 KAR 004:030
Definitions; 810 KAR 004:001
Entries; 810 KAR 004:030
Horses; 810 KAR 004:010
Jockeys and apprentices; 810 KAR 004:070
Owners; 810 KAR 004:090
Running of the race; 810 KAR 004:040
Subscriptions; 810 KAR 004:030
General
Self exclusion; 810 KAR 002:100
Standardbred Development Fund & Standardbred Breeders' Incentive Fund; 810 KAR 002:040
Thoroughbred and flat racing:
Associations; 810 KAR 002:070
Officials; 810 KAR 002:020
Licensing
Racing associations; 810 KAR 003:010

HOUSING

Also see: Buildings and Construction

Housing Corporation
Rural Housing Trust Fund; 202 KAR 002:020

HUMAN RIGHTS

Advertising employment opportunities; 104 KAR 001:040
Advertising licensing opportunities; 104 KAR 001:040
Equal employment opportunities; 104 KAR 001:050
Fair housing; 104 KAR 001:080
Nondiscrimination on the basis of disability; 104 KAR 001:100
Notices and pamphlets; 104 KAR 001:010

INSPECTOR GENERAL (CHFS)

Health Services and Facilities
Operation and services:
General; 902 KAR 020:300
Intermediate care facilities for individuals with intellectual disabilities; 902 KAR 020:086
Nursing homes; 902 KAR 020:048
Personal care homes; 902 KAR 020:036

INSURANCE

Agents, Consultants, Solicitors and Adjusters
Public adjuster filings; 806 KAR 009:400

SUBJECT INDEX

Health Insurance Contracts

Annual report on providers prescribing medication for addiction treatment; 806 KAR 017:590
Independent External Review Program; 806 KAR 017:290

JUSTICE AND PUBLIC SAFETY

Corrections (KAR Title 501)

Internal Investigations Branch

Abuse Investigation

Internal Investigations Branch; 500 KAR 013:020

Juvenile Justice (505 KAR Chapter 001)

JUVENILE JUSTICE

Child Welfare

Activity fund account; 505 KAR 001:390
Allowance; 505 KAR 001:290
Behavior management; 505 KAR 001:400
Cell entry teams; 505 KAR 001:200
Definitions; 505 KAR 001:010
Dietary services; 505 KAR 001:240
Drug screening and testing; 505 KAR 001:250
Emergency response teams; training; 505 KAR 001:200
Furloughs; 505 KAR 001:310
Grievances; 505 KAR 001:270
Grooming; 505 KAR 1:280
Hair; 505 KAR 1:280
Intake and orientation; 505 KAR 001:110
Isolation; 505 KAR 001:410
Leave; 505 KAR 001:310
Library services; 505 KAR 001:320
Mail; 505 KAR 001:380
Personal property; 505 KAR 001:330
Policies and Procedures Manual:
 Detention Services; 505 KAR 001:140
 Health and Safety Services; 505 KAR 001:120
Progressive discipline; 505 KAR 001:400
Protective custody; 505 KAR 001:410
Records and information; 505 KAR 001:300
Recreation; 505 KAR 001:340
Religious practice; 505 KAR 001:350
Releases; 505 KAR 001:310
Searches; 505 KAR 001:360
Telephone use; 505 KAR 001:380
Treatment; 505 KAR 001:370
Visiting; 505 KAR 001:380
Work detail; 505 KAR 001:290
Youthful offenders; 505 KAR 001:420

KENTUCKY

All administrative regulations in this publication relate to Kentucky. If an agency has "Kentucky" at the beginning of its proper name, please skip over "Kentucky" and go to the second word of the proper name for that agency's heading.

K-TAP, KENTUCKY WORKS, WELFARE TO WORK, STATE SUPPLEMENTATION

Supplemental programs for persons who are aged, blind, or have a disability; 921 KAR 002:015

LANDSCAPE ARCHITECTS

Also see: Boards and Commissions

Applications; 201 KAR 010:040
Continuing education; 201 KAR 010:080
Ethics; 201 KAR 010:030
Fees; 201 KAR 010:050
Seals, official use of; 201 KAR 010:070

LAW ENFORCEMENT

Law Enforcement Council

Professional Standards:

Court security officer; 503 KAR 001:140
Peace officer; 503 KAR 001:140
Telecommunicator; 503 KAR 001:140

LICENSED PROFESSIONAL COUNSELORS

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

MATERNAL AND CHILD HEALTH

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

MEDICAID SERVICES

Behavioral Health

Crisis continuum of care; 907 KAR 015:100
Crisis continuum services provided or mediated by an administrative service organization; 907 KAR 015:090
Definitions; 907 KAR 015:005

Payments and Services

Community Health Worker services and reimbursement; 907 KAR 003:310
Nonemergency medical transportation waiver services and payments; 907 KAR 003:066

Private Duty Nursing:

Coverage, provisions & requirements; 907 KAR 013:010
Service or supply reimbursement; 907 KAR 013:015

Psychiatric Residential Treatment Facility Services and Reimbursement

Reimbursement for non-outpatient Level I and II psychiatric residential treatment facility services; 907 KAR 009:010

Services

Coverage provisions and requirements regarding community mental health center behavioral health services; 907 KAR 001:044
Medical supplies, equipment and appliances; 907 KAR 001:479
Payments:
 Ambulance transportation; 907 KAR 001:061
 Price-based nursing facilities; 907 KAR 001:065
 Services provided by various facilities; 907 KAR 001:025

MEDICAL LICENSURE

Standards and procedures for medicinal cannabis practitioners; 201 KAR 009:067

MEDICINAL CANNABIS

See CANNABIS/CANNABINOIDS

MIDWIVES

See Nursing (201 KAR Chapter 020)

MILITARY AFFAIRS

Military Burial Honors Program

Honor Guard and trust fund; 106 KAR 004:020
Kentucky Emergency Response Commission civil penalty assessment and hearings procedure; 106 KAR 001:131

NURSING

Advanced practice registered nurse licensure and certification requirements; 201 KAR 020:056
Continuing competency requirements; 201 KAR 020:215
Continuing education provider approval; 201 KAR 020:220
Continuing evaluation/approval of precicensure RN & LPN programs; 201 KAR 020:360
Professional standards for medicinal cannabis; 201 KAR 020:067
Licensing

SUBJECT INDEX

Applications; 201 KAR 020:370
Compact; 201 KAR 020:475
Medicinal cannabis; professional standards; 201 KAR 020:067
Midwives; licensing requirements; 201 KAR 020:620
Professional standards for prescribing Buprenorphine-MonoProduct or Buprenorphine-Combined-with-Naloxone by ARNPs for medication assisted treatment for opioid disorder; 201 KAR 02:065
Reinstatement of license; 201 KAR 020:225
Scope and standards of practice of advanced practice registered nurses; 201 KAR 020:057
Standards for curriculum of prelicensure RN & LPN programs; 201 KAR 020:320

OFFICE OF DATA ANALYTICS

Data Reporting and Public Use Data Sets
Release of public data sets; 900 KAR 007:040
Reporting by health care providers; 900 KAR 007:030

OPTOMETRIC EXAMINERS

Fees, fines, and forms; 201 KAR 005:005
Telehealth; 201 KAR 005:055

PERSONNEL

Board
Appeal and hearing procedures; 101 KAR 001:365
Disciplinary actions; 101 KAR 001:345
Employee actions; 101 KAR 001:335
Employee grievances and complaints; 101 KAR 001:375
Probationary periods; 101 KAR 001:325
Repeal of 101 KAR 001:395; 101 KAR 001:396
Cabinet, Classified
2024 Plan Year Handbook for the Public Employee Health Insurance Program; 101 KAR 002:210

PHARMACY

Collaborative care agreements; 201 KAR 002:220
Compounding; 201 KAR 002:076
Continuing education; 201 KAR 002:015
Examination; 201 KAR 002:020
Fees; licenses and permits; 201 KAR 002:050
Licensing and permits, fees; 201 KAR 002:050
Licensing: transfer and non-resident; 201 KAR 002:030
Manufacturers requirements for various; 201 KAR 002:320
Non-resident applications and waivers; 201 KAR 002:465
Pharmacist-in-charge; 201 KAR 002:205
Registration of pharmacist interns; 201 KAR 002:040
Special limited pharmacy permit
Charitable; 201 KAR 002:240
Clinical practice; 201 KAR 002:340
Medical gas; 201 KAR 002:225
Third-party logistics providers; requirements; 201 KAR 002:390
Transfer of prescription information; 201 KAR 002:165
Wholesalers; requirements for various; 201 KAR 002:105

PHYSICAL THERAPY

Compact Commission; 201 KAR 022:170
Ethics and standards of practice for physical therapists and physical therapist assistants; 201 KAR 022:053

POSTSECONDARY EDUCATION

Healthcare
Program incentives; 013 KAR 005:020
Training scholarships; 013 KAR 005:010

PUBLIC HEALTH

Food and Cosmetics (902 KAR Chapter 45)
Maternal and Child Health (902 Chapter 004)
Radiology (902 KAR Chapter 100)

PUBLIC PENSIONS

General Rules
Administrative hearing; 105 KAR 001:215
Agency communications; 105 KAR 001:470

Definitions; 105 KAR 001:001
Employment after retirement; 105 KAR 001:390
Federal tax withholding or direct rollover of eligible distributions; 105 KAR 001:270
Hospital and medical insurance for retired members and KY Retirement Systems Insurance Fund Trust; 105 KAR 001:411
In line of duty Hazardous Retirement Disability Benefits; 105 KAR 001:455
In-Line-of-Duty Survivor Benefits; 105 KAR 001:457
Merged, split, new, separate, or separated employers or entities; 105 KAR 001:148
Participation, County Employees Retirement System employers; 105 KAR 001:120
Qualified domestic relations orders; 105 KAR 001:190

RADIOLOGY

Employees; notices, reports, instructions; 902 KAR 100:165
Irradiators; licensing and radiation safety requirements; 902 KAR 100:200
Licenses:
General; 902 KAR 100:050
Special nuclear material; 902 KAR 100:195
Specific products; 902 KAR 100:058
Specific; 902 KAR 100:040
Reciprocal recognition; 902 KAR 100:065
Protection from radioactive materials standards; 902 KAR 100:185
Protection standards; 902 KAR 100:019

RETIREMENT

See *Public Pensions (KAR Title 105)*
Teachers' Retirement System (KAR Title 102)

SECRETARY OF STATE

Address Confidentiality Program
Repeal of 030 KAR 006:011; 030 KAR 006:012
Fees
Standard form for occupational license fee return; 030 KAR 007:011
Safe at Home Program
Age of majority; 030 KAR 010:100
Appeal; 030 KAR 010:040
Application; 030 KAR 010:020
Application assistant training, designation; 030 KAR 010:050
Cancellation; 030 KAR 010:040
Certification; 030 KAR 010:020
Definitions; 030 KAR 010:010
Notification:
Expiration; 030 KAR 010:030
Recertification; 030 KAR 010:030
Participant privileges; 030 KAR 010:090
Recognition of certification in other state; 030 KAR 010:120
Release of information to:
Criminal justice officials or agencies; 030 KAR 010:060
Schools (enrollment and records); 030 KAR 010:070
Service of process; 030 KAR 010:110
Substitute address; 030 KAR 010:080
Withdrawal; 030 KAR 010:040

SOCIAL WORK

Inactive status; 201 KAR 23:055
Telehealth; 201 KAR 023:170
Temporary permission to practice; 201 KAR 023:160

SPORTS WAGERING

Licensing
Occupational licenses; 809 KAR 001:003
Service provider licensing; 809 KAR 001:002
Technical Criteria
Accounts; 809 KAR 010:004
Advertising; responsible; 809 KAR 010:007
Audit and internal control standards; 809 KAR 010:006
Definitions; 809 KAR 010:001
Disciplinary actions; hearings; 809 KAR 010:008

SUBJECT INDEX

Gaming; responsible; 809 KAR 010:007
Licensed premises; 809 KAR 010:005
Standards; 809 KAR 010:002
Technical requirements and oversight; 809 KAR 010:003

SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP)

Elderly Simplified Application Project (ESAP); 921 KAR 003:095
Financial requirements; 921 KAR 003:020
Technical requirements; 921 KAR 003:027
Transitional benefit alternative; 921 KAR 003:100

STATE BOARD OF ELECTIONS

Electronic Voting Systems
Preparation of ballots and voting systems prior to election day;
031 KAR 002:010
Forms and Procedures
Consolidation of precincts; election officers; 031 KAR 004:196
Recount procedures; 031 KAR 004:220
Statewide Voter Registration
Electronic voter registration system; 031 KAR 003:041
Voting
Ballot standards and election security; 031 KAR 005:026
Eligibility of voters; 031 KAR 005:040

STATE HEALTH PLAN

Facilities and services, 900 KAR 005:020

TRANSPORTATION

Driver's License
Drivers license or personal ID renewal or replacement for
persons without an established and fixed nighttime residence;
601 KAR 012:080
Highways
Vegetation management; 603 KAR 005:155
Motor Vehicle Licensing
Application forms, KY Electronic License Title Entity; 601 KAR
023:040

VETERANS' AFFAIRS

Veterans' Programs
Kentucky Women Veterans Program and coordinating
committee, administrative procedures; 017 KAR 006:020
Kentucky Wounded or Disabled Veterans Program,
administrative procedures; 017 KAR 006:030

VETERINARY EXAMINERS

Animal control agencies:
Drug limitations; 201 KAR 016:552
Fees; 201 KAR 016:514
Restricted controlled substances certificate; 201 KAR 016:550
Euthanasia specialist certification; 201 KAR 16:560
Fees:
Animal control agencies; 201 KAR 016:514
Animal euthanasia specialists; 201 KAR 016:514
Other; 201 KAR 016:516
Veterinarians; 201 KAR 016:510
Veterinary technicians; 201 KAR 016:512
Medical records standards; 201 KAR 016:701
Surgery standards; 201 KAR 016:702
Technicians, licensed; 201 KAR 016:750

WRESTLING

See Boxing and Wrestling (201 KAR Chapter 27)

SUBJECT INDEX