



ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, June 14, 2024

MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet on July 9, 2024 at 1:00 p.m. in room 149 Capitol Annex. **ARRS Tentative Agenda – 1** [Online agenda updated as needed](#)

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The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2018 Edition of the **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

HOW TO CITE: Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Register Year number and Page number. Example: 51st Year of the Kentucky Register, page 318 (short form: 51 Ky.R. 318).

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

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

ADMINISTRATIVE REGISTER OF KENTUCKY

(ISSN 0096-1493)

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

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

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all of the administrative regulations that may be removed to complete the public comment process or deferred or withdrawn by promulgating agencies.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



Administrative Regulation Review Subcommittee
TENTATIVE Meeting Agenda
Tuesday, July 9, 2024 at 1 p.m.
Annex Room 149



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

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011 KAR 004:080. Student aid application.

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011 KAR 015:090. Kentucky Educational Excellence Scholarship (KEES) program.

011 KAR 015:110. Scholarships for Registered Apprenticeship and Qualified Workplace Training programs.

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013 KAR 002:120E. Comprehensive funding model for the allocation of state general fund appropriations to public universities. (Filed with Ordinary) ("E" expires 01-25-2025)

013 KAR 002:130E. Comprehensive funding model for the allocation of state general fund appropriations to Kentucky Community and Technical College System institutions. (Filed with Ordinary) ("E" expires 01-25-2025)

EDUCATION AND LABOR CABINET

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016 KAR 002:160. Probationary certificate for teachers of exceptional children. (Deferred from May)

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Electronic Voting Systems

031 KAR 002:010E. Preparation of ballots and voting systems prior to election day. (Filed with Ordinary) ("E" expires 01-10-2025) (Comments Received, SOC due 06-14-2024)

031 KAR 002:010. Preparation of ballots and voting systems prior to election day. (Filed with Emergency)

Statewide Voter Registration

031 KAR 003:041E. Electronic Voter Registration System. (Filed with Ordinary) ("E" expires 01-10-2025) (Comments Received, SOC due 06-14-2024)

031 KAR 003:041. Electronic Voter Registration System. (Filed with Emergency)

Forms and Procedures

031 KAR 004:031E. Reporting. (Filed with Ordinary) ("E" expires 01-10-2025) (Comments Received, SOC due 06-14-2024)

031 KAR 004:031. Reporting. (Filed with Emergency)

031 KAR 004:220E. Recount procedures. (Filed with Ordinary) ("E" expires 01-10-2025) (Comments Received, SOC due 06-14-2024)

031 KAR 004:220. Recount procedures. (Filed with Emergency)

Voting

031 KAR 005:026E. Ballot standards and election security. (Filed with Ordinary) ("E" expires 01-10-2025) (Comments Received, SOC due 06-14-2024)

031 KAR 005:026. Ballot standards and election security. (Filed with Emergency)

031 KAR 005:040E. Questions regarding voter eligibility. (Filed with Ordinary) ("E" expires 01-10-2025) (Comments Received, SOC due 06-14-2024)

031 KAR 005:040. Questions regarding voter eligibility. (Filed with Emergency)

OFFICE OF THE ATTORNEY GENERAL

Department of Law

Criminal Investigations

040 KAR 010:010. Uniform procedure and timeline for conducting independent election inquiries. (Deferred from June)

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101 KAR 001:335. Employee actions.

101 KAR 001:345. Disciplinary actions.

101 KAR 001:375. Employee grievances and complaints.

101 KAR 001:396. Repeal of 101 KAR 001:395.

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**Kentucky Public Pensions Authority
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- 105 KAR 001:001. Definitions.
- 105 KAR 001:120. Participation of County Employees Retirement System employers.
- 105 KAR 001:190. Qualified domestic relations orders.
- 105 KAR 001:411. Hospital and medical insurance for retired members and Kentucky Retirement Systems Insurance Fund Trust.

BOARDS AND COMMISSIONS

Board of Pharmacy

- 201 KAR 002:015. Continuing education.
- 201 KAR 002:030. License transfer and Non-Resident Pharmacist License.
- 201 KAR 002:050. License and permits; fees.
- 201 KAR 002:465. Non-Resident Pharmacy Applications and Waivers.

Board of Licensure for Occupational Therapy

- 201 KAR 028:240E. Occupational Therapy Licensure Compact. (Filed with Ordinary) ("E" expires 02-08-2025)

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911 Services Board

- 202 KAR 006:090. Permitted uses by PSAPs for CMRS funds. (Deferred from June)

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- 301 KAR 001:152. Harvest and sale of invasive carp.

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- 301 KAR 005:022. License, tag, and permit fees.

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Office of the Secretary

- 501 KAR 006:330E. Corrections policies and procedures; personnel. (Filed with Ordinary) ("E" expires 02-09-2025)
- 501 KAR 006:430E. Corrections policies and procedures: communication, mail, and visiting. (Filed with Ordinary) ("E" expires 02-09-2025)

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- 501 KAR 013:010. Life safety issues. (Deferred from May)

EDUCATION AND LABOR CABINET

Board of Education

Office of Instruction

- 704 KAR 003:550. Minimum qualifications for paraprofessionals.

Office of Learning Support Services

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

Department for Technical Education

Management of the Kentucky TECH System

- 780 KAR 002:031. Repeal of 780 KAR 002:010.

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- 780 KAR 006:010. Classification plan.
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Department of Workers' Claims

- 803 KAR 025:089E. Workers' compensation medical fee schedule for physicians. (Filed with Ordinary) ("E" expires 02-08-2025)

PUBLIC PROTECTION CABINET

Department of Financial Institutions

Securities

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

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815 KAR 007:120. Kentucky Building Code. (Not Amended After Comments)

815 KAR 007:125. Kentucky Residential Code. (Not Amended After Comments)

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Food and Cosmetics

902 KAR 045:001E. Definitions for hemp-derived cannabinoid products. (Filed with Ordinary) ("E" expires 01-19-2025)

902 KAR 045:012E. Hemp-derived cannabinoid product retail and food service establishment requirements. (Filed with Ordinary) ("E" expires 01-19-2025)

902 KAR 045:021E. Hemp-derived cannabinoid products registration, processing, manufacturing, storage and distribution requirements. (Filed with Ordinary) ("E" expires 01-19-2025)

902 KAR 045:031E. Hemp-derived cannabinoid product sampling and testing requirements. (Filed with Ordinary) ("E" expires 01-19-2025)

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. (Amended After Comments)

Office of the Secretary

Medicinal Cannabis Program

915 KAR 001:001. Definitions for 915 KAR Chapter 1. (Amended After Comments) (Deferred from June)

915 KAR 001:010E. Initial and renewal applications for cannabis business licenses. (Filed with Ordinary) ("E" expires 01-13-2025)

915 KAR 001:020E. Cannabis business licenses. (Filed with Ordinary) ("E" expires 01-13-2025)

915 KAR 001:030. Cultivator. (Amended After Comments) (Deferred from June)

915 KAR 001:040. Processor. (Amended After Comments) (Deferred from June)

915 KAR 001:050. Producer. (Not Amended After Comments) (Deferred from June)

915 KAR 001:060. Safety compliance facility. (Amended After Comments) (Deferred from June)

915 KAR 001:070. Dispensary. (Amended After Comments) (Deferred from June)

915 KAR 001:080. Transportation and delivery of medicinal cannabis. (Amended After Comments) (Deferred from June)

915 KAR 001:090. Advertising. (Amended After Comments) (Deferred from June)

915 KAR 001:100. Packaging and labeling of medicinal cannabis. (Amended After Comments) (Deferred from June)

915 KAR 001:110. Medicinal cannabis testing. (Amended After Comments) (Deferred from June)

Patients, Caregivers, and Practitioners

915 KAR 002:001. Definitions for 915 KAR Chapter 2. (Deferred from June)

915 KAR 002:010. Procedures for registry identification cards. (Amended After Comments)

915 KAR 002:020. Supply limits and equivalency formula. (Not Amended After Comments)

915 KAR 002:030. Written certifications. (Amended After Comments)

915 KAR 002:040. Procedures to publish list of varieties of medicinal cannabis. (Deferred from June)

3. REGULATIONS REMOVED FROM JULY'S AGENDA

BOARDS AND COMMISSIONS

Board of Pharmacy

201 KAR 002:220. Collaborative care agreements. (Comments Received, SOC ext.; due 07-15-2024)

Board of Nursing

201 KAR 020:320. Standards for curriculum of prelicensure registered nurse and practical nurse programs. (Comments Received, SOC ext.; due 07-15-2024)

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Behavioral Health

907 KAR 015:100. Crisis Continuum of Care. (Withdrawn by Agency; 06-05-2024)

Expiration dates in this document have been determined pursuant to KRS Chapter 13A provisions. Other statutes or legislation may affect a regulation's actual end date.

STANDARD ADMINISTRATIVE REGULATION REVIEW PROCEDURE
Overview for Regulations Filed under KRS Chapter 13A As Amended by 2021 Legislation

(See KRS Chapter 13A for specific provisions)

Filing and Publication

Administrative bodies shall file all proposed administrative regulations with the Regulations Compiler. Filed regulations shall include public hearing and comment period information; a regulatory impact analysis and tiering statement; a fiscal note 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.

REPRINT

This administrative regulation was originally published in 50 Ky.R. 2453; however the Amended After Comments changes were inadvertently omitted. The Amended After Comments version of this administrative regulation is being published here in its entirety.

**CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary
(Amended After Comments)**

915 KAR 1:110. Medicinal cannabis testing.

RELATES TO: KRS Chapter 218B

STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing requirements for random sample testing of medicinal cannabis to ensure quality control. This administrative regulation establishes those requirements and procedures.

Section 1. General Requirements.

(1) To ensure the suitability and safety for human consumption of medicinal cannabis and medicinal cannabis products, cultivators, processors, and producers shall test medicinal cannabis in accordance with Section 2 of this administrative regulation.

(2) No laboratory may test medicinal cannabis under this administrative regulation without being issued a license to operate as a safety compliance facility. A safety compliance facility shall only send medicinal cannabis samples for testing to another licensed safety compliance facility in the Commonwealth.

(3) Batch size.

(a) Cultivators and producers shall separate all harvested medicinal cannabis into harvest batches not to exceed ~~twenty (20)~~~~fifteen (15)~~ pounds with the exception of any raw plant material to be sold to a processor or producer for the purposes of turning the raw plant material into concentrate which may be separated into harvest batches of no more than fifty (50) pounds.

(b) Processors and producers shall separate all medicinal cannabis product into production batches not to exceed ~~five (5)~~~~four (4)~~ liters of liquid medicinal cannabis concentrate or nine (9) pounds for nonliquid medicinal cannabis products and, for final medicinal cannabis products, no greater than 1,000 grams of delta-9-tetrahydrocannabinol.

(4) An authorized cannabis business employee or agent collecting any samples for testing shall follow the standard operating procedures established by the contracted safety compliance facility conducting the testing for:

- (a) Sampling; and
- (b) Documenting the chain of custody.
- (5) Testing frequency.

(a) Harvest batch samples shall be obtained and tested post-harvest and prior to sell, transfer, or delivery of the medicinal cannabis from the respective harvest batch.

(b) Production batch samples shall be obtained and tested in their final form prepackaging and prior to sale, transfer, or delivery of the medicinal cannabis from the respective production batch.

(6) Prohibitions.

(a) Cultivators and producers shall not sell, transfer, or deliver any medicinal cannabis from a harvest batch to a dispensary, processor, cultivator, or producer until a sample of the harvest batch has passed all tests required by Section 2 of this administrative regulation.

(b) Processors and producers shall not sell, transfer, or deliver any medicinal cannabis from a production batch to a dispensary, processor, cultivator, or producer until a sample of the production batch has passed all tests required by Section 2 of this administrative regulation.

(c) Dispensaries shall not dispense or sell medicinal cannabis to cardholders until a sample of its harvest or production batch has passed all tests required by Section 2 of this administrative regulation.

(d) Following the collection of a sample from a harvest batch or

production batch, medicinal cannabis shall not undergo any additional processing, transforming, or other changes that alter the substance of the medicinal cannabis or otherwise would result in different test results. Any medicinal cannabis that undergoes additional processing, transforming, or other changes that alters the substance of the medicinal cannabis following sample collection shall be tested as required by Section 2 of this administrative regulation prior to any sale, transfer, or delivery to a dispensary, processor, or producer.

(7) The cabinet may select and collect a sample or test sample from a cannabis business at any time. The cabinet may require a cultivator, processor, producer, or dispensary to submit a sample or test sample to a safety compliance facility upon request when the cabinet has reason to believe the medicinal cannabis is unsafe for cardholder consumption or inhalation or has not been tested in accordance with KRS Chapter 218B and Section 2 of this administrative regulation. A cultivator, processor, producer, or dispensary shall provide the samples for testing at their own expense.

(8) Except as authorized in Section 5 of this administrative regulation, cannabis businesses shall properly dispose of and shall not use, sell, or otherwise transfer medicinal cannabis that fails to meet any testing standard or requirement set forth in this administrative regulation. Cannabis businesses shall dispose of this medicinal cannabis waste in accordance with the 915 KAR 1:030, 915 KAR 1:040, 915 KAR 1:060, and 915 KAR 1:070, as applicable.

Section 2. Medicinal Cannabis Tests.

(1) In accordance with Section 3 of this administrative regulation, finished medicinal cannabis products intended for sale by dispensaries to cardholders shall be tested for:

- (a) Tetrahydrocannabinol (THC) and cannabinoid concentration;
- (b) Terpenoid type and concentration;
- (c) Residual solvents and processing chemicals (for production batches);
- (d) Residual pesticides;
- (e) Heavy metals;
- (f) Microbial impurities;
- (g) Mycotoxins;
- (h) Water activity (for harvest batches);
- (i) Yeast and mold; and
- (j) Vitamin E acetate.

(2) The cabinet may conduct additional tests on samples or test samples at its discretion.

(3) For harvest batches consisting of raw plant material not intended for sale to cardholders in its current form, the following tests shall be performed prior to sale or transfer of the harvest batch to another licensed cannabis business:

- (a) Residual pesticides; and
- (b) THC and cannabinoid concentration.

(4) For production batches consisting of non-finished medicinal cannabis products not intended for sale to cardholders in its current form, the following tests shall be performed prior to sale or transfer of the production batch to another licensed cannabis business:

- (a) Residual solvents and processing chemicals;
- (b) Heavy metals; and
- (c) THC and cannabinoid concentration.

(5) Harvest batches and production batches tested pursuant to subsections (3) and (4) of this Section that pass those tests shall not be required to be retested for those items in their final form if those batches were not physically or chemically altered following the prior sale or transfer.

Section 3. Maximum Allowable Limits for Medicinal Cannabis Tests.

(1) Cannabinoid and terpenoid concentration. KRS Chapter

218B, specifically KRS 218B.095, KRS 218B.105, KRS 218B.115, and KRS 218B.120, establishes the maximum delta-9 tetrahydrocannabinol content for raw plant material and medicinal cannabis products in the Commonwealth. Cultivators, processors, and producers shall test harvest batch and production batch samples for levels of total THC and cannabinoid concentration and terpenoid type and concentration.

(a) For THC and cannabinoid concentration, the testing shall include:

1. Total THC;
2. Total cannabidiol (CBD);
3. Total cannabinoids;
4. Tetrahydrocannabinolic acid (THCa);
5. Delta-9-tetrahydrocannabinol (Delta-9-THC);
6. Delta-8-tetrahydrocannabinol (Delta-8-THC);
7. Cannabidiolic acid (CBDA);
8. Cannabidiol (CBD);
9. Cannabinol (CBN);
10. Cannabigerolic acid (CBGa);
11. Cannabigerol (CBG);
12. Tetrahydrocannabinavarin (THCV);
13. Cannabichromene (CBC);

(b) For terpenoid type and ~~[concentrate]~~ concentration, the testing shall **establish the percentage of total terpenes and the most prevalent terpenes expressed in the sample.**~~[include:]~~

- ~~[1.] [Total terpenes;]~~
- ~~[2.] [Limonene;]~~
- ~~[3.] [Myrcene;]~~
- ~~[4.] [Pinene;]~~
- ~~[5.] [Linalool;]~~
- ~~[6.] [Eucalyptol;]~~
- ~~[7.] [Delta-terpinene (terpinolene);]~~
- ~~[8.] [Caryophyllene]~~
- ~~[9.] [Nerolidol;]~~
- ~~[10.] [Humulene;]~~
- ~~[11.] [Bisabolol;]~~
- ~~[12.] [Camphene;]~~
- ~~[13.] [Delta-3-Carene;]~~
- ~~[14.] [Borneol;]~~
- ~~[15.] [Geraniol; and]~~
- ~~[16.] [Terpineol;]~~

(c) In accordance with KRS 218B.140(1)(c)(9), cultivators and producers shall track the terpene content of the twelve (12) major terpenoids within each strain of medicinal cannabis that they cultivate in the Commonwealth and provide a written summary of this information to the cabinet upon request.

(2) Residual solvents and processing chemicals. Production batch samples shall be tested for residual solvents and processing chemicals and shall not exceed the maximum allowable concentration for each solvent or chemical used as set forth in Appendix A, which is incorporated by reference.

(3) Residual Pesticides. Harvest batch samples and production batch samples shall be tested for residual pesticides and shall not exceed the maximum allowable concentration for each pesticide used as set forth in Appendix B, which is incorporated by reference.

(4) Heavy Metals. All harvest batch and production batch samples shall be tested for heavy metals, which shall include arsenic, cadmium, lead, and mercury, as follows:

(a) For inhaled medicinal cannabis products, including administration by metered dose nasal spray or pressurized metered dose inhaler, harvest and production batches shall be tested for the following heavy metal analytes and shall comply with the maximum allowable concentration:

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

(b) For medicinal cannabis products not intended to be inhaled, harvest and production batches shall be tested for the following

heavy metal analytes and shall comply with the maximum allowable concentration:

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

(5) Microbial impurities. Harvest batch samples and production batch samples shall be tested for the presence of microbial impurities. Harvest batch and production batch samples shall be deemed to have passed the microbial impurities testing if the following conditions are met:

- (a) Total *Escherichia coli* is not detected above one hundred (100) colony forming units/gram;
- (b) Shiga toxin-producing *Escherichia coli* is not detected in one (1) gram;
- (c) *Salmonella* spp. is not detected in one (1) gram; and
- (d) Pathogenic *Aspergillus* species *A. fumigatus*, *A. flavus*, *A. niger*, and *A. terreus* are not detected in one (1) gram.

(6) Mycotoxins. Harvest batch and production batch samples shall be tested for the following mycotoxins: aflatoxin B1, B2, G1, and G2 ochratoxin A. A production batch shall be deemed to have passed mycotoxin testing if the following conditions are met:

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

(7) Water activity. Harvest batch samples shall be tested to determine the level of water activity. Harvest batch samples shall have a water activity (aw) rate of less than 0.65.

(8) Yeast and mold. Harvest batch and production batch samples shall be tested to determine the level of yeast and mold. Harvest batch and production batch samples shall have a total combined yeast and mold not to exceed ~~10,000~~**100,000** colony forming units per gram.

(9) Vitamin E acetate. ~~[Harvest batches and]~~ Production batches shall be tested for any detectable level of vitamin E acetate.

Section 4. Failed Testing.

(1) A harvest batch or production batch sample that fails any initial testing may be reanalyzed by the safety compliance facility using the reserve sample for that harvest or production batch.

~~(2) [If the reserve sample passes the required testing, an authorized cannabis business employee or agent shall resample the harvest batch or production batch in question and send the new sample to a different safety compliance facility than the one that performed the initial testing. In order for the harvest batch or production batch in question to pass testing under this administrative regulation, the new safety compliance facility shall test the resample and confirm the resample passed all required tests.]~~

~~[(3)]~~ A harvest batch or production batch shall fail testing if the respective sample exceeds any maximum allowable limit established in Section 3 of this administrative regulation or the maximum allowable delta-9 tetrahydrocannabinol content for raw plant material and medicinal cannabis products established in KRS Chapter 218B:

- (a) During an initial test where no reanalysis is requested; or
- (b) Upon reanalysis as described in this section.

~~[(3)]~~~~(4)~~ If a harvest batch or production batch sample fails a test or a reanalysis, the harvest batch or production batch:

- (a) May be remediated or sterilized if allowed by Section 5 of this administrative regulation; or
- (b) If it cannot be remediated or sterilized in accordance with Section 5 of this administrative regulation, the harvest or production batch shall be deemed medicinal cannabis waste and destroyed by the cultivator, processor, or producer in accordance with 915 KAR 1:030 or 915 KAR 1:040 as applicable for their respective business.

~~[(4)]~~~~(5)~~ Medicinal cannabis from a harvest or production batch that failed testing shall not be combined with another harvest or production batch. Mixed products shall be considered adulterated

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and shall not be sold, transferred, or otherwise delivered to a cannabis business.

Section 5. Remediation.

(1) THC concentration.

(a) If a harvest batch sample exceeds the THC content limit imposed on raw plant material in KRS 218B.095, KRS 218B.105, 218B.115, or 218B.120, the harvest batch shall be deemed medicinal cannabis waste and destroyed by the cultivator or producer in accordance with 915 KAR 1:030.

(b) If a production batch sample exceeds the THC content limits imposed on edibles, oils, tincture, and other medicinal cannabis products by KRS 218B.095, 218B.115, or 218B.120, the production batch may be remediated using procedures that would reduce the concentration of THC to allowable levels provided that the remediation method does not impart any toxic or deleterious substance to the medicinal cannabis in the production batch.

(c) A production batch that is remediated in accordance with this subsection shall be sampled and tested in accordance with Sections 2 and 3 of this administrative regulation.

(d) A processor or producer shall inform the safety compliance facility conducting the retesting prior to samples being taken that the production batch has previously failed testing and is being retested after undergoing remediation. Any remediation methods or remediation solvents used on the production batch being retested shall be disclosed to the safety compliance facility conducting the retesting.

(e) A production batch that exceeds the required THC content limits that is not remediated or that if remediated fails testing shall be deemed medicinal cannabis waste and destroyed by the processor or producer in accordance with 915 KAR 1:040.

(2) Residual solvents and processing chemicals.

(a) If a production batch sample fails residual solvent testing, the production batch may be remediated using procedures that would reduce the concentration of solvents to less than the action level provided that the remediation method does not impart any toxic or deleterious substance to the medicinal cannabis in the production batch.

(b) A production batch that is remediated in accordance with this subsection shall be sampled and tested in accordance with Sections 2 and 3 of this administrative regulation.

(c) A processor or producer shall inform the safety compliance facility conducting the retesting prior to samples being taken that the production batch has previously failed testing and is being retested after undergoing remediation or decontamination. Any remediation methods or remediation solvents used on the production batch being retested shall be disclosed to the safety compliance facility conducting the retesting.

(d) A production batch that fails solvent testing that is not remediated or that if remediated fails testing shall be deemed medicinal cannabis waste and destroyed by the processor or producer in accordance with the 915 KAR 1:040.

(3) Residual Pesticides. A harvest batch or production batch that fails residual pesticide testing shall be deemed medicinal cannabis waste and destroyed by the cultivator, processor, or producer in accordance with 915 KAR 1:030 or 915 KAR 1:040 as applicable for their respective business.

(4) Heavy metals. A harvest batch or production batch that fails heavy metals testing shall be deemed medicinal cannabis waste and destroyed by the cultivator, processor, or producer in accordance with the 915 KAR 1:030 or 915 KAR 1:040 as applicable for their respective business.

(5) Microbial impurities.

(a) If a harvest batch or production batch sample fails microbial impurities testing, the harvest batch or production batch may be further processed if the processing method effectively sterilizes the batch and does not impart any toxic or deleterious substance to the medicinal cannabis in the batch.

(b) A harvest batch or production batch that is sterilized in accordance with this subsection shall be sampled and tested in accordance with Sections 2 and 3 of this administrative regulation.

(c) A cultivator, processor, or producer shall inform the safety compliance facility conducting the retesting prior to samples being

taken that the harvest or production batch has previously failed testing and is being retested after undergoing sterilization. Any sterilization methods or sterilization solvents used on the harvest or production batch being retested shall be disclosed to the safety compliance facility conducting the retesting.

(d) A harvest batch or production batch that fails microbiological contaminant testing after undergoing a sterilization process in accordance with this subsection shall be deemed medicinal cannabis waste and destroyed by the cultivator, processor, or producer in accordance with 915 KAR 1:030 or 915 KAR 1:040 as applicable for their respective business.

(6) Mycotoxins. A harvest batch or production batch that fails mycotoxins testing shall be deemed medicinal cannabis waste and destroyed by the cultivator, processor, or producer in accordance with 915 KAR 1:030 or 915 KAR 1:040 as applicable for their respective business.

(7) Water activity. If a harvest batch sample fails water activity testing, the harvest batch may be further dried and cured by the cultivator or producer. A harvest batch that is further dried and cured shall be sampled and retested in accordance with Sections 2 and 3 of this administrative regulation.

(8) Yeast and mold. A harvest batch or production batch sample that fails yeast and mold testing shall be deemed medicinal cannabis waste and destroyed by the cultivator, processor, or producer in accordance 915 KAR 1:030 or 915 KAR 1:040 as applicable for their respective business.

(9) Vitamin E acetate. A harvest batch or production batch that fails vitamin E acetate testing shall be deemed medicinal cannabis waste and destroyed by the cultivator, processor, or producer in accordance with 915 KAR 1:030 or 915 KAR 1:040 as applicable for their respective business.

(10) Where remediation is allowed, a harvest or production batch shall only be remediated twice. If the harvest or production batch fails testing after a second remediation attempt and the second retesting, the harvest or production batch shall be deemed medicinal cannabis waste and destroyed by the cultivator, processor, or producer in accordance with 915 KAR 1:030 or 915 KAR 1:040 as applicable for their respective business.

(11) Prior to taking any remediation efforts, cultivators, processors, and producers shall:

(a) Create and maintain detailed written procedures for all remediation processes used by the cannabis business and provide those procedures to the cabinet upon request within three (3) business days of receiving the request or during an inspection; and

(b) Document all remediation, sterilization, resampling, retesting, and disposal of medicinal cannabis that fails testing required by Section 2 of this administrative regulation.

Section 6. Certificate of Analysis.

(1) A safety compliance facility shall:

(a) Generate a certificate of analysis (COA) for each harvest batch and production batch sample that the safety compliance facility analyzes; and

(b) Ensure the COA contains the results of all required analyses performed for the harvest batch or production batch sample.

(2) The COA shall contain, at minimum:

(a) The safety compliance facility's name, address, and license number;

(b) The cultivator, processor, or producer's name, address, and license number;

(c) The harvest batch or production batch number from which the sample was obtained;

(d) Sample identifying information, including matrix type and unique sample identifiers;

(e) Sample history, including the date collected, the date received by the safety compliance facility, and the date of all sample analyses and corresponding testing results;

(f) The analytical methods, analytical instrumentation used, and corresponding limit of detection (LOD) and limits of quantitation (LOQ);

(g) An attestation from an authorized employee of the safety compliance facility that all testing required by Section 2 of this administrative regulation was performed; and

(h) Analytes detected during the analyses of the harvest batch or production batch sample that are unknown, unidentified, or injurious to human health if consumed, if any.

(3) The safety compliance facility shall report test results for each representative harvest batch or production batch sample on the COA as an overall "pass" or "fail" for the entire batch.

(a) When reporting qualitative results for each analyte, the safety compliance facility shall indicate "pass" or "fail";

(b) When reporting quantitative results for each analyte, the testing facility shall use the appropriate units of measurement for testing the analyte;

(c) When reporting results for each test method, the testing facility shall indicate "pass" or "fail";

(d) When reporting results for any analytes that were detected below the analytical method LOQ, indicate "<LOQ," notwithstanding cannabinoid and terpenoid results;

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

(f) Indicate "NT" for any test that the safety compliance facility did not perform.

(4) The safety compliance facility shall retain a reserve sample for each harvest or production batch consisting of any portion of a sample that was not used in the testing process. The reserve sample shall be kept for a minimum of forty-five (45) calendar days after the analyses, after which time it may be destroyed as medicinal cannabis waste by the safety compliance facility in accordance with 915 KAR 1:060.

(5) The safety compliance facility shall securely store the reserve sample in a manner that minimizes the risk of sample degradation, contamination, and tampering.

(6) The safety compliance facility shall provide any reserve samples to the cabinet upon request within three (3) business days of receiving the request.

(7) All certificates of analysis prepared by safety compliance facilities shall be documented in the Commonwealth's designated electronic monitoring system and seed to sale tracking system in accordance with instructions provided by the cabinet.

(8) On any informational website that they maintain in accordance with 915 KAR 1:090, Section 2, cultivators, processors, and producers shall publish or provide links to the COAs that they receive from safety compliance facilities for their respective harvest batches and production batches. The information required to be provided under this provision shall be presented in such a way that cardholders can easily access the specific COA for the harvest batch or production batch referenced on the medicinal cannabis product label.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Appendix A: List of residual solvents for medicinal cannabis testing", dated January 4, 2024; and

(b) "Appendix B: List of residual pesticides for medicinal cannabis testing", dated January 4, 2024.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Office of the Secretary, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8:30 a.m. to 4:30 p.m. This material may also be viewed on the Kentucky Medical Cannabis Program's website at <https://kymedcan.ky.gov>.

SAM FLYNN, Executive Director
ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 14, 2024

FILED WITH LRC: May 15, 2024 at 11:15 a.m.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for random sample testing of medicinal cannabis to ensure quality control.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out the requirements of KRS Chapter 218B, specifically KRS 218B.140.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 218B.140 authorizes the Cabinet for Health and Family Services to promulgate administrative regulations establishing requirements for random sample testing of medicinal cannabis to ensure quality control. This administrative regulation sets out those requirements and procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the requirements for random sample testing of medicinal cannabis to ensure quality control.

(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: Not applicable. This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable. This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable. This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable. 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 affects cannabis businesses that have applied for and subsequently received licenses to conduct medicinal cannabis activities in the commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Cannabis businesses must review and comply with the testing requirements contained in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Cultivators, processors, and producers will contract with safety compliance facilities to conduct the required testing of medicinal cannabis harvest and production lots.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Cultivators, processors, producers, and safety compliance facilities will be able to properly sample and test medicinal cannabis in the commonwealth.

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

(a) Initially: It is anticipated that an increase in funding will be necessary to implement this administrative regulation as additional staff and resources are necessary to administer and enforce testing requirements. The cabinet estimates that the total staffing costs for the program in the first year will be approximately \$1,800,000, and a portion of those staffing costs will go toward regulating testing requirements.

(b) On a continuing basis: It is anticipated that an increase in funding will be necessary to administer this administrative regulation as additional staff and resources are necessary to enforce testing requirements. The cabinet estimates that the total staffing costs for the program on a continuing basis following the first year will be

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approximately \$2,400,000, and a portion of those staffing costs will go toward regulating testing requirements.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds provided by the commonwealth.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It is anticipated that an increase in funding will be necessary to implement this regulation as additional staff and resources are necessary to administer and enforce the testing requirements.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All cannabis businesses will be treated equally.

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 218B.140(1)(c)(10).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: This administrative regulation is promulgated by the Kentucky Medical Cannabis Program within the Cabinet for Health and Family Services.

(a) Estimate the following for the first year:

Expenditures: The cabinet estimates that the total staffing costs for the program in the first year will be approximately \$1,800,000, a portion of those staffing costs will go toward regulating testing requirements.

Revenues: This administrative regulation is not expected to generate revenue in the first year.

Cost Savings: The cabinet does not anticipate any cost savings in the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The cabinet estimates that the total staffing costs for the program on a continuing basis following the first year will be approximately \$2,400,000, and a portion of those staffing costs will go toward regulating testing requirements. This administrative regulation is not expected to generate revenue in subsequent years. The cabinet does not anticipate any cost savings in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): If its application is approved, a proposed cannabis business will locate within a city or county in the commonwealth and be subject to the testing requirements contained in this administrative regulation.

(a) Estimate the following for the first year:

Expenditures: Unknown at this time. This response will depend on the number of licensed cannabis businesses located in a respective city or county and any ordinances established by local authorities regulating licensed cannabis businesses in their jurisdiction as allowed by KRS 218B.130.

Revenues: Unknown at this time. This response will depend on the number of licensed cannabis businesses located in a respective city or county and any ordinances and fees established by local authorities regulating licensed cannabis businesses in their jurisdiction as allowed by KRS 218B.130.

Cost Savings: The cabinet does not anticipate any cost savings in the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Unknown at this time. This response will depend on the number of licensed cannabis businesses located in a respective city or county and any ordinances and fees established by local authorities regulating licensed cannabis businesses in their jurisdiction as allowed by KRS 218B.130.

(4) Identify additional regulated entities not listed in questions (2) or (3): Licensed cannabis businesses.

(a) Estimate the following for the first year:

Expenditures: Cultivators, processors, and producers will contract with safety compliance facilities to conduct the required testing of medicinal cannabis harvest and production batches.

Revenues: This administrative regulation is expected to generate revenue for licensed safety compliance facilities in the first year as those licensees will conduct the testing required by this administrative regulation.

Cost Savings: The cabinet does not anticipate any cost savings in the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Cultivators, processors, and producers will contract with safety compliance facilities to conduct the required testing of medicinal cannabis harvest and production batches. This administrative regulation is expected to continue to generate revenue for licensed safety compliance facilities in the subsequent years as those licensees will conduct the testing required by this administrative regulation. Cost savings may occur in subsequent years as licensed safety compliance facilities gain experience and efficiency in their operations while still remaining fully compliant with the applicable administrative regulations.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward licensing and enforcement of cannabis businesses operating in the commonwealth as well implementation and continued operation of the electronic monitoring system and seed to sale tracking system required by KRS 218B.140. A portion of the estimated staffing costs will go toward regulating testing of medicinal cannabis.

(b) Methodology and resources used to determine the fiscal impact: As part of its Biennial Budget Request, the Cabinet for Health and Family Services analyzed the cost to administer all aspects of the Kentucky Medical Cannabis Program, including estimated costs for staffing and implementation and ongoing maintenance and operations costs for the electronic monitoring system and seed to sale tracking system required by KRS 218B.140.

(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 annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward licensing and enforcement of cannabis businesses operating in the commonwealth as well implementation and continued operation of the electronic monitoring system and seed to sale tracking system required by KRS 218B.140. The Kentucky Medical Cannabis Program will have a major economic impact on the Cabinet for Health and Family Services.

(b) The methodology and resources used to reach this conclusion: As part of its Biennial Budget Request, the Cabinet for Health and Family Services analyzed the cost to administer all aspects of the Kentucky Medical Cannabis Program, including estimated costs for staffing and implementation and ongoing maintenance and operations costs for the electronic monitoring system required by KRS 218B.140.

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
16 KAR 9:030E

This emergency administrative regulation is being promulgated in order to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute. During the 2024 legislative session, the General Assembly passed Senate Bill 265 and the Governor signed it into law on April 9, 2024. This legislation, which became effective on the Governor's signature, amends KRS 161.048(4) to remove the requirement of an offer of employment prior to issuance of the certificate and require one (1) year of successful teaching experience and recommendation of the employing school district prior to issuance of the professional certificate. Per KRS 161.048(1)(e) the Education Professional Standards Board (EPSB) has the authority to promulgate administrative regulations establishing the standards and procedures for the Option 3 alternative route to certification. Since this emergency legislation became effective upon the Governor's signature, the emergency administrative regulation is necessary to establish the application requirements for certification under the Option 3 alternative route to certification. This emergency administrative regulation will be replaced by an ordinary administrative regulation because the requirements for certification under this route are expected to remain in statute. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
JUSTIN MITCHELL, Chair

EDUCATION AND LABOR CABINET
Education Professional Standards Board
(Emergency Amendment)

16 KAR 9:030E. Professional and provisional certificate for college faculty.

EFFECTIVE: May 31, 2024

RELATES TO: KRS ~~[460.380(5)(c),]~~161.020, 161.028, 161.030, 161.048

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.048

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048 authorizes the eligibility requirements for a candidate seeking to participate in an alternative teacher preparation program. This administrative regulation establishes the requirements for ~~[and renewal of.]~~the professional and provisional certificate for college faculty.

Section 1. Prerequisites.

(1) A two (2) year provisional certificate for college faculty may be issued to an eligible candidate who meets the requirements of KRS 161.048(4).

(2) Application for a provisional certificate shall be submitted to the EPSB and shall:

(a) Contain proof of a master's degree or doctoral degree in the academic content area for which certification is sought;

(b) Contain verification of qualifying teaching experience from a regionally or nationally accredited institution of higher education; and

(c) Be in compliance with 16 KAR 2:010, Section 3(1).

(3) The provisional certificate for college faculty shall be issued for the content area and grade range corresponding to the candidate's degree and teaching experience.

(4) The provisional certificate for college faculty shall be valid for teaching the content area and grade range indicated on the face of

the certificate.

~~[(a)] [An eligible candidate who meets the requirements of KRS 161.048(4) (a) and (b) shall be issued a statement of eligibility for the professional certificate for college faculty valid for five (5) years.]~~

~~[(b)] [Application for the statement of eligibility for the professional certificate for college faculty shall be made on Form CA-194.]~~

~~[(2)] [Upon confirmation of employment in an assignment for the grade level and specialization identified on the statement of eligibility, a provisional teaching certificate shall be issued.]~~

~~[(3)] [Upon successful completion of the Kentucky Teacher Internship Program as provided in KRS 161.030 and 16 KAR 7:010, the professional certificate for college faculty shall be issued for an additional four (4) years.]~~

Section 2. Renewal.

(1) If a candidate does not complete one (1) year of successful teaching experience during the initial provisional certificate, the candidate may apply to renew the provisional certificate.

(2) Application for renewal of the two (2) year provisional certificate for college faculty shall be submitted to the EPSB and be in compliance with 16 KAR 2:010, Section 3(1). [Each five (5) year renewal of the professional certificate for college faculty shall require:]

~~[(1)] [Three (3) years of successful classroom teaching experience; or]~~

~~[(2)] [Six (6) semester hours of additional graduate credit.]~~

Section 3. Equivalent College Teaching Experience.

(1) Ninety (90) semester credit hours taught at the postsecondary level at a regionally- or nationally-accredited institution of higher education shall be accepted as the equivalent of five (5) years of full-time teaching experience.

(2) The ninety (90) hours of college teaching experience may:

(a) Be accumulated at more than one (1) institution of higher education; and

(b) Include part-time teaching or adjunct teaching positions.

(3)

(a) A full-time faculty member's experience at a regionally- or nationally-accredited institution of higher education may include the following activities in lieu of regular full-time teaching experience as established in subsection (1) of this section:

1. Action research;

2. Service to the P-12 schools; or

3. Other activities undertaken as part of a full-time faculty member's assigned responsibilities at the institution of higher education.

(b) The head of the faculty member's unit shall verify the validity of the experiences or responsibilities in this subsection in lieu of regular full-time teaching load on a per semester basis.

Section 4.

(1) Upon completion of one (1) year of successful teaching experience on the provisional certificate for college faculty, the candidate may apply for the professional certificate.

(2) Application for the professional certificate shall be submitted to the EPSB and shall:

(a) Contain proof of successful completion of one (1) year of teaching experience;

(b) Contain a recommendation from the employing school district; and

(c) Be in compliance with 16 KAR 2:010, Section 3(1). [An applicant for a professional certificate for college faculty who is not currently certified as an educator in Kentucky shall submit a national and state criminal background check performed in accordance with KRS 160.380(5)(c) within twelve (12) months prior to the date of

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application.]

[Section 5.] [Incorporation by Reference.]

[(1)] ["Form CA-494", 08/15, is incorporated by reference.]

[(2)] [This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

JUSTIN MITCHELL, Board Chair

APPROVED BY AGENCY: May 31, 2024

FILED WITH LRC: May 31, 2024 at 1:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 29, 2024, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the professional and provisional certificate for college faculty.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the certification requirements for Option 3, College Faculty Route to Teacher Certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020, 161.028 and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation approved by the Education Professional Standards Board. KRS 161.048 authorizes the Education Professional Standards Board to promulgate administrative regulations establishing the standards and procedures for the Option 3 College Faculty Route Teacher Certification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the certification requirements for the Option 3 College Faculty Route to Teacher Certification.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment to 16 KAR 9:030 allows a candidate for the Option 3, College Faculty Alternative Route to Certification to be issued a two (2) year provisional certificate upon application to the EPSB, proof of a master's degree or doctoral degree in the academic content area, qualifying teaching experience from a regionally or nationally accredited institution of higher education, and completion of the character and fitness review. Applicants are no longer required to have an offer of employment before issuance of the initial certificate but must successfully complete one (1) year of teaching experience and have a recommendation from the employing school district prior to issuance of the professional certificate.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the changes

to KRS 161.030 and KRS 161.048(4) from Senate Bill 265 of the 2024 Legislative Session.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment sets the requirements for issuance of certification under the Option 3 College Faculty Route to Teacher Certification. The amendment removes the requirement that candidates have a job offer prior to issuance and adds the requirement that candidates complete one (1) year of teaching experience and have a recommendation from the employing district prior to issuance of the professional certificate. The amendment also removes the reference to the Kentucky Teacher Internship Program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in establishing the requirements for the provisional and professional certificate for the Option 3 College Faculty Route to Teacher Certification.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 171 Kentucky school districts and those pursuing the Option 3 College Faculty Route to Teacher Certification.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for the Option 3 route will have to meet the requirements for issuance of the provisional certificate, then obtain one (1) year of teaching experience before applying for the professional certificates. Districts will no longer have to verify that candidates have an offer of employment but will have to provide a recommendation for those candidates that complete one (1) year of teaching experience.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no fee established by the Education Professional Standards Board in this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance will result in issuance of the provisional and professional certificate to eligible candidates.

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

(a) Initially: There are no costs expected to implement this amendment.

(b) On a continuing basis: There are no expected continuing costs with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding will not be necessary for the Education Professional Standards Board to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation because the standards apply to all teachers seeking certification through the Option 3 College Faculty Route to Teacher Certification.

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 161.020, KRS 161.028, KRS 161.030, KRS 161.048.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Education Professional Standards Board.

(a) Estimate the following for the first year:

Expenditures: No additional expenditures are expected to be needed since the systems and staff are already in place for processing applications and issuing certificates under the Option 3 route.

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Revenues: The amendment to this administrative regulation is not expected to generate any revenue during the first year as this regulation does not create fees.

Cost Savings: No cost savings are expected with this amendment.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures, revenues and cost savings are not expected to differ in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Public-school districts.

(a) Estimate the following for the first year:

Expenditures: There are no expected expenditures for districts as there are no fees established in this regulation.

Revenues: This regulation sets the standards for certification under the Option 3 route to certification. It will not generate revenues for districts.

Cost Savings: There are no cost savings expected with this amendment.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures, revenues and cost savings are not expected to differ in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): Applicants for certification under the Option 3 College Faculty Route to Teacher Certification.

(a) Estimate the following for the first year:

Expenditures: There are no expected expenditures for applicants to comply with this amendment.

Revenues: This regulation sets the standards for certification under the Option 3 route. It will not generate revenue for applicants.

Cost Savings: There is no expected cost savings since there are no fees created or reduced by this regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures, revenues and cost savings are not expected to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no fiscal impact as a result of the proposed amendments to this regulation. No fees are established or increased in this regulation, and there are no fees for two (2) year provisional certificates. While processing applications and issuing certificates does require staff time and resources from the Education Professional Standards Board, the amendments can be carried out by the existing staff and systems.

(b) Methodology and resources used to determine the fiscal impact: The methodology and resources used to determine that there is no fiscal impact, is looking to current systems and processes to see if additional expenditures or resources are needed to carry out the amendments. Since no additional expenditures or resources are needed to carry out the amendments, and there are no fees established or increased by this regulation, it was determined there is no 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 not an expected major economic impact from this regulation as it does not create additional costs for the Education Professional Standards Board or the regulated entities.

(b) The methodology and resources used to reach this conclusion: The methodology and resources used to determine this is looking to current systems and processes to see if additional expenditures or resources are needed to carry out the amendments. Since no additional expenditures or resources are needed to carry out the amendments, and there are no fees established or increased by this regulation, there will not be a negative or adverse major economic impact.

STATEMENT OF EMERGENCY
200 KAR 5:021E

This emergency amendment to an existing administrative regulation is necessary to update the Finance manual of policies and procedures to comply with statutory changes in 24 RS SB 91, which was enacted into law with an emergency clause rendering the

changes effective on passage. Accordingly, this emergency amendment to the existing administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)3. to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute or federal law. Senate Bill 91 adjusted small purchase authority for construction projects, contract valuation thresholds which trigger bond requirements, and valuation thresholds for capital construction to determine whether Finance and Administration Cabinet approval is required. The Finance manual of policies and procedures, attached as incorporated material to 200 KAR 5:021, contains polices that address these issues and must be updated to comply. An ordinary amendment to the existing administrative regulation is not sufficient because the effective date of an ordinary regulation would leave an extended and unnecessary period of time where the Finance manual of policies and procedures would be in direct conflict with statutory language made effective with the passage of Senate Bill 91. The emergency amendment to the existing administrative regulation is limited to updates necessary to remain in compliance with statutory language amended by the passage of SB 91. This administrative regulation will be replaced through an emergency amendment by an ordinary administrative regulation. The ordinary administrative regulation will retain the updated provisions of this administrative regulation through an emergency amendment but will also contain additional updates to the Finance manual of policies and procedures of a non-emergency nature.

ANDY BESHEAR, Governor
HOLLY M. JOHNSON, Secretary

FINANCE AND ADMINISTRATION CABINET
(Emergency Amendment)

200 KAR 5:021E. Manual of policies and procedures.

EFFECTIVE: May 16, 2024

RELATES TO: KRS 45A.045(2)[Chapter 45A]

STATUTORY AUTHORITY: KRS 45A.045(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.045(2) requires the Finance and Administration Cabinet to publish a manual of policies and procedures, which is to be incorporated by reference as an administrative regulation pursuant to KRS Chapter 13A. This administrative regulation incorporates the Finance and Administration Cabinet Manual of Policies and Procedures.

Section 1. [~~A state agency shall follow the procurement requirements in the Finance and Administration Cabinet Manual of Policies and Procedures.~~]

[~~Section 2.~~] Incorporation by Reference.

(1) "Finance and Administration Cabinet Manual of Policies and Procedures", revised May 2024[~~February 2016~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Finance and Administration Cabinet, Office of General Counsel, 200 Mero Street, 5th Floor[~~Office of Policy and Audit, Policy Branch, Room 493, Capitol Annex~~], Frankfort, Kentucky 40622[~~40604~~], Monday through Friday, 8 a.m. to 4:00[~~4:30~~] p.m. This material may also be obtained at the Finance and Administration Cabinet's Web site, https://finance.ky.gov/office-of-the-secretary/office-of-policy-and-audit/Pages/Finance-Policies.aspx[~~www.finance.ky.gov/services/policies/Pages/default.aspx~~].

HOLLY M. JOHNSON, Secretary

APPROVED BY AGENCY: May 16, 2024

FILED WITH LRC: May 16, 2024 at 4:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

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July 24, 2024, at 10:00 a.m. at the Kentucky Finance and Administration Cabinet, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing 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 until 11:59 p.m. on July 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: Cary Bishop, Assistant General Counsel, Office of General Counsel, 200 Mero Street, 5th Floor, Frankfort, Kentucky 40622, phone (502) 564-6660, fax (502) 564-9875, email cary.bishop@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cary Bishop

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation publishes a manual of procedures that clarify and explain detailed processes necessary for daily administration of purchase-related activities.

(b) The necessity of this administrative regulation: This regulation fulfills the requirement of KRS 45A.045(2) for the Secretary to publish a manual of procedures which shall be incorporated by reference as an administrative regulation pursuant to KRS Chapter 13A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation incorporates by reference the policies and procedures manual required by KRS 45A.045(2).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides guidance to vendors, prospective bidders, Finance and Administration Cabinet ("FAC") staff and other state employees in the administration of Kentucky's Model Procurement Code (KRS Chapter 45A).

(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 regulation contains minimal changes to the regulation and manual, mostly limited to those necessary to conform with recently effective statutory changes.

(b) The necessity of the amendment to this administrative regulation: This amendment will reflect changes in statutes and related policies.

(c) How the amendment conforms to the content of the authorizing statutes: The manual is required by KRS 45A.045(2).

(d) How the amendment will assist in the effective administration of the statutes: The updated manual will assist state employees and vendors in procurement matters.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All current and prospective state vendors. (4) Provide an assessment 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:

(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: Amendment of administrative regulation

is required to comply with recently passed legislation which contained an emergency clause.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): (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 additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is necessary for implementation of this regulation.

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

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

(9) TIERING: Is tiering applied? While the regulation itself is limited in scope and does not utilize tiering, the incorporated Manual of Policies and Procedures, consistent with KRS 13A.210, uses tiering, when possible, to avoid disproportionate impacts by using reasonable criteria. For example, the manual had reduced administrative requirements for small purchase amounts, as opposed to larger purchases where greater oversight is necessary. Additionally, per 13A.210(2), the manual generally aims to provide clarification and eliminate ambiguity regarding provisions of the model procurement code which might otherwise cause confusion and administrative inefficiency for agencies and vendors.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. No federal statute or regulation at issue. While the Commonwealth's Model Procurement Code is modeled on the federal model, the statute authorizing this regulation is a state statute, KRS 45A.045.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: This regulation is promulgated by the Finance and Administration as a whole and will impact all state agencies.

(a) Estimate the following for the first year:

Expenditures: \$0

Revenues: \$0

Cost Savings: \$0

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No change expected.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): No local entities will be affected.

(a) Estimate the following for the first year:

Expenditures: \$0

Revenues: \$0

Cost Savings: \$0

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No change expected.

(4) Identify additional regulated entities not listed in questions (2) or (3): None.

(a) Estimate the following for the first year:

Expenditures: \$0

Revenues: \$0

Cost Savings: \$0

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No change expected.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: No fiscal impact expected.

(b) Methodology and resources used to determine the fiscal impact: Legal office review of changes included with regulatory amendment. Changes are limited to procedural thresholds that will not have a direct 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 major economic impact is expected.

(b) The methodology and resources used to reach this conclusion: Legal office review of changes included with regulatory amendment. Changes are limited to procedural thresholds that will not have a direct fiscal impact.

**STATEMENT OF EMERGENCY
807 KAR 5:015E**

This emergency amendment is being promulgated to meet an imminent deadline for promulgation of amendments to regulations established by the General Assembly during the 2024 Regular Session in Senate Joint Resolution 175. The Resolution states that access to broadband internet service in rural areas of the Commonwealth places unserved and underserved citizens at a disadvantage and recounts that funds from the Broadband Equity, Access, and Deployment (BEAD) Program and the Rural Digital Opportunity Fund (RDOF) that will be used to assist in deploying broadband internet service to unserved and underserved areas. The Resolution states that the deployment of broadband internet access will require attaching to utility poles. The Resolution directs the Commission to promulgate emergency regulations on pole attachments not later than sixty (60) days after the effective date of the Joint Resolution, and that the "new or amended emergency regulations are tailored to advance the buildout of broadband service to unserved or underserved areas." The Resolution was signed by the Governor on April 4, 2024, and enrolled with the Secretary of State the same day. This emergency administrative regulation will not be replaced with an ordinary regulation because the Public Service Commission anticipates that further amendments to this administrative regulation will be necessary upon observing the effects of the emergency regulation and what future amendments will be necessary to accomplish the goals enumerated in Senate Joint Resolution 175.

ANDY BESHEAR, Governor
KENT A. CHANDLER, Chairman

**ENERGY AND ENVIRONMENT CABINET
Public Service Commission
(Emergency Amendment)**

807 KAR 5:015E. Access and attachments to utility poles and facilities.

EFFECTIVE: May 31, 2024

RELATES TO: KRS Chapter 278, 47 U.S.C. 224(c)

STATUTORY AUTHORITY: KRS 278.030(1), 278.040(2), 278.5464

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.040(2) requires the commission to have exclusive jurisdiction over the regulation of rates and service of utilities. KRS 278.030(1) authorizes utilities to demand, collect, and receive fair, just, and reasonable rates. KRS 278.030(2) requires every utility to furnish adequate, efficient, and reasonable service. KRS 278.5464 requires the commission to promulgate administrative regulations regarding pole attachments under its jurisdiction, including those necessary for the provision of broadband. 47 U.S.C.A. 224(c) requires that state regulation of pole attachments shall only preempt federal regulation

of poles under federal jurisdiction if the state regulates the rates, terms, and conditions of access to those poles, has the authority to consider and does consider the interest of the customers of attachers and the pole owning utilities, has effective rules and administrative regulations governing attachments, and addresses complaints regarding pole attachments within 180[360] days. This administrative regulation establishes the process by which the commission regulates the rates, terms, and conditions of utility pole attachments and access to other utility facilities, establishes specific criteria and procedures for obtaining access to utility poles within the commission's jurisdiction, and establishes a process by which the complaints of those seeking to access utility facilities shall be addressed within the period established by federal law. The amendments establish an expedited complaint process to address issues pertaining to contract negotiations. 2024 Kentucky S.J.R. 175, 2024 Regular Session requires the Commission to promulgate emergency regulations addressing issues pertaining to broadband attachments to utility poles.

Section 1. Definitions.

(1) "Attachment" means any attachment by a cable television system operator, telecommunications carrier, broadband internet provider, or governmental unit to a pole owned or controlled by a utility.

(2) "Broadband internet provider":

(a) Means a person who owns, controls, operates, or manages any facility used or to be used to offer internet service to the public with download speeds of at least twenty-five (25) megabits per second and upload speeds of at least three (3) megabits per second; and

(b) Does not mean a utility with an applicable joint use agreement with the utility that owns or controls the poles to which it is seeking to attach.

(3) "Communications space" means the lower usable space on a utility pole, which is typically reserved for low-voltage communications equipment.

(4) "Complex make-ready" means any make-ready that is not simple make-ready, such as the replacement of a utility pole; splicing of any communication attachment or relocation of existing wireless attachments, even within the communications space; and any transfers or work relating to the attachment of wireless facilities.

(5) "Existing attacher" means any person or entity with equipment lawfully on a utility pole.

(6) "Governmental unit" means an agency or department of the federal government; a department, agency, or other unit of the Commonwealth of Kentucky; or a county or city, special district, or other political subdivision of the Commonwealth of Kentucky.

(7) "Macro cell facility" means a wireless communications system site that is typically high-power and high-sited, and capable of covering a large physical area, as distinguished from a distributed antenna system, small cell, or WiFi attachment, for example.

(8) "Make-ready" means the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the utility pole.

(9) "New attacher" means a cable television system operator, telecommunications carrier, broadband internet provider, or governmental unit requesting to attach new or upgraded facilities to a pole owned or controlled by a utility, except that a new attacher does not include a utility with an applicable joint use agreement with the utility that owns or controls the pole to which it is seeking to attach or a person seeking to attach macro cell facilities.

(10) "Red tagged pole" means a pole that a utility that owns or controls the pole that:

(a) Is designated for replacement based on the pole's non-compliance with an applicable safety standard;

(b) Is designated for replacement within two (2) years of the date of its actual replacement for any reason unrelated to a new attacher's request for attachment; or

(c) Would have needed to be replaced at the time of replacement even if the new attachment were not made.

(11) "Telecommunications carrier":

(a) Means a person who owns, controls, operates, or manages any facility used or to be used for or in connection with the

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transmission or conveyance over wire, in air, or otherwise, any message by telephone or telegraph for the public, for compensation; and

(b) Does not mean a utility with an applicable joint use agreement with the utility that owns or controls the poles to which it is seeking to attach.

(12) "Simple make-ready" means make-ready in which existing attachments in the communications space of a pole could be rearranged without any reasonable expectation of a service outage or facility damage and does not require splicing of any existing communication attachment or relocation of an existing wireless attachment.

Section 2. Duty to Provide Access to Utility Poles and Facilities.

(1) Except as established in paragraphs (a) through (c) of this subsection, a utility shall provide any cable television system operator, telecommunications carrier, broadband internet provider, or governmental unit nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.

(a) A utility may deny access to any pole, duct, conduit, or right-of-way on a non-discriminatory basis if there is insufficient capacity or for reasons of safety, reliability, or generally applicable engineering purposes.

(b) A utility shall not be required to provide access to any pole that is used primarily to support outdoor lighting.

(c) A utility shall not be required to secure any right-of-way, easement, license, franchise, or permit required for the construction or maintenance of attachments or facilities from a third party for or on behalf of a person or entity requesting access pursuant to this administrative regulation to any pole, duct, conduit, or right-of-way owned or controlled by the utility.

(2) A request for access to a utility's poles, ducts, conduits or rights-of-way shall be submitted to a utility in writing, either on paper or electronically, as established by a utility's tariff or a special contract between the utility and person requesting access.

(3) If a utility provides access to its poles, ducts, conduits, or rights-of-way pursuant to an agreement that establishes rates, terms, or conditions for access not contained in its tariff:

(a) The rates, terms, and conditions of the agreement shall be in writing; and

(b) The utility shall file the written agreement with the commission pursuant to 807 KAR 5:011, Section 13.

Section 3. Pole Attachment Tariff Required.

(1) A utility that owns or controls utility poles located in Kentucky shall maintain on file with the commission a tariff that includes rates, terms, and conditions governing pole attachments in Kentucky that are consistent with the requirements of this administrative regulation and KRS Chapter 278.

(2) The tariff may incorporate a standard contract or license for attachments if its terms and conditions are consistent with the requirements of this administrative regulation and KRS Chapter 278.

(3) Standard contracts or licenses for attachments permitted by subsection (2) of this section shall prominently indicate that the contracts or licenses are based wholly on the utility's tariff and that the tariff shall control if there is a difference.

(4) The tariff may include terms, subject to approval by the commission, that are fair, just, and reasonable and consistent with the requirements of this administrative regulation and KRS Chapter 278, such as certain limitations on liability, indemnification and insurance requirements, and restrictions on access to utility poles for reasons of lack of capacity, safety, reliability, or generally applicable engineering standards.

(5)

(a) The tariff shall include the URL for a utility-maintained Web site.

(b) The Web site shall include:

1. A certificate form that a new attachor shall submit to the utility that shall require a new attachor to:

a. Certify that the person filing the application has reviewed the utility's requirements, pole attachment tariff, and applicable law and that the application meets these requirements to the best of the new

attachor's knowledge and ability;

b. Designate appropriate personnel responsible for overseeing all attachments with the utility;

c. Identify appropriate personnel associated with each application, who shall be responsible for coordinating with the utility and ensuring that attachment-related issues are addressed in a timely manner;

2. Pole attachment information including the identity and contact information for contractors approved to conduct surveys and make-ready self-help;

3. Construction standards for attachments; and

4. The identity and contact information for:

a. The primary utility personnel responsible for invoicing, payment, make-ready work, and escalation of disputes; and

b. The alternate utility personnel responsible for invoicing, payment, make-ready work, and escalation of disputes if the primary personnel are unavailable.

(6) Overlapping.

(a) A utility shall not require prior approval for:

1. An existing attachor that overlaps its existing wires on a pole; or

2. A third party overlapping of an existing attachment that is conducted with the permission of an existing attachor.

(b)

1. A utility shall not prevent an attachor from overlapping because another existing attachor has not fixed a preexisting violation.

2. A utility shall not require an existing attachor that overlaps its existing wires on a pole to fix preexisting violations caused by another existing attachor, unless failing to fix the preexisting violation would create a capacity, safety, reliability, or engineering issue.

(c)

1. A utility shall not require more than thirty (30) days' advance notice of planned overlapping.

2. If a utility requires advance notice for overlapping, then the utility shall include the notice requirement in its tariff or include the notice requirement in the attachment agreement with the existing attachor.

3. If, after receiving advance notice, the utility determines that an overlap would create a capacity, safety, reliability, or engineering issue, it shall provide specific documentation of the issue to the party seeking to overlap within the thirty (30) day advance notice period and the party seeking to overlap shall address any identified issues before continuing with the overlap either by modifying its proposal or by explaining why, in the party's view, a modification is unnecessary.

(d)

1. A party that engages in overlapping shall be responsible for its own equipment and shall ensure that it complies with reasonable safety, reliability, and engineering practices.

2. If damage to a pole or other existing attachment results from overlapping or overlapping work causes safety or engineering standard violations, then the overlapping party shall be responsible at its expense for any necessary repairs.

(e) An overlapping party shall notify the affected utility within fifteen (15) days of completion of the overlap on a particular pole.

1. The notice shall provide the affected utility at least ninety (90) days from receipt in which to inspect the overlap.

2. The utility shall have fourteen (14) days after completion of its inspection to notify the overlapping party of any damage or code violations to its equipment caused by the overlap.

3. If the utility discovers damage or code violations caused by the overlap on equipment belonging to the utility, then the utility shall inform the overlapping party and provide adequate documentation of the damage or code violations.

4. The utility shall either:

a. Complete any necessary remedial work and bill the overlapping party for the reasonable costs related to fixing the damage or code violations; or

b. Require the overlapping party to fix the damage or code violations at its expense within fourteen (14) days following notice from the utility.

(7)[(6)] Signed standard contracts or licenses for attachments

allowed by subsection (2) of this section shall be submitted to the commission but shall not be filed pursuant to 807 KAR 5:011, Section 13.

~~(8)(7)~~ Tariffs conforming to the requirements of this administrative regulation and with a proposed effective date no later than ~~August~~~~(March)~~ 31, ~~2024~~~~[2022]~~, shall be filed by ~~July~~ ~~31~~~~[February-28]~~, ~~2024~~~~[2022]~~.

Section 4. Procedure for New Attachers to Request Utility Pole Attachments.

(1) All time limits established in this section shall be calculated according to 807 KAR 5:001, Section 4(7).

(2) Application review and survey.

(a) Application completeness.

1. A new attacher shall:

a. Prior to submitting a pole attachment application to a utility:

(i) Review the application for completeness and;

(ii) Submit the information required by Section 3(5) of this administrative regulation; and

b. Submit the written certification with the pole attachment application. If the utility uses an electronic system to manage pole attachments, this certification shall be uploaded to the utility's designated system.

2. A utility shall review a new attacher's pole attachment application for completeness before reviewing the application on its merits and shall notify the new attacher within ten (10) business days after receipt of the new attacher's pole attachment application if the application is incomplete.

3.~~[2.]~~ A new attacher's pole attachment application shall be considered complete if the application provides the utility with the information necessary under its procedures, as established in the utility's applicable tariff or a special contract regarding pole attachments between the utility and the new attacher, to begin to survey the affected poles.

4.~~[3.]~~ If the utility notifies a new attacher that its attachment application is not complete, then the utility shall state all reasons for finding it incomplete.

5. A utility shall not require a new attacher to submit a survey or pole loading analysis as a filing requirement for an application.

6. A new attacher may submit a survey with an application of 500 poles or less, which the utility shall accept if the new attacher used an approved contractor listed on the utility's Web site and the survey was conducted no longer than thirty (30) days prior to submission. A utility shall conduct the survey for applications exceeding 500 poles.

7. If a utility rejects an application the rejection shall state the reason for the denial and shall include specific citations to this administrative regulation and the utility's tariff that form the basis of the rejection.

8. A utility shall complete a review of an application of 500 poles or less within ten (10) business days after receipt of the application. A utility shall have an additional one (1) business day to complete its review for each additional 500-pole increment in an application.

9. A new attacher, if it submits an application while a previous application is still under review, may prioritize the order in which a utility shall review the applications. Prioritizing a new application resets the respective review time period of the new attacher's deprioritized applications currently under review over which the new application is being prioritized.

10.~~[4.]~~ If the utility does not respond within the time prescribed in subparagraph 8. of this paragraph~~[ten (10) business days]~~ after receipt of the application, or if the utility rejects the application as incomplete but fails to state any reasons in the utility's response, then the application shall be deemed complete and the time for the utility's next procedural step begins to run.

(b) Survey and application review on the merits.

1. A utility shall complete a survey of poles for which access has been requested within forty-five (45) days of receipt of a complete application to attach facilities to its utility poles (or within ~~105~~~~[sixty (60)]~~ days in the case of larger orders as established in subsection ~~(8)~~~~(7)~~ of this section) for the purpose of determining if the attachments may be made and identifying any make-ready to be completed to allow for the attachment.

2. Participation of attachers in surveys conducted by a utility.

a. A utility shall allow the new attacher and any existing attachers on the affected poles to be present for any field inspection conducted as part of a utility's survey conducted pursuant paragraph (b)1. of this subsection.

b. A utility shall use commercially reasonable efforts to provide the affected attachers with advance notice of not less than five (5) business days of any field inspection as part of the survey and shall provide the date, time, and location of the inspection, and name of the contractor, if any, performing the inspection.

3. If a new attacher has conducted a survey pursuant to subsection ~~(11)~~~~(40)~~(b) of this section, or a new attacher has otherwise conducted and provided a survey, after giving existing attachers notice and an opportunity to participate in a manner consistent with subsection ~~(11)~~~~(40)~~(b), a utility may elect to satisfy survey obligations established in this paragraph by notifying affected attachers of the intent to use the survey conducted by the new attacher and by providing a copy of the survey to the affected attachers within the time period established in subparagraph 1. of this paragraph.

4. Based on the results of the applicable survey and other relevant information, a utility shall respond to the new attacher either by granting access or denying access within forty-five (45) days of receipt of a complete application to attach facilities to its utility poles (or within ~~105~~~~[sixty (60)]~~ days in the case of larger orders as described in subsection ~~(8)~~~~(7)~~ of this section).

5. A utility's denial of a new attacher's pole attachment application shall be specific, shall include all relevant evidence and information supporting the denial, and shall explain how the evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards.

6. Payment of survey costs and estimates.

a. A utility's tariff may require prepayment of the costs of surveys made to review a pole attachment application, or some other reasonable security or assurance of credit worthiness before a utility shall be obligated to conduct surveys pursuant to this section.

b. If a utility's tariff requires prepayment of survey costs, the utility shall include a per pole estimate of costs in the utility's tariff and the payment of estimated costs shall satisfy any requirement that survey costs be prepaid.

c. The new attacher shall be responsible for the costs of surveys made to review the new attacher's pole attachment application even if the new attacher decides not to go forward with the attachments.

(3) Payment of make-ready estimates.

(a) Within fourteen (14) days of providing a response granting access pursuant to subsection (2)(b)4. of this section, a utility shall send a new attacher whose application for access has been granted a detailed, itemized estimate in writing, on a pole-by-pole basis if requested and reasonably calculable, and consistent with subsection (6)(b) of this section, of charges to perform all necessary make-ready.

(b) A utility shall provide documentation that is sufficient to determine the basis of all estimated charges, including any projected material, labor, and other related costs that form the basis of the estimate.

(c) A utility may withdraw an outstanding estimate of charges to perform make-ready beginning fourteen (14) days after the estimate is presented.

(d) A new attacher may accept a valid estimate and make payment any time after receipt of an estimate, except a new attacher shall not accept the estimate after the estimate is withdrawn.

(e) Invoices for estimates shall clearly identify the application or project for which payment is requested.

(f) Payment for the estimate shall clearly identify the application(s) or project(s) for which payment is made.

(4) Make-ready. Upon receipt of payment for survey costs owed pursuant to the utility's tariff and the estimate specified in subsection (3)(d) of this section, a utility shall, as soon as practical but in no case more than seven (7) days, notify all known entities with existing attachments in writing that could be affected by the make-ready.

(a) For make-ready in the communications space, the notice shall:

1. State where and what make-ready will be performed;

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2. State a date for completion of make-ready in the communications space that is no later than forty-five (45)~~[thirty (30)]~~ days after notification is sent (or up to 105~~[seventy-five (75)]~~ days in the case of larger orders as established in subsection (8)~~[(7)]~~ of this section);

3. State that any entity with an existing attachment may modify the attachment. Modification shall be consistent with the specified make-ready before the date established for completion;

4. State that, if make-ready is not completed by the completion date established by the utility in subparagraph 2. of this paragraph, the new attacher may complete the make-ready, which shall be completed as specified pursuant to subparagraph 1. of this paragraph; and

5. State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.

(b) For make-ready above the communications space, the notice shall:

1. State where and what make-ready will be performed;

2. State a date for completion of make-ready that is no later than ninety (90) days after notification is sent (or 135 days in the case of larger orders, as established in subsection (8)~~[(7)]~~ of this section).

3. State that any entity with an existing attachment may modify the attachment. Modification shall be consistent with the specified make-ready before the date established for completion;

4. State that the utility may assert the utility's right to up to fifteen (15) additional days to complete make-ready;

5. State that if make-ready is not completed by the completion date established by the utility in subparagraph 2. of this paragraph (or, if the utility has asserted its fifteen (15) day right of control, fifteen (15) days later), the new attacher may complete the make-ready, which shall be completed as specified pursuant to subparagraph 1. of this paragraph; and

6. State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.

(c) Once a utility provides the notices required by this subsection, the utility shall provide the new attacher with a copy of the notices and the existing attachers' contact information and address where the utility sent the notices. The new attacher shall be responsible for coordinating with existing attachers to encourage completion of make-ready by the dates established by the utility pursuant to paragraph (a)2. of this subsection for communications space attachments or paragraph (b)2. of this subsection for attachments above the communications space.

(5) A utility shall complete its make-ready in the communications space by the same dates established for existing attachers in subsection (4)(a)2. of this section or its make-ready above the communications space by the same dates for existing attachers in subsection (4)(b)2. of this section (or if the utility has asserted its fifteen (15) day right of control, fifteen (15) days later).

(6) An attacher shall, within fifteen (15) business days following completion of all attachments within an application, provide written notice to a utility in the manner and form stated in the utility's tariff.

(7)~~[(6)]~~ Final invoice.

(a) Within a reasonable period, not to exceed 120 days after a utility completes the utility's make-ready, the utility shall provide the new attacher:

1. A detailed, itemized final invoice of the actual survey charges incurred if the final survey costs for an application differ from any estimate previously paid for the survey work or if no estimate was previously paid; and

2. A detailed, itemized final invoice, on a pole-by-pole basis if requested and reasonably calculable, of the actual make ready costs to accommodate attachments if the final make-ready costs differ from the estimate provided pursuant to subsection (3)(d) of this section.

(b) Limitations on make ready costs.

1. A utility shall not charge a new attacher, as part of any invoice for make-ready, to bring poles, attachments, or third-party or utility equipment into compliance with current published safety, reliability, and pole owner construction standards if the poles, attachments, or third-party or utility equipment were out of compliance because of

work performed by a party other than the new attacher prior to the new attachment.

2. A utility shall not charge a new attacher, as part of any invoice for make ready, the cost to replace any red tagged pole with a replacement pole of the same type and height.

3. If a red tagged pole is replaced with a pole of a different type or height, then the new attacher shall be responsible, as part of any invoice for make ready, only for the difference, if any, between the cost for the replacement pole and the cost for a new utility pole of the type and height that the utility would have installed in the same location in the absence of the new attachment.

4. The make ready cost, if any, for a pole that is not a red tagged pole to be replaced with a new utility pole to accommodate the new attacher's attachment shall be charged in accordance with the utility's tariff or a special contract regarding pole attachments between the utility and the new attacher.

(8)~~[(7)]~~ For the purposes of compliance with the time periods in this section:

(a) A utility shall apply the timeline as established in subsections (2) through (4) of this section to all requests for attachment up to the lesser of 500~~[300]~~ poles or .75~~[zero and five-tenths (0.5)]~~ percent of the utility's poles in the state;

(b) A utility may, for every full 500-pole increment, add up to fifteen (15) days to the survey period established in subsection (4) of this section to larger orders up to the lesser of 3,000~~[1,000]~~ poles or three (3)~~[1-50]~~ percent of the utility's poles in Kentucky;

(c) A utility may, for every full 500-pole increment, add up to fifteen (15)~~[forty-five (45)]~~ days to the make-ready periods established in subsection (4) of this section to larger orders up to the lesser of 3,000~~[1,000]~~ poles or three (3)~~[1-50]~~ percent of the utility's poles in Kentucky;

(d) A utility and a new attacher, unless the utility owns or controls fewer than 500 poles, shall negotiate a special contract in good faith [the timing of] all requests for attachment larger than the lesser of 3,000~~[1,000]~~ poles or three (3)~~[1-50]~~ percent of the utility's poles in Kentucky, or upon receipt of three (3) separate applications averaging 1,000 poles or one (1) percent of the utility's poles in Kentucky for any three (3) months over a five (5) month period. The special contract, at a minimum, shall contain:[:]

1. An agreement for a prepaid account from the new attacher to cover the cost of the request;

2. Direction from the new attacher regarding make ready work that the utility can complete without further direction from the new attacher including:

a. The maximum cost per pole;

b. The total cost for make ready work for each project or line of each project;

3. The new attacher's prioritization of projects if the new attacher has submitted multiple requests for attachment;

4. Contact information, including phone numbers and email addresses, for all necessary utility and new attacher personnel;

5. The cadence, location, and necessary personnel for each project; and

6. The timing of surveys and make ready.

(e) If a special contract identified in paragraph (d) of this subsection cannot be agreed to within fifteen (15) business days from submission of a formal written request to engage from the attacher, the new attacher may file a complaint with the commission, with a copy served contemporaneously to the utility, on which the commission shall rule within twenty (20) business days of filing of the complaint.

(f)~~[(e)]~~ A utility may treat multiple requests from a single new attacher as one (1) request if the requests are submitted during the same calendar month as~~[within thirty (30) days of]~~ one another; and

(g)~~[(f)]~~ As soon as reasonably practicable, but no less than ninety (90)~~[sixty (60)]~~ days before the new attacher expects to submit an application in which the number of requests exceed the lesser of the amounts identified in paragraph (a) of this subsection, a new attacher shall provide written notice to a utility in the manner and form stated in the utility's tariff that the new attacher expects to submit a [high volume]-request.

(9)~~[(8)]~~ Deviations from make-ready timeline.

(a) A utility may deviate from the time limits specified in this

section before offering an estimate of charges if the new attacher failed to satisfy a condition in the utility's tariff or in a special contract between the utility and the new attacher.

(b) A utility may deviate from the time limits established in this section during performance of make-ready for good and sufficient cause that renders it infeasible for the utility to complete make-ready within the time limits established in this section. A utility that so deviates shall immediately notify, in writing, the new attacher and affected existing attachers and shall identify the affected poles and include a detailed explanation of the reason for the deviation and a new completion date. The utility shall deviate from the time limits established in this section for a period no longer than necessary to complete make-ready on the affected poles and shall resume make-ready without discrimination once the utility returns to routine operations.

(c) An existing attacher may deviate from the time limits established in this section during performance of complex make-ready for reasons of safety or service interruption that renders it infeasible for the existing attacher to complete complex make-ready within the time limits established in this section. An existing attacher that so deviates shall immediately notify, in writing, the new attacher and other affected existing attachers and shall identify the affected poles and include a detailed explanation of the basis for the deviation and a new completion date, which shall not extend beyond sixty (60) days from the completion date provided in the notice specified in subsection (4) of this section as sent by the utility (or up to 105 days in the case of larger orders specified in subsection (6)(b) and (c) of this section). The existing attacher shall not deviate from the time limits established in this section for a period for longer than necessary to complete make-ready on the affected poles.

~~(10)(9)~~ Self-help remedy.

(a) Surveys. If a utility fails to complete a survey as established in subsection (2)(b) of this section, then a new attacher may conduct the survey in place of the utility by hiring a contractor to complete a survey, which shall be completed as specified in Section 5 of this administrative regulation.

1. A new attacher shall allow the affected utility and existing attachers to be present for any field inspection conducted as part of the new attacher's survey.

2. A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of not less than five (5) business days of a field inspection as part of any survey the attacher conducts.

3. The notice shall include the date and time of the survey, a description of the work involved, and the name of the contractor being used by the new attacher.

(b) Make-ready. If make-ready is not complete by the applicable date established in subsection (4) of this section, then a new attacher may conduct the make-ready in place of the utility and existing attachers by hiring a contractor to complete the make-ready, which shall be completed as specified in Section 5 of this administrative regulation. The make-ready shall be performed in compliance with this administrative regulation, the utility's tariff, and the construction standards listed on the utility's Web site. Make-ready work performed by the new attacher within the electric space shall be conducted by an approved contractor listed on the utility's Web site.

1. A new attacher shall allow the affected utility and existing attachers to be present for any make-ready.

2. A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of not less than seven (7) days of the impending make-ready.

3. The notice shall include the date and time of the make-ready, a description of the work involved, and the name of the contractor being used by the new attacher.

(c) The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher.

(d) Pole replacements. Self-help shall not be available for pole replacements.

~~(11)(40)~~ One-touch make-ready option. For attachments involving simple make-ready, new attachers may elect to proceed

with the process established in this subsection in lieu of the attachment process established in subsections (2) through (6) and (9) of this section.

(a) Attachment application.

1. A new attacher electing the one-touch make-ready process shall elect the one-touch make-ready process in writing in its attachment application and shall identify the simple make-ready that it will perform. It is the responsibility of the new attacher to ensure that its contractor determines if the make-ready requested in an attachment application is simple.

2. Application completeness.

a. The utility shall review the new attacher's attachment application for completeness before reviewing the application on its merits and shall notify the new attacher within ten (10) business days after receipt of the new attachers attachment application whether or not the application is complete.

b. An attachment application shall be considered complete if the application provides the utility with the information necessary under its procedures, as established in the utility's applicable tariff or a special contract regarding pole attachments between the utility and the new attacher, to make an informed decision on the application.

c. If the utility notifies the new attacher that an attachment application is not complete, then the utility shall state all reasons for finding the application incomplete.

d. If the utility fails to notify a new attacher in writing that an application is incomplete within ten (10) business days of receipt, then the application shall be deemed complete.

3. Application review on the merits. The utility shall review on the merits a complete application requesting one-touch make-ready and respond to the new attacher either granting or denying an application within fifteen (15) days of the utility's receipt of a complete application (or within thirty (30) days in the case of larger orders as established in subsection ~~(8)(7)~~(b) of this section or within a time negotiated in good faith for requests equal to or larger than those established in ~~(8)(7)~~(d)).

a. If the utility denies the application on its merits, then the utility's decision shall be specific, shall include all relevant evidence and information supporting its decision, and shall explain how the evidence and information relate to a denial of access.

b. Within the fifteen (15) day application review period (or within thirty (30) days in the case of larger orders as established in subsection ~~(8)(7)~~(b) of this section or within a time negotiated in good faith for requests equal to or larger than those established in ~~(8)(7)~~(d)), a utility or an existing attacher may object to the designation by the new attacher's contractor that certain make-ready is simple.

c. An objection made pursuant to clause b. of this subparagraph shall be specific and in writing, include all relevant evidence and information supporting the objection, be made in good faith, and explain how the evidence and information relate to a determination that the make-ready is not simple.

d. If the utility's or the existing attacher's objection to the new attacher's determination that make-ready is simple complies with clause c. of this subparagraph, then the make-ready shall be deemed to be complex and the new attacher shall not proceed with the affected proposed one-touch make-ready.

(b) Surveys.

1. The new attacher shall be responsible for all surveys required as part of the one-touch make-ready process and shall use a contractor as established in Section 5(2) of this administrative regulation to complete surveys.

2. The new attacher shall allow the utility and any existing attachers on the affected poles to be present for any field inspection conducted as part of the new attacher's surveys.

3. The new attacher shall use commercially reasonable efforts to provide the utility and affected existing attachers with advance notice of not less than five (5) business days of a field inspection as part of any survey and shall provide the date, time, and location of the surveys, and name of the contractor performing the surveys.

(c) Make-ready. If the new attacher's attachment application is approved by the pole owner and if the attacher has provided at least fifteen (15) days prior written notice of the make-ready to the affected utility and existing attachers, the new attacher may proceed

with make-ready. The new attacher shall use a contractor in the manner established for simple make-ready in Section 5(2) of this administrative regulation.

1. The prior written notice shall include the date and time of the make-ready, a description of the work involved, the name of the contractor being used by the new attacher, and provide the affected utility and existing attachers a reasonable opportunity to be present for any make-ready.

2. The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher.

3. In performing make-ready, if the new attacher or the utility determines that make-ready classified as simple is complex, then all make-ready on the impacted poles shall be halted and the determining party shall provide immediate notice to the other party of its determination and the impacted poles. All remaining make-ready on the impacted poles shall then be governed by subsections (2) through (9) of this section, and the utility shall provide the notices and estimates required by subsections (2)(a), (3), and (4) of this section as soon as reasonably practicable.

(d) Post-make-ready timeline. A new attacher shall notify the affected utility and existing attachers within fifteen (15) days after completion of make-ready on a one-touch make ready application.

Section 5. Contractors for Survey and Make-ready.

(1) Contractors for self-help complex and above the communications space make-ready. A utility shall make available and keep up-to-date a reasonably sufficient list of contractors the utility authorizes to perform self-help surveys and make-ready that is complex and self-help surveys and make-ready that is above the communications space on the utility's poles. The new attacher shall use a contractor from this list to perform self-help work that is complex or above the communications space. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in subsection (3) of this section and the utility shall not unreasonably withhold its consent.

(2) Contractors for surveys and simple work. A utility may keep up-to-date a reasonably sufficient list of contractors the utility authorizes to perform surveys and simple make-ready. If a utility provides this list, then the new attacher shall choose a contractor from the list to perform the work. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in subsection (3) of this section and the utility shall not unreasonably withhold its consent.

(a)

1. If the utility does not provide a list of approved contractors for surveys or simple make-ready or no utility-approved contractor is available within a reasonable time period, then the new attacher may choose its own qualified contractor that shall meet the requirements in subsection (3) of this section.

2. If choosing a contractor that is not on a utility-provided list, the new attacher shall certify to the utility that the attacher's contractor meets the minimum qualifications established in subsection (3) of this section upon providing notices required by Section 4(9)(a)2., (9)(b)2., (10)(b)3., and (10)(c) of this administrative regulation.

(b)

1. The utility may disqualify any contractor chosen by the new attacher that is not on a utility-provided list, but a disqualification shall be based on reasonable safety or reliability concerns related to the contractor's failure to meet any of the minimum qualifications established in subsection (3) of this section or to meet the utility's publicly available and commercially reasonable safety or reliability standards.

2. The utility shall provide notice of the utility's objection to the contractor within the notice periods established by the new attacher in Section 4(9)(a)2., (9)(b)2., (10)(b)3., and (10)(c) of this administrative regulation and in the utility's objection must identify at least one available qualified contractor.

(3) Contractor minimum qualification requirements. Utilities shall ensure that contractors on a utility-provided list, and new attachers shall ensure that contractors selected pursuant to subsection (2)(a) of this section, meet the minimum requirements established in

paragraphs (a) through (e) of this subsection.

(a) The contractor has agreed to follow published safety and operational guidelines of the utility, if available, but if unavailable, the contractor shall agree to follow National Electrical Safety Code (NESC) guidelines.

(b) The contractor has acknowledged that the contractor knows how to read and follow licensed-engineered pole designs for make-ready, if required by the utility.

(c) The contractor has agreed to follow all local, state, and federal laws and regulations including the rules regarding Qualified and Competent Persons under the requirements of the Occupational and Safety Health Administration (OSHA) rules.

(d) The contractor has agreed to meet or exceed any uniformly applied and reasonable safety and reliability thresholds established by the utility, if made available.

(e) The contractor shall be adequately insured or shall establish an adequate performance bond for the make-ready the contractor will perform, including work the contractor will perform on facilities owned by existing attachers.

(4) A consulting representative of a utility may make final determinations, on a nondiscriminatory basis, if there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

Section 6. Notice of Changes to Existing Attachers.

(1) Unless otherwise established in a joint use agreement or special contract, a utility shall provide an existing attacher no less than sixty (60) days written notice prior to:

(a) Removal of facilities or termination of any service to those facilities if that removal or termination arises out of a rate, term, or condition of the utility's pole attachment tariff or any special contract regarding pole attachments between the utility and the attacher; or

(b) Any modification of facilities by the utility other than make-ready noticed pursuant to Section 4 of this administrative regulation, routine maintenance, or modifications in response to emergencies.

(2) Stays from removals, terminations, and modifications noticed pursuant to subsection (1) of this section.

(a) An existing attacher may request a stay of the action contained in a notice received pursuant to subsection (1) of this section by filing a motion pursuant to 807 KAR 5:001, Section 4 within fifteen (15) days of the receipt of the first notice provided pursuant to subsection (1) of this section.

(b) The motion shall be served on the utility that provided the notice pursuant to 807 KAR 5:001, Section 5(1).

(c) The motion shall not be considered unless it includes the relief sought, the reasons for such relief, including a showing of irreparable harm and likely cessation of cable television system operator or telecommunication service, a copy of the notice, and a certification that service was provided pursuant to paragraph (b) of this subsection.

(d) The utility may file a response within ten (10) days of the date the motion for a temporary stay was filed.

(e) No further filings under this subsection shall be considered unless requested or authorized by the commission.

(3) Transfer of attachments to new poles.

(a) Unless an applicable tariff or special contract or Section 4 of this administrative regulation establishes a different timeframe, existing attachers shall transfer their attachments within sixty (60) days of receiving written notice from the utility pole owner.

(b) Existing attachers may deviate from the time limit established in paragraph (a) of this subsection for good and sufficient cause that renders it infeasible for the existing attacher to complete the transfer within the time limit established. An existing attacher that requires such a deviation shall immediately notify, in writing, the utility and shall identify the affected poles and include a detailed explanation of the reason for the deviation and the date by which the attacher shall complete the transfer. An existing attacher shall deviate from the time limits established in paragraph (a) of this subsection for a period no longer than is necessary to complete the transfer.

(c) If an existing attacher fails to transfer its attachments within the timeframe established in paragraph (a) of this subsection and the existing attacher has not notified the utility of good and sufficient cause for extending the time limit pursuant to paragraph (a) of this

subsection, a utility pole owner may transfer attachments and the transfer shall be at the existing attacher's expense.

(d) A utility pole owner may transfer an existing attacher's attachment prior to the expiration of any period established by paragraph (a) or (b) of this subsection if an expedited transfer is necessary for safety or reliability purposes.

Section 7. Complaints for Violations of This Administrative Regulation.

(1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall establish the names of the complainant and the defendant, and shall state:

(a) The full name and post office address of the complainant;

(b) The full name and post office address of the defendant;

(c) Fully, clearly, and with reasonable certainty, the act or omission, of which complaint is made, with a reference, if practicable, to the law, order, or administrative regulation, of which a failure to comply is alleged, and other matters, or facts, if any, as necessary to acquaint the commission fully with the details of the alleged failure; and

(d) The relief sought.

(2) Signature. The complainant or his or her attorney, if applicable, shall sign the complaint. A complaint by a corporation, association, or another organization with the right to file a complaint, shall be signed by its attorney.

(3) How filed.

(a) Complaints shall be filed in accordance with the electronic filing procedures in 807 KAR 5:001, Section 8; and

(b) The complainant shall serve a copy of the complaint on the defendant at the same time as it files the complaint with the commission. ~~The filing party shall file two (2) copies in paper medium with the commission in the manner required by 807 KAR 5:001, Section 8(12)(a)2.~~

(4) Procedure on filing of complaint.

(a) Upon the filing of a complaint, the commission shall immediately examine the complaint to ascertain if it establishes a prima facie case and conforms to this administrative regulation.

1. If the commission finds that the complaint does not establish a prima facie case or does not conform to this administrative regulation, the commission shall notify the complainant and provide the complainant an opportunity to amend the complaint within a stated time.

2. If the complaint is not amended within the time or the extension as the commission, for good cause shown, shall grant, the complaint shall be dismissed.

(b) If the complaint, either as originally filed or as amended, establishes a prima facie case and conforms to this administrative regulation, the commission shall serve an order upon the person complained of, accompanied by a copy of the complaint, directed to the person complained of and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of the order. The commission may require the answer to be filed within a shorter period if the complaint involves an emergency situation or otherwise would be detrimental to the public interest.

(5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, he or she shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief that the defendant is willing to give. Upon the acceptance of this offer by the complainant and with the approval of the commission, pursuant to KRS Chapter 278 and this administrative regulation, the case shall be dismissed.

(6) Answer to complaint. If the complainant is not satisfied with the relief offered, the defendant shall file an answer to the complaint within the time stated in the order or the extension as the commission, for good cause shown, shall grant.

(a) The answer shall contain a specific denial of the material allegations of the complaint as controverted by the defendant and also a statement of any new matters constituting a defense.

(b) If the defendant does not have information sufficient to answer an allegation of the complaint, the defendant may so state in the answer and place the denial upon that ground.

(7) Burden of proof.

(a) The complainant has the burden of establishing it is entitled to the relief sought.

(b) The commission may presume that a pole replaced to accommodate a new attachment was a red tagged pole if:

1. There is a dispute regarding the condition of the pole at the time it was replaced; and

2. The utility failed to document and maintain records that inspections were conducted pursuant to 807 KAR 5:006 and that no deficiencies were found on the pole or poles at issue, or if inspections of poles are not required pursuant to 807 KAR 5:006, the utility failed to periodically inspect and document the condition of its poles.

(8) Time for final action.

(a) The commission shall take final action on a complaint regarding the rates, terms, or conditions for access to a utility's pole, duct, conduit, or right-of-way within sixty (60)[180] days of a complaint establishing a prima facie case being filed, unless the commission finds it is necessary to continue the proceeding for good cause for up to 180[360] days from the date the complaint establishing a prima facie case is filed.

(b) The period within which final action shall be taken may be extended beyond 180[360] days upon agreement of the complainant and defendant and approval of the commission.

This is to certify that the Public Service Commission approved promulgation of this emergency administrative regulation, pursuant to KRS 278.040(3), on June 3, 2024.

LINDA BRIDWELL, P.E., Executive Director

KENT A. CHANDLER, Chairman

APPROVED BY AGENCY: May 31, 2024

FILED WITH LRC: May 31, 2024 at 3:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this emergency administrative regulation shall be held on July 30, 2024, at 10:00 a.m. Eastern Daylight Time at the Kentucky Public Service Commission, 211 Sower Boulevard, 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. This hearing is open to the public and instructions on how to attend and participate virtually will be published on the commission's website at psc.ky.gov. 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 July 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: John E.B. Pinney, Executive Advisor, Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-2587, fax (502) 564-7279, email jeb.pinney@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John E.B. Pinney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the process by which the commission regulates the rates, terms, and conditions of utility pole attachments and access to other utility facilities, amends the specific criteria and procedures for certain types of pole attachment applications for obtaining access to utility poles within the Kentucky Public Service Commission's jurisdiction, and establishes a process by which the complaints of those seeking to access utility facilities shall be addressed within the period established by federal law. The emergency amendments address issues pertaining to expediting certain applications to attach broadband facilities to the poles of utilities subject to the jurisdiction of the Public Service Commission.

(b) The necessity of this administrative regulation: Senate Joint Resolution 175 from the 2024 Regular Session mandates that the Public Service Commission promulgate emergency regulations, or

emergency amendment to existing regulations, to address issues pertaining to certain applications to attach broadband facilities to the poles of utilities subject to the jurisdiction of the Public Service Commission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.040(3) authorizes the Commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278. KRS 278.040(2) states that the PSC has exclusive jurisdiction over the regulation of rates and services of utilities. KRS 278.030(1) provides that all rates received by a utility shall be fair, just, and reasonable. KRS 278.030(2) provides that every utility shall furnish adequate, efficient, and reasonable service. In *Kentucky CATV Ass'n v. Volz*, 675 S.W.2d 393 (Ky. App. 1983), the Court of Appeals held that utility pole attachments are a service that is provided for a rate. Senate Joint Resolution 175 from the 2024 Regular Session mandates that the Public Service Commission promulgate emergency regulations, or emergency amendment to existing regulations, to address issues pertaining to certain applications to attach broadband facilities to the poles of utilities subject to the jurisdiction of the Public Service Commission.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The amendments will expedite deployment of broadband internet service in rural areas of the Commonwealth places unserved and underserved citizens at a disadvantage and recounts that funds from the Broadband Equity, Access, and Deployment Program and the Rural Digital Opportunity Fund that will be used to assist in deploying broadband internet service to unserved and underserved areas.

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

(a) How the amendment will change this existing administrative regulation: The amendments: expedite the time spent reviewing for completeness applications for pole attachments; allow the attachers, if they have multiple pending applications, to prioritize a particular application; Increase the maximum number of poles, from 1,000 to 3,000, that may be requested in an application and to which regulatory timelines for processing apply; address concerns regarding clarity of invoices and payments from both utilities and pole attachers that expedites invoicing and payment; increases from 60 to 90 days the time in which an attacher will be filing an application for attachments exceeding 3,000 poles; establishes minimum contents of special contracts for applications of greater than 3,000 poles; establishes an expedited complaint and resolution process if a special contract cannot be negotiated within 15 business days of the beginning of good faith negotiations; and for other complaints, reduces from 180 to 60 days the time in which the Commission must issue a final order.

(b) The necessity of the amendment to this administrative regulation: 2024 Kentucky S.J.R. 175, 2024 Regular Session requires the Commission to promulgate emergency regulations addressing issues pertaining to broadband attachments to utility poles.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 278.040(3) authorizes the Commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278. 2024 Kentucky S.J.R. 175, 2024 Regular Session requires the Commission to promulgate emergency regulations addressing issues pertaining to broadband attachments to utility poles.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will hasten the review the processing of pole attachment applications and increase the speed at which pole attachments are made which meet the requirements of 2024 Kentucky S.J.R. 175, 2024 Regular Session directing the Public Service Commission to promulgate emergency amendments to promote the deployment of broadband in unserved or underserved areas of the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation will primarily affect regulated utilities in Kentucky that own or control utility poles, including investor owned electric utilities, rural electric cooperatives, and incumbent local exchange carriers. There are currently four investor owned electric utilities, 21 rural electric cooperates, and 20 incumbent local exchange carriers, which include investor owned telephone utilities and telephone cooperatives, operating in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The utilities will have to file amended tariffs to comply with the amended regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The regulated entities will incur some initial costs in updating their tariffs to comply with this administrative regulation. The costs of such a process are likely to vary depending on the size and complexity of the utility involved and whether and the extent to which potential attachers or other customer groups object to the proposed tariff. An estimate of the costs regulated entities might incur to update their tariffs would be between \$25,000 and \$200,000 per regulated entity. However, such costs could likely be mitigated if similarly situated utilities worked together to draft tariffs that comply with this regulation. However, like the federal regulation, and consistent with the cost causation principles the Public Service Commission applies when setting rates for other customers, utilities are able to recover the costs of processing pole attachment applications and completing make-ready from the attaching entities that caused them to be incurred, so the timelines for reviewing applications and completing make-ready should not result in the regulated entities incurring uncompensated costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The adoption of a uniform process to expedite broadband deployment should reduce potential conflicts in the future that would have to be resolved through the complaint process. This should reduce the overall cost of pole attachments for utilities and attachers by reducing or eliminating costly delays.

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

(a) Initially: Zero Dollars, no fiscal impact.

(b) On a continuing basis: Zero Dollars, no fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission does not anticipate this amendment increasing its enforcement cost. The commission currently funds enforcement of this regulation through its general operating budget funded through annual assessments paid by regulated utilities pursuant to KRS 278.130, et. seq., and this amendment has no effect on that 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: No fiscal impact.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No new fees are established and existing fees will not be affected.

(9) TIERING: Is tiering applied? Yes. The speed at which utilities are required to process applications and complete make ready is tiered based on the number of poles owned the utility. Tiering the regulation in this manner, which is consistent with how the federal regulation is tiered, will allow smaller utilities to process pole attachment applications at slower rates, while maintaining a relatively consistent attachment speed throughout the state.

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 278.040, HB 320 (2021,) SJR 175 (2024).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

(a) Estimate the following for the first year:

Expenditures: Zero Dollars; no fiscal impact.

Revenues: Zero Dollars; no fiscal impact.

Cost Savings: Zero Dollars; no fiscal impact.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No fiscal impact.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): These entities will be affected to the extent that they are seeking to attach to poles owned or controlled by

regulated utilities of which there should be few requests.

(a) Estimate the following for the first year:
Expenditures: Zero Dollars; no fiscal impact.
Revenues: Zero Dollars; no fiscal impact.
Cost Savings: Zero Dollars; no fiscal impact.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Zero Dollars; no fiscal impact.

(4) Identify additional regulated entities not listed in questions (2) or (3): Utilities, as defined by KRS 278.010(3), that own utility poles.

(a) Estimate the following for the first year:

Expenditures: It is not possible to estimate the expenditures for the first year. The amount of expenditures will depend upon the volume of applications for pole attachments, as well as the utilities' costs to engage the resources necessary to meet the requirements of the amendments to the regulation.

Revenues: It is not possible to estimate the revenues for the first year. The revenues should approximately match the expenditures incurred to process pole attachments although there may be some lag in recovery. Utilities are allowed to recover the cost of pole attachments from attachers through rates and billing of other costs.

Cost Savings: None. Expenditures and revenue should roughly match.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? While the amount of expenditures and revenues will vary in subsequent years the expenditures and revenues should roughly match because utilities are allowed to recover the cost of pole attachments from attachers through rates and billing of costs.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no fiscal impact to the Public Service Commission. Pole-owning utilities are already under an obligation to allow broadband attachment to their poles at rates, terms, and conditions in their tariffs. The emergency amendments will increase the speed at which these attachments are made, but should have no significant fiscal impact over the current obligation to provide attachments.

(b) Methodology and resources used to determine the fiscal impact: The Public Service Commission will not require additional resources to implement the emergency amendment. Pole-owning utilities are under an existing obligation to provide access to their poles and the emergency amendment does not increase the fiscal impact of attachments that does not already exist.

(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 major economic impact to the Public Service Commission which will have no increased costs resulting from the emergency regulation. Other public entities that attach to utility poles will see no negative or positive fiscal impact. Pole-owning utilities will see increased costs of operation due to an increase of pole attachment requests. These costs, however, will ultimately be recovered from the entities requesting attachment to the poles.

(b) The methodology and resources used to reach this conclusion: The Public Service Commission initiated a docket at the end of 2023 to review the application of 807 KAR 5:015 and invited the participation of pole-owning utilities and pole attachers. The Public Service Commission has held several conferences in this docket, during which the attachers and utilities introduced information that the incoming funds from the Broadband Equity, Access, and Deployment (BEAD) Program and the Rural Digital Opportunity Fund (RDOF) will result in a significant increase in pole attachment applications. Pole owning utilities will have to acquire the necessary personnel and resources to meet this increase in attachment applications, which will increase the utilities' up-front expenses. The costs, however, will ultimately be recovered from the attaching entities once attachments are completed.

FEDERAL MANDATE ANALYSIS COMPARISON

- (1) Federal statute or regulation constituting the federal mandate. Currently not applicable to the regulation.
- (2) State compliance standards. Currently not applicable to the

regulation.

(3) Minimum or uniform standards contained in the federal mandate. : Currently not applicable to the regulation.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Currently not applicable to the regulation.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Currently not applicable to the regulation.

STATEMENT OF EMERGENCY
922 KAR 2:090E

This emergency administrative regulation is necessary to meet an imminent deadline for the promulgation of an administrative regulation that is established by state statute pursuant to KRS 13A.190(1)(a)3. In the 2024 Regular Session of the General Assembly, House Bill 491 passed as emergency legislation. The bill amended KRS 199.896(21) to exempt instructional programs for school-age children meeting specific requirements from child care licensure administrative regulations. The legislation was effective April 5, 2024. This amendment is deemed to be an emergency pursuant to KRS 13A.190(1)(a)3., as the legislation requiring this amendment was passed as an emergency and became effective on April 5, 2024. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation as it also addresses federal non-compliances identified in a recent federal monitoring visit.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(Emergency Amendment)

922 KAR 2:090E. Child-care center licensure.

EFFECTIVE: May 20, 2024
RELATES TO: KRS Chapter 13B, Chapter 157, 158.030, 199.011(3), (4), (16), [499.892,]199.894(1), (3), 199.895, 199.896-199.898, 214.010, 214.036, 314.011(5), [600.020(4),]620.020(8), 620.030, 45 C.F.R. 98.2, 98.43, 42 U.S.C. [604-649,]9831-9852[, 9857-9858]

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2), (6)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations to establish license fees and standards for a child-care center. KRS 199.896(6) requires the cabinet to establish an informal dispute resolution process. This administrative regulation establishes licensure standards for a child-care center and describes the informal dispute resolution process.

Section 1. Definitions.

- (1) "Applicant" means an individual or entity applying to become a licensee or renew status as a licensee.
- (2) "Cabinet" is defined by KRS 199.011(3) and 199.894(1).
- (3) "Child" is defined by KRS 199.011(4).
- (4) "Child care" means care of a child in a center or home that regularly provides full or part-time care, day or night, and includes

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developmentally appropriate play and learning activities.

(5) "Child-care center" is defined by KRS 199.894(3).

(6) "Contract substitute staff member" means a person who temporarily assumes the duties of a regular staff person, meets the requirements established in Section 12 of this administrative regulation, and receives payment from a contract entity rather than the child care center.

(7) "Director" means an individual who meets the education and training requirements established in Section 10 of this administrative regulation.

(8) "Finding of fraud" means a suspected intentional program violation referred in accordance with 922 KAR 2:020, Section 4(4)(a)1, that is accepted for investigation and substantiated by the cabinet's Office of the Inspector General.

(9) "Health professional" means a person actively licensed as a:

(a) Physician;

(b) Physician assistant;

(c) Advanced practice registered nurse; or

(d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician or advanced practice registered nurse.

(10) "Infant" means a child who is less than twelve (12) months of age.

(11) "Instructional program" means a program operated by a business, educational institution, sole proprietor, or government entity that strictly serves school-aged children in providing specialized instruction or the continuation of learning outside the time period when school is in session.

(12) "Licensee" means the owner or operator of a child-care center to include:

(a) Sole proprietor;

(b) Corporation;

(c) Limited liability company;

(d) Partnership;

(e) Association; or

(f) Organization, such as:

1. Board of education;

2. Private school;

3. Faith-based organization;

4. Government agency; or

5. Institution.

(13){(12)} "Nontraditional hours" means the hours of:

(a) 7 p.m. through 5 a.m. Monday through Friday; or

(b) 7 p.m. on Friday until 5 a.m. on Monday.

(14){(13)} "Parent" is defined by 45 C.F.R. 98.2.

(15){(14)} "Parental or family participation" means a child-care center's provision of information or inclusion of a child's parent in the child-care center's activities, including:

(a) Distribution of a newsletter;

(b) Distribution of a program calendar; or

(c) A conference between the provider and a parent.

(16){(15)} "Pediatric abusive head trauma" is defined by KRS 620.020(8).

(17){(16)} "Premises" means the building and contiguous property in which child care is licensed.

(18){(17)} "Preschool-age" means a child who is older than a toddler and younger than school-age.

(19){(18)} "Qualified substitute" means a person who meets the requirements of a staff person established in Section 11 of this administrative regulation.

(20){(19)} "School-age" means a child who meets the age requirements of KRS 158.030 or who attends kindergarten, elementary, or secondary education.

(21){(20)} "Secretary" is defined by KRS 199.011(16).

(22){(21)} "Toddler" means a child between the age of twelve (12) and thirty-six (36) months.

Section 2. Child-Care Centers. The following child-care centers shall meet the requirements of this administrative regulation:

(1) A Type I child-care center. This child-care center shall be licensed to regularly provide child care services for:

(a) Four (4) or more children in a nonresidential setting; or

(b) Thirteen (13) or more children in a designated space separate from the primary residence of a licensee; and

(2) A Type II child-care center. This child-care center shall be the primary residence of the licensee in which child care is regularly provided for seven (7), but not more than twelve (12), children including children related to the licensee.

Section 3. Exempt Child Care Settings. The following child-care settings shall be exempt from licensure requirements of this administrative regulation, 922 KAR 2:120, and 922 KAR 2:280:

(1) Summer camps permitted by the cabinet as youth camps that serve school-age children;

(2) Kindergarten through grade 12 in private schools while school is in session;

(3) All programs and preschools regulated by the Kentucky Department of Education governed by KRS Chapter 157;

(4) Summer programs operated by a religious organization that a child attends no longer than two (2) weeks;

(5) Child care provided while parents are on the premises, other than the employment and educational site of parents;

(6) Child care programs operated by the armed services located on an armed forces base;

(7) Child care provided by educational programs that include parental involvement with the care of the child and the development of parenting skills;

(8) Facilities operated by a religious organization while religious services are being conducted;

(9) A child care program providing instructional and educational programs that:

(a) Operates for a maximum of twenty (20) hours per week; and

(b) A child attends for no more than ten (10) hours per week;

(10) A child-care center that meets requirements of KRS 199.896(19) or (20); ~~and~~

(11) An after-school program, which is:

(a) A continuation of the school day during the academic year;

(b) Operated and staffed by an accredited private or public school under the purview of the Kentucky Department of Education; and

(c) Not participating in the Child Care Assistance Program in accordance with 922 KAR 2:160; ~~and~~

(12) An instructional program for school-age children that demonstrates to the cabinet that the requirements established in KRS 199.896(21) have been met.

Section 4. Application.

(1) An applicant for a license shall submit to the cabinet a completed OIG-DRCC-01, Initial Child-Care Center License Application.

(2) Approval of an applicant for initial licensure shall result in the issuance of a preliminary license for a probationary period not to exceed six (6) months.

(3) The issuance of a preliminary license, or the issuance or reapproval of a regular license, shall be governed under the provisions of this section and Sections 6 and 7 of this administrative regulation.

(4) If the applicant for licensure is a:

(a) Corporation or a limited liability company, the application shall include a current certificate of existence or authorization from the Secretary of State; or

(b) Partnership, the application shall include:

1. A written statement from each partner assuring that the partnership is current and viable; and

2. Proof that each individual is twenty-one (21) years or older by photo identification or birth certificate.

(5) If the status of a corporation, partnership, or ownership of the child-care center changes, the new entity shall submit a completed OIG-DRCC-01.

(6) If ownership of a child-care center changes and the cabinet approves preliminary licensure upon inspection of the child-care center under the new ownership, the effective date on the preliminary license shall be the date of the approved inspection under the new ownership.

(7) The cabinet shall return the OIG-DRCC-01 and accompanying fee to an applicant if the applicant:

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(a) Has an ownership interest in a facility that is licensed or regulated by the cabinet, and that is subject to a finding of fraud or is involved in an investigation of alleged fraud by:

1. The cabinet's Office of the Inspector General; or
2. An agency with investigative authority; and

(b) Is requesting a:

1. Change in ownership; or
2. License for a new facility.

(8) An applicant shall submit to background checks in accordance with 922 KAR 2:280.

(9) A child may include a person eighteen (18) years of age if the person has a special need for which child care is required.

Section 5. Evacuation Plan.

(1) A licensed child-care center shall have a written evacuation plan in the event of a fire, natural disaster, or other threatening situation that may pose a health or safety hazard for a child in care in accordance with KRS 199.895 and 42 U.S.C. 9858c(c)(2)(U).

(2) The cabinet shall post an online template of an evacuation plan that:

- (a) Fulfills requirements of KRS 199.895;
- (b) Is optional for a child-care center's use; and
- (c) Is available to a licensed child-care center without charge.

Section 6. License Issuance.

(1) The cabinet shall monitor a child-care center that operates under a preliminary license issued pursuant to Section 4(2) of this administrative regulation.

(2) Upon completion of the probationary period required in Section 4(2) of this administrative regulation, the cabinet shall:

- (a) Approve regular licensure for a child-care center operating under a preliminary license; or
- (b) If a condition specified in Section 17 of this administrative regulation exists, deny regular licensure.

(3) A preliminary or regular license shall not be issued unless each background check required by 922 KAR 2:280 has been completed on behalf of an applicant for licensure.

(4) Background checks in accordance with 922 KAR 2:280 shall apply to:

- (a) An applicant;
- (b) A director;
- (c) An employee who is present during the time a child is receiving care;
- (d) Any person with supervisory or disciplinary control over a child in care; or
- (e) A person in accordance with 42 U.S.C. 9858f and 45 C.F.R. 98.43.

(5) If an applicant for licensure has had a previous ownership interest in a child-care provider that has had a prior certification, license, or registration denied, revoked, or voluntarily relinquished as a result of an investigation or pending adverse action, the cabinet shall grant the applicant a license if:

- (a) A seven (7) year period has expired from the:
 1. Date of the prior denial or revocation;
 2. Date the certification, license, or registration was voluntarily relinquished as a result of an investigation or pending adverse action;
 3. Last day of legal remedies being exhausted; or
 4. Administrative hearing decision; and
- (b) The applicant has:
 1. Demonstrated compliance with the provisions of this administrative regulation, 922 KAR 2:120, 922 KAR 2:280, and KRS 199.896;
 2. Completed, since the time of the prior denial, revocation, or relinquishment, sixty (60) hours of training in child development and child care practice, approved by the cabinet or its designee; and
 3. Not had an application, certification, license, or registration denied, revoked, or voluntarily relinquished as a result of an investigation or pending adverse action:

- a. For one (1) of the reasons set forth in:
 - (i) KRS 199.896(19); or
 - (ii) 922 KAR 2:280; or

b. Due to a disqualification from:

(i) The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or

(ii) Another governmental assistance program for fraud, abuse, or criminal conviction related to that program.

(6) If a license is granted after the seven (7) year period specified in subsection (5)(a) of this section, the licensee shall serve a two (2) year probationary period during which the child-care center shall be inspected no less than semi-annually.

(7) A preliminary or regular license shall specify:

- (a) A particular premises;
- (b) A designated licensee;
- (c) Age category of the children in care;
- (d) The maximum number of children allowed under center supervision at one (1) time, including a child related to the licensee or an employee, based upon:

1. Available space as determined by the State Fire Marshal's Office in conjunction with the cabinet;

2. Adequacy of program;

3. Equipment; and

4. Staff;

(e) If provided, nontraditional hours;

(f) If provided, transportation; and

(g) A list of services to be provided by the child-care center.

(8) To qualify for a preliminary license, or maintain a regular license, a child-care center shall:

(a) Provide written documentation from the local authority showing compliance with local zoning requirements;

(b) Be approved by the Office of the State Fire Marshal or designee;

(c) Have an approved water and sewage system in accordance with local, county, and state laws;

(d) Provide written proof of liability insurance coverage of at least \$100,000 per occurrence;

(e) Comply with provisions of this administrative regulation, 922 KAR 2:120, and 922 KAR 2:280;

(f) Cooperate with the cabinet, the cabinet's designee, or another agency with regulatory authority during:

1. An investigation of an alleged complaint, including an allegation of child abuse or neglect pursuant to KRS 620.030; and
2. Unannounced inspections; and

(g) Have a director who meets the requirements listed in Section 10 of this administrative regulation.

(9) A child-care center shall allow the cabinet or its designee, another agency with regulatory authority, and a parent of an enrolled child unannounced access to the child-care center during the hours of operation.

(10) Denial of access, including any effort to delay, interfere with, or obstruct an effort by a representative of the cabinet or another agency with regulatory authority, to enter the child-care center or deny access to records relevant to the inspection shall result in the cabinet pursuing adverse action in accordance with Section 16, 17, or 18 of this administrative regulation.

(11) A regular license shall be issued if the center has met the requirements contained in this administrative regulation, 922 KAR 2:120, 922 KAR 2:280, and KRS 199.896(3), (15), (16), (18), (19), and ~~(22)~~~~(24)~~.

(12) A preliminary or regular license shall not be sold or transferred.

(13) A child-care center shall not begin operation without a preliminary license to operate from the cabinet.

(14) A child-care center operating without a preliminary or regular license shall be subject to legal action.

(15) The voluntary relinquishment of a preliminary or regular license shall not preclude the cabinet's pursuit of adverse action.

Section 7. Fees.

(1) A nonrefundable initial licensing fee of fifty (50) dollars shall be charged according to KRS 199.896(3).

(2) A nonrefundable renewal fee of twenty-five (25) dollars shall be charged in accordance with KRS 199.896(3).

(3) Licensing fees shall be:

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- (a) Payable to the Kentucky State Treasurer;
- (b) Attached to the licensure application; and
- (c) Paid by:
 1. Cashier's check;
 2. Certified check;
 3. Business check; or
 4. Money order.

Section 8. General.

- (1) A licensee shall:
 - (a) Be responsible for the operation of the child-care center pursuant to this administrative regulation, 922 KAR 2:120, and 922 KAR 2:280; and
 - (b) Protect and assure the health, safety, and comfort of each child.
- (2) Child-care center staff shall be:
 - (a) Instructed by the child-care center's director regarding requirements for operation; and
 - (b) Provided with a copy of this administrative regulation, 922 KAR 2:120, and 922 KAR 2:280.
- (3) A volunteer or board member shall comply with the policies and procedures of the child-care center.
- (4) Program policies and procedures shall:
 - (a) Be in writing; and
 - (b) Include:
 1. Staff policies;
 2. Job descriptions;
 3. An organization chart;
 4. Chain of command; and
 5. Other procedures necessary to ensure implementation of:
 - a. KRS 199.898, Rights for children in child-care programs and their parents, custodians, or guardians - posting and distribution requirements;
 - b. 922 KAR 2:120, Child-care center health and safety standards;
 - c. 922 KAR 2:280, Background checks for child care staff members, reporting requirements, and appeals; and
 - d. This administrative regulation.
 - (5) An activity of a person living in a child-care center that is a dwelling unit shall not interfere with the child-care center program.
 - (6) In addition to the posting requirement of KRS 199.898(3), a child-care center shall post the following in a conspicuous place and make available for public inspection:
 - (a) The provider's preliminary or regular license;
 - (b) Each statement of deficiency and civil penalty notice issued by the cabinet during the current licensure year;
 - (c) Each plan of correction submitted by the child-care center to the cabinet during the current licensure year;
 - (d) Information on the Kentucky Consumer Product Safety Program and the program's Web site as specified in KRS 199.897;
 - (e) A description of services provided by the child-care center, including:
 1. Current rates for child care; and
 2. Each service charged separately and in addition to the basic rate for child care;
 - (f) Minimum staff-to-child ratios and group size established in 922 KAR 2:120; and
 - (g) Daily planned program.
 - (7) If a director, employee, volunteer, or any person with supervisory or disciplinary control over, or having unsupervised contact with a child in care is named as the alleged perpetrator in a child abuse or neglect report accepted by the cabinet in accordance with 922 KAR 1:330, the individual shall be removed from direct contact with a child in care:
 - (a) For the duration of the assessment or investigation; and
 - (b) Pending completion of the administrative appeal process for a cabinet substantiation of child abuse or neglect in accordance with 922 KAR 1:320 or 922 KAR 1:480.

Section 9. Records.

- (1) A child-care center shall maintain:
 - (a) A current immunization certificate for each child in care within thirty (30) days of the child's enrollment, unless an attending

physician or the child's parent objects to the immunization of the child pursuant to KRS 214.036;

- (b) A written record for each child:
 1. Completed and signed by the child's parent;
 2. Retained on file on the first day the child attends the child-care center; and
 3. To contain:
 - a. Identifying information about the child, which includes, at a minimum, the child's name, address, and date of birth;
 - b. Contact information to enable a person in charge to contact the child's:
 - (i) Parent at the parent's home or place of employment;
 - (ii) Family physician; and
 - (iii) Preferred hospital;
 - c. The name of each person who is designated in writing to pick-up the child;
 - d. The child's general health status and medical history including, if applicable:
 - (i) Allergies;
 - (ii) Restriction on the child's participation in activities with specific instructions from the child's parent or health professional; and
 - (iii) Permission from the parent for third-party professional services in the child-care center;
 - e. The name and phone number of each person to be contacted in an emergency involving or impacting the child;
 - f. Authorization by the parent for the child-care center to seek emergency medical care for the child in the parent's absence; and
 - g. A permission form for each trip off the premises signed by the child's parent in accordance with 922 KAR 2:120, Section 12;
 - (c) Daily attendance records documenting the arrival and departure time of each child, including records that are required in accordance with 922 KAR 2:160, Section 13, if a child receives services from the child-care center through the Child Care Assistance Program;
 - (d) A written schedule of staff working hours;
 - (e) A current personnel file for each child-care center staff person to include:
 1. Name, address, date of birth, and date of employment;
 2. Proof of educational qualifications;
 3. Record of annual performance evaluation;
 4. Documentation of compliance with tuberculosis screening in accordance with Section 11(1)(b) of this administrative regulation; and
 5. The results of background checks conducted in accordance with 922 KAR 2:280;
 - (f) A written annual plan for child-care staff professional development;
 - (g) A written evacuation plan in accordance with Section 5 of this administrative regulation;
 - (h) A written record of quarterly practiced earthquake drills and tornado drills detailing the date, time, and children who participated in accordance with 922 KAR 2:120, Section 3;
 - (i) A written record of practiced fire drills conducted monthly detailing the date, time, and children who participated in accordance with 922 KAR 2:120, Section 3;
 - (j) A written plan and diagram outlining the course of action in the event of a natural or manmade disaster, posted in a prominent place;
 - (k) A written record of reports to the cabinet required in Section 13 of this administrative regulation; and
 - (l) A written record of transportation services provided in accordance with 922 KAR 2:120, Section 12.
 - (2) A child-care center shall:
 - (a) Maintain the confidentiality of a child's record and information concerning a child or the child's parent;
 - (b) Maintain all records for five (5) years; and
 - (c) Provide the cabinet access and information in the completion of the investigation pursuant to KRS 620.030.

Section 10. Director Requirements and Responsibilities.

- (1) A director shall:
 - (a) Be at least twenty-one (21) years of age;

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(b) Have a high school diploma, a general equivalency diploma (GED), or qualifying documentation from a comparable educational entity;

(c) Not be employed in a position other than an onsite child care director, or director of multiple facilities, during the hours the child-care center is in operation;

(d) Ensure:

1. Compliance with 922 KAR 2:120, 922 KAR 2:280, and this administrative regulation; and

2. The designation of one (1) adult staff person in charge to carry out the director's duties if the director is not present in the child-care center during operating hours. The director shall be responsible for the actions of the designee during the director's absence;

(e) Manage the staff in their individual job descriptions;

(f) Assure the development, implementation, and monitoring of child-care center plans, policies, and procedures;

(g) Supervise staff conduct to ensure implementation of program policies and procedures;

(h) Post a schedule of daily activities, to include dates and times of activities to be conducted with the children in each classroom;

(i) Conduct, manage, and document in writing recurring staff meetings;

(j) Assess each staff person's interaction with children in care and classroom performance through an annual written performance evaluation;

(k) Assure that additional staff are available during cooking and cleaning hours, if necessary, to maintain staff-to-child ratios pursuant to 922 KAR 2:120;

(l) Notify the parent immediately of an accident or incident requiring medical treatment of a child;

(m) Assure that a person acting as a caregiver of a child in care shall not be left alone with a child, if the licensee has not received the results of the background checks as established in 922 KAR 2:280;

(n) Assure each mandatory record specified in Section 9 of this administrative regulation has not been altered or falsified;

(o) Coordinate at least one (1) annual activity involving parental or family participation; and

(p) Not have had previous ownership interest in a child-care provider that had its certification, license, or registration denied or revoked.

(2) The director of a Type I child-care center shall meet one (1) of the following educational requirements:

(a) Master's degree in education or child development field;

(b) Bachelor's degree in education or child development field;

(c) Master's degree or a bachelor's degree in a field other than education or child development, including a degree in pastoral care and counseling, plus twelve (12) clock hours of child development training;

(d) Associate degree in Early Childhood Education and Development;

(e) Associate degree in a field other than Early Childhood Education and Development, plus twelve (12) clock hours of child development training, and two (2) years of verifiable full-time paid experience working directly with children;

(f) A Director's Credential in Early Childhood Development and one (1) year of verifiable full-time paid experience working directly with children in:

1. A school-based program following Department of Education guidelines;

2. An early childhood development program, such as Head Start; or

3. A licensed or certified child-care program;

(g) Child development associate plus one (1) year of verifiable paid experience working directly with children in:

1. A school-based program following Department of Education guidelines;

2. An early childhood development program, such as Head Start; or

3. A licensed or certified child-care program; or

(h) Three (3) years of verifiable full-time paid experience working directly with children in:

1. A school-based program following Department of Education

guidelines;

2. An early childhood development program, such as Head Start; or

3. A licensed or certified child-care program.

(3) The director of a Type II child-care center shall:

(a) Meet the requirements in subsection (2) of this section; or

(b) Meet two (2) of the following:

1. Have twelve (12) hours of orientation and child development training;

2. Have one (1) year of verifiable full-time paid experience working directly with children in:

a. A school-based program following Department of Education guidelines;

b. An early childhood development program, such as Head Start; or

c. A licensed or certified child-care program; or

3. Obtain six (6) additional hours of training in child day care program administration.

Section 11. Staff Requirements.

(1) Child-care center staff:

(a) Hired after January 1, 2009, who have supervisory power over a minor and are not enrolled in secondary education, shall have a:

1. High school diploma;

2. GED or qualifying documentation from a comparable educational entity; or

3. Commonwealth Child Care Credential as described in 922 KAR 2:250; and

(b) Shall provide, prior to employment and every two (2) years thereafter:

1. A statement from a health professional that the individual is free of active tuberculosis; or

2. A copy of negative tuberculin results.

(2)

(a) A child-care center shall not employ a person:

1. With a disqualifying background check result in accordance with 922 KAR 2:280; or

2. Determined by a physician to have a health condition that renders the person unable to care for children.

(b) An individual described in Section 6(4) of this administrative regulation shall report to the licensee if the individual:

1. Meets a disqualifying criterion or has a disqualifying background check result as specified in 922 KAR 2:280;

2. Is the subject of a cabinet child abuse or neglect investigation;

or

3. Is determined by a physician to have a health condition that renders the person unable to care for children.

(3) For a child-care center licensed for infant, toddler, or preschool-age children, at least one (1) person on duty and present with the children shall be currently certified by a cabinet-approved training agency in the following skills:

(a) Infant and child cardiopulmonary resuscitation; and

(b) Infant and child first aid.

(4) For a child-care center licensed for school-age children, at least one (1) person on duty and present with the children shall be currently certified by a cabinet-approved training agency in the following skills:

(a) Adult cardiopulmonary resuscitation; and

(b) First aid.

(5) Cardiopulmonary resuscitation (CPR) and first aid training shall be in addition to the fifteen (15) clock hours requirement in subsection (16) of this section.

(6) Child-care centers shall have available in case of need:

(a) One (1) qualified substitute staff person for a Type II child-care center; or

(b) Two (2) qualified substitute staff persons for a Type I child-care center.

(7) Each qualified substitute staff person shall:

(a) Meet the staff requirements of this administrative regulation; and

(b) Provide the required documentation to verify compliance with this administrative regulation.

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(8) A qualified substitute who works in more than one (1) licensed child-care center shall provide the required documentation to verify compliance with this administrative regulation at the time of employment with each child-care center.

(9) If the operator of a Type II child-care center is unable to provide care in accordance with this administrative regulation, 922 KAR 2:280, or 922 KAR 2:120, the Type II child-care center shall:

(a) Close temporarily until the operator is able to resume compliance; and

(b) Immediately notify parents of enrolled children of the temporary closure.

(10) The minimum number of adult workers in a child-care center shall be sufficient to ensure that:

(a) Minimum staff-to-child ratios in accordance with 922 KAR 2:120 are followed;

(b) Each staff person under eighteen (18) years of age and each student trainee are under the direct supervision of a qualified staff person who meets the requirements of this section; and

(c) Unless providing care with a qualified staff person, a person under the age of eighteen (18) shall not be counted as staff for the staff-to-child ratio.

(11) Except for medication as prescribed by a physician, a controlled substance shall not be permitted on the premises during hours of operation.

(12) Alcohol shall:

(a) Not be consumed by any person on the licensed child-care center's premises during hours of operation; and

(b) Be kept out of reach and sight of a child in care.

(13) Each staff person shall remain awake while on duty except as specified in 922 KAR 2:120, Section 2(11)(f).

(14) For each adult residing at a Type II child-care center, the results of the following shall be maintained on file at the center:

(a) Background checks conducted in accordance with 922 KAR 2:280; and

(b) A copy of negative tuberculin results or a health professional's statement documenting that the adult is free of tuberculosis. Every two (2) years, the adult shall provide negative tuberculin results or health professional's statement documenting that the adult is free of tuberculosis.

(15) If a new adult begins residing in a Type II child-care center, the adult shall submit to background and health checks within thirty (30) calendar days of residence within the household.

(16) In accordance with KRS 199.896(15) and (16), a staff person with supervisory authority over a child shall complete the following:

(a) Six (6) hours of cabinet-approved orientation completed within the first three (3) months of employment in a child care program;

(b) Nine (9) hours of cabinet-approved early care and education training within the first year of employment in a child care program, including one and one-half (1 1/2) hours of cabinet-approved pediatric abusive head trauma training; and

(c) Fifteen (15) hours of cabinet-approved early care and education training completed between July 1 and the following June 30 of each subsequent year of employment in a child care program, including one and one-half (1 1/2) hours of cabinet-approved pediatric abusive head trauma training completed once every five (5) years.

(17) A staff person's compliance with training requirements of this section shall be verified through the cabinet-designated database maintained pursuant to 922 KAR 2:240.

Section 12. Contract Substitute Staff Member Requirements.

(1) A contract substitute staff member shall:

(a) Comply with the training requirements established in Section 11 of this administrative regulation;

(b) Be employed by an outside agency and provide the required documentation to verify the contractual agreement between the licensed child-care center and the outside agency;

(c) Provide a hard copy file containing all required staff records to be kept on-site at the licensed child-care center and maintained at the center for five (5) years;

(d) Be entered into the cabinet-designated database as a staff

member of the outside organization in accordance with 922 KAR 2:240;

(e) Be the responsibility of the licensed child-care center while working on-site; and

(f) Have supervisory authority over a child only if the requirements of 922 KAR 2:120, 922 KAR 2:280, and this administrative regulation are met.

(2) Except for an employee of a child-care center program authorized by 42 U.S.C. 9831-9852, an owner or employee of a contract agency possessing a Kentucky Early Care and Education Trainer's Credential shall not train an employee of the same contract agency in order to meet the training requirements established in:

(a) KRS 199.896(15) and (16), 922 KAR 2:180, 922 KAR 2:240, 922 KAR 2:250, 922 KAR 2:270, or this administrative regulation; or

(b) A child development associate credential.

Section 13. Reports.

(1) The following shall be reported to the cabinet or designee and other agencies specified in this section within twenty-four (24) hours from the time of discovery:

(a) Communicable disease, which shall also be reported to the local health department pursuant to KRS 214.010;

(b) An accident or injury to a child that requires medical care initiated by the child-care center or the child's parent;

(c) An incident that results in legal action by or against the child-care center that:

1. Affects a child or staff person; or

2. Includes the center's discontinuation or disqualification from a governmental assistance program due to fraud, abuse, or criminal conviction related to that program;

(d) An incident involving fire or other emergency, including a vehicular accident when the center is transporting a child receiving child care services;

(e) A report of child abuse or neglect that:

1. Has been accepted by the cabinet in accordance with 922 KAR 1:330; and

2. Names a director, employee, volunteer, or person with supervisory or disciplinary control over, or having unsupervised contact with, a child in care as the alleged perpetrator; or

(f) An individual specified in Section 6(4) of this administrative regulation meeting a disqualifying criterion or background check result pursuant to 922 KAR 2:280.

(2) An incident of child abuse or neglect shall be reported to the cabinet pursuant to KRS 620.030.

(3) A licensee shall report to the cabinet within one (1) week:

(a) Any resignation, termination, or change of director; and

(b) The name of the acting director who satisfies the requirements of Section 10 of this administrative regulation.

(4)

(a) Written notification of the following shall be:

1. Made to the cabinet, in writing, to allow for approval before implementation:

a. Change of ownership;

b. Change of location;

c. Increase in capacity;

d. Change in hours of operation;

e. Change of services in the following categories:

(i) Infant;

(ii) Toddler;

(iii) Preschool-age;

(iv) School-age;

(v) Nontraditional hours; or

(vi) Transportation; or

f. Addition to or reduction of the square footage of a child-care center's premises; and

2. Signed by each owner listed on the preliminary or regular license.

(b) The cabinet or its designee shall not charge a fee for acting upon reported changes.

(5) The death of a child in care shall be reported to the cabinet within one (1) hour.

(6) The cabinet and the parent of a child enrolled in a child-care center shall receive notice as soon as practicable, and prior to, a

child-care center's temporary or permanent closure.

Section 14. Annual Renewal.

(1)

(a) A regular license shall expire one (1) year from the effective date or last renewal date unless the licensee renews the regular license in accordance with this section and KRS 199.896(3).

(b) A preliminary license shall expire six (6) months from the date of issuance.

(c) A regular license that expires shall lapse and shall not be subject to appeal.

(2) A licensee seeking renewal of a regular license shall:

(a) Submit one (1) month prior to the anniversary of the regular license's effective date, an OIG-DRCC-06, Child-Care Center License Renewal Form;

(b) Meet the requirements specified in Sections 4 through 13 of this administrative regulation; and

(c) Pay the nonrefundable renewal fee in accordance with Section 7 of this administrative regulation.

(3) If requirements of subsection (1) of this section are met, the cabinet shall renew the license in the form of a validation letter.

(4) An application for renewal shall be denied in accordance with Section 17 of this administrative regulation.

Section 15. Statement of Deficiency and Corrective Action Plans.

(1) If a center is found not to be in regulatory compliance, the cabinet or its designee shall complete a written statement of deficiency in accordance with KRS 199.896(5).

(2) Except for a violation posing an immediate threat as handled in accordance with KRS 199.896(5)(c), a child-care center shall submit a written corrective action plan to the cabinet or its designee within fifteen (15) calendar days of the date of the statement of deficiency to eliminate or correct the regulatory violation.

(3) A corrective action plan shall include:

(a) Specific action undertaken to correct a violation;

(b) The date action was or shall be completed;

(c) Action utilized to assure ongoing compliance;

(d) Supplemental documentation requested as a part of the plan; and

(e) Signature of the licensee or designated representative of the licensee and the date of signature.

(4) The cabinet or its designee shall review the plan and notify the child-care center within thirty (30) calendar days of receipt of the plan, in writing, of the decision to:

(a) Accept the plan;

(b) Not accept the plan; or

(c) Deny, suspend, or revoke the child-care center's license, in accordance with Section 17 of this administrative regulation.

(5) A notice of unacceptability shall state the specific reasons the plan is unacceptable.

(6) A child-care center notified of the unacceptability of its plan shall:

(a) Within fifteen (15) calendar days of the notification's date, submit an amended plan; or

(b) Have its license revoked or denied for failure to:

1. Submit an acceptable amended plan in accordance with KRS 199.896(4); or

2. Implement the corrective measures identified in the plan of correction.

(7) The cabinet shall not review or accept more than three (3) corrective action plans from a licensed child-care center in response to the same written statement of deficiency.

(8) If a licensed child-care center fails to submit an acceptable corrective action plan or does not implement corrective measures in accordance with the corrective action plan, the cabinet shall deny or revoke the center's license.

(9) The administrative regulatory violation reported on a statement of deficiency that poses an immediate threat to the health, safety, or welfare of a child shall be corrected within five (5) working days from the date of the statement of deficiency in accordance with KRS 199.896(5)(c).

Section 16. Directed Plan of Correction (DPOC). If the cabinet determines that a child-care center is in violation of this administrative regulation, 922 KAR 2:120, or 922 KAR 2:280, based on the severity of the violation, the cabinet:

(1) Shall enter into an agreement with the provider detailing the requirements for remedying a violation and achieving compliance;

(2) Shall notify or require the provider to notify a parent of a child who may be affected by the situation for which a DPOC has been imposed;

(3) Shall increase the frequency of monitoring by cabinet staff;

(4) May require the provider to participate in additional training; and

(5) May amend the agreement with the provider if the cabinet identifies an additional violation during the DPOC.

Section 17. Basis for Denial, Suspension, or Revocation.

(1)

(a) The cabinet shall deny, suspend, or revoke a preliminary or regular license in accordance with KRS 199.896 if the applicant for licensure, director, employee, or a person who has supervisory authority over, or unsupervised contact with, a child fails to meet the requirements of this administrative regulation, 922 KAR 2:120, 922 KAR 2:280, or 922 KAR 2:190.

(b) A licensee whose regular license is suspended or revoked shall:

1. Receive a new license certificate indicating that the license is under adverse action; and

2. Post the new license certificate in accordance with Section 8(6) of this administrative regulation.

(2) Emergency Action.

(a) The cabinet shall take emergency action in accordance with KRS 199.896(4) by issuing an emergency order that suspends a child-care center's license.

(b) An emergency order shall:

1. Be served to a licensed child-care center in accordance with KRS 13B.050(2); and

2. Specify the regulatory violation that caused the emergency condition to exist.

(c) Upon receipt of an emergency order, a child-care center shall surrender its license to the cabinet.

(d) The cabinet or its designee and the child-care center shall make reasonable efforts to:

1. Notify a parent of each child in care of the center's suspension; and

2. Refer a parent for assistance in locating alternate child care arrangements.

(e) A child-care center required to comply with an emergency order issued in accordance with this subsection may submit a written request for an emergency hearing within twenty (20) calendar days of receipt of the order to determine the propriety of the licensure's suspension in accordance with KRS 199.896(7).

(f) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing in accordance with KRS 13B.125(3).

(g)

1. Within five (5) working days of completion of the hearing, the cabinet's hearing officer shall render a written decision affirming, modifying, or revoking the emergency order to suspend licensure.

2. The emergency order shall be affirmed if there is substantial evidence of an immediate threat to public health, safety, or welfare.

(h) A provider's license shall be revoked if the:

1. Provider does not request a hearing within the timeframes established in paragraph (e) of this subsection; or

2. Condition that resulted in the emergency order is not corrected within thirty (30) calendar days of service of the emergency order.

(3) Public information shall be provided in accordance with KRS 199.896(10) and (11), and 199.898(2)(d) and (e).

(4) Unless an applicant for a license meets requirements of Section 6(5) of this administrative regulation, the cabinet shall deny an applicant for a preliminary or regular license if:

(a) The applicant has had previous ownership interest in a child-care provider that had its certification, license, or registration denied

or revoked;

(b) Denial, investigation, or revocation proceedings were initiated, and the licensee voluntarily relinquished the license;

(c) An appeal of a denial or revocation is pending;

(d) The applicant previously failed to comply with the requirements of KRS 199.896, 922 KAR 2:120, 922 KAR 2:280, 922 KAR 2:190, this administrative regulation, or another administrative regulation effective at the time;

(e) An individual with ownership interest in the child-care center has been discontinued or disqualified from participation in:

1. The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or

2. Another governmental assistance program due to fraud, abuse, or criminal conviction related to that program;

(f) The applicant is the parent, spouse, sibling, or child of a previous licensee whose license was denied, revoked, or voluntarily relinquished as described in paragraphs (a) through (d) of this subsection, and the previous licensee will be involved in the child-care center in any capacity;

(g) The applicant listed as an officer, director, incorporator, or organizer of a corporation or limited liability company whose child-care center license was denied, revoked, or voluntarily relinquished as described in paragraph (a) through (d) of this subsection within the past seven (7) years;

(h) The applicant knowingly misrepresents or submits false information on a form required by the cabinet;

(i) The applicant interferes with a cabinet or other agency representative's ability to perform an official duty pursuant to Section 6(8)(f) or 6(9) of this administrative regulation;

(j) The applicant's background check reveals that the applicant is disqualified in accordance with 922 KAR 2:280;

(k) The applicant has been the subject of more than two (2) directed plans of correction during a three (3) year period; or

(l) The applicant has failed to comply with payment provisions in accordance with 922 KAR 2:190.

(5) A child-care center's license shall be revoked if:

(a) A representative of the center interferes with a cabinet or other agency representative's ability to perform an official duty pursuant to Section 6(8)(f) or 6(9) of this administrative regulation;

(b) A cabinet representative, a representative from another agency with regulatory authority, or parent is denied access during operating hours to:

1. A child;
2. The child-care center; or
3. Child-care center staff;

(c) The licensee is discontinued or disqualified from participation in:

1. The Child Care Assistance Program as a result of an intentional program violation in accordance with 922 KAR 2:020; or

2. A governmental assistance program as a result of fraud, abuse, or criminal conviction related to that program;

(d) The licensee fails to meet a condition of, or violates a requirement of a directed plan of correction pursuant to Section 16 of this administrative regulation;

(e) The applicant or licensee knowingly misrepresents or submits false information on a form required by the cabinet;

(f) The licensee is the subject of more than two (2) directed plans of correction during a three (3) year period; or

(g) The licensee has failed to comply with payment provisions in accordance with 922 KAR 2:190.

(6) The cabinet or its designee shall suspend the license if:

(a) A regulatory violation is found to pose an immediate threat to the health, safety, and welfare of the children in care as described in KRS 199.896(4); or

(b) The child care-center fails to comply with the approved plan of correction.

Section 18. Civil Penalty. The cabinet shall assess and enforce a civil penalty in accordance with 922 KAR 2:190.

Section 19. Right of Appeal.

(1) If an application has been denied or a licensee receives notice of suspension, revocation, or civil penalty, the cabinet shall inform the applicant for licensure or licensee by written notification of the right to appeal the notice of adverse action in accordance with KRS Chapter 13B and 199.896(7).

(2) An adverse action may be appealed by filing form OIG-DRCC-02, Licensed Provider Request for Appeal. The request shall:

(a) Be submitted to the secretary of the cabinet or designee within twenty (20) calendar days of the notice of adverse action; and

(b) Specify if an applicant for licensure or licensee requests an opportunity to informally dispute the notice of adverse action.

(3) If an applicant for licensure or a licensee files an OIG-DRCC-02 for a hearing, the cabinet shall:

(a) Appoint a hearing officer; and

(b) Proceed pursuant to KRS 13B.050.

(4) If an applicant for licensure or a licensee files a request for a hearing and a request for an informal dispute resolution, the cabinet shall:

(a) Abate the formal hearing pending completion of the informal dispute resolution process; and

(b) Proceed to informal dispute resolution.

Section 20. Informal Dispute Resolution.

(1) A request for informal dispute resolution shall:

(a) Accompany the request for a hearing;

(b) Identify the licensure deficiency in dispute;

(c) Specify the reason the applicant for licensure or licensee disagrees with the deficiency; and

(d) Include documentation that disputes the deficiency.

(2) Upon receipt of the written request for informal dispute resolution, the regional program manager or designee shall:

(a) Review documentation submitted by the applicant for licensure or licensee; and

(b) If requested, schedule an informal dispute resolution meeting with the applicant for licensure or licensee.

(3) The informal dispute resolution meeting shall be held within ten (10) calendar days of receipt of the request by the cabinet, unless both parties agree in writing to an extension of time.

(4) The informal dispute resolution meeting shall be conducted by:

(a) The regional program manager or designee; and

(b) A child care surveyor who did not participate in the survey resulting in the disputed deficiency.

(5) Within ten (10) calendar days of completion of the informal dispute resolution meeting or request, the regional program manager or designee shall:

(a) Issue a decision by written notification to the return address specified in the request for informal dispute resolution;

(b) If a change is made to the statement of deficiencies, issue an amended statement of deficiencies; and

(c) Specify whether the adverse action has been rescinded.

(6) An applicant or a licensee may:

(a) Accept the determination; or

(b) Proceed to a hearing according to KRS 13B.050.

(7) A request for informal dispute resolution shall not:

(a) Limit, modify, or suspend enforcement action against the applicant for licensure or licensee; or

(b) Delay submission of a written plan of correction.

(8) Emergency action taken in accordance with Section 17(2) of this administrative regulation shall conform to the requirements of KRS 199.896(4). The informal dispute resolution process shall not restrict the cabinet's ability to issue an emergency order to stop, prevent, or avoid an immediate threat to public health, safety, or welfare under KRS 13B.125(2) and 199.896(4).

Section 21. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "OIG-DRCC-01, Initial Child-Care Center License Application", 8/2018;

(b) "OIG-DRCC-02, Licensed Provider Request for Appeal", 3/2020; and

(c) "OIG-DRCC-06, Child-Care Center License Renewal Form", 8/2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbcs/Pages/default.aspx>.

LESA DENNIS, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 9, 2024

FILED WITH LRC: May 20, 2024 at 12:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 22, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by July 15, 2024, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until July 31, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Laura Begin and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes licensure standards for a child-care center, and describes an applicant's and a child-care center's appeal rights and informal dispute resolution processes.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a child-care center's licensure standards, appeal rights, and informal dispute resolution process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of licensure standards for a child-care center and related due process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for a child-care center license and related due process.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation exempts instructional programs that meet the requirements of KRS 199.896(21) from child-care center licensure as a result of the passage of House Bill 491 from the 2024 Regular Session. This legislation was passed as an emergency.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with state law

because of legislation that passed in the 2024 Regular Session (House Bill 491).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment exempts instructional programs meeting statutory requirements from child-care center licensure.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will ensure consistency with state law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of April 2024, there were 1,807 licensed child-care centers in Kentucky affected by this administrative regulation. It is unknown how many of these may choose to become license-exempt instructional programs for the purpose of not having to obtain a child care license. However, KRS 199.896(21) does contain requirements that must be met to be license-exempt. The Cabinet for Health and Family Services Office of the Inspector General, Division of Regulated Child Care, and Department for Community Based Services, Division of Child Care, administer this program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Instructional programs meeting the definition of this administrative regulation and the requirements of KRS 199.896(21) shall submit documentation to the cabinet to demonstrate meeting licensure exemption requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities meeting the requirements will be exempt from licensure requirements and may realize reduced costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities meeting statutory requirements will be exempt from child-care licensure and oversight.

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

(a) Initially: This amendment to this administrative regulation will not result in any new costs for the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation will not result in any new costs for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match, and maintenance of effort funds for the block grant, and limited agency funds support the overall implementation of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Entities demonstrating compliance with KRS 199.896(21) will be exempt from the child care licensure requirements of this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98.2, 98.43

(2) State compliance standards. KRS 194A.050(1), 199.896(2), (6), (21)

(3) Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 98.2

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or

requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.

FISCAL 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), 199.896(2), (6), (21), 45 C.F.R. 98.2

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Cabinet for Health and Family Services is impacted by this administrative regulation.

(a) Estimate the following for the first year:

Expenditures: No expenditures are expected.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: No cost savings are expected.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this administrative regulation will not generate revenue in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Licensed child-care centers and instructional programs for school-age children.

(a) Estimate the following for the first year:

Expenditures: No expenditures are expected.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: This administrative regulation exempts instructional programs that meet the requirements of KRS 199.896(21) from child-care center licensure as a result of the passage of House Bill 491 from the 2024 Regular Session. This may result in some cost savings for these programs.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This is not expected to differ over subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): None.

(a) Estimate the following for the first year:

Expenditures: Not applicable.

Revenues: Not applicable.

Cost Savings: Not applicable.

(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: This administrative regulation does not have a fiscal impact other than possibly reducing the cost of instructional programs that are now exempt from child care licensure.

(b) Methodology and resources used to determine the fiscal impact: There is not a 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 will not have an overall negative or adverse major economic impact to entities.

(b) The methodology and resources used to reach this conclusion: This amendment does not include new requirements on regulated entities.

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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
JIC = Interim Joint Committee

EDUCATION AND LABOR CABINET
Education Professional Standards Board
(As Amended at ARRS, June 11, 2024)

16 KAR 2:120. Emergency teaching certification and out-of-field teaching.

RELATES TO: KRS 157.200, 157.390, 160.380, 161.020, 161.028, 161.030, 161.100, ~~161.102~~, 161.1211, 161.1221, 334A.030, 334A.033, 334A.035, 334A.050, 334A.060, 34 C.F.R. 300.156

STATUTORY AUTHORITY: KRS 161.028(1)(a), 161.030(1), 161.100, 161.1221(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.100 authorizes the Education Professional Standards Board (EPSB) to establish qualifications for granting emergency certificates if qualified teachers are not available for specific positions. KRS 161.1221(1) requires the EPSB[Education Professional Standards Board] to establish a definition for out-of-field teaching. This administrative regulation establishes the qualifications and procedures for emergency teacher certifications and establishes the definition for out-of-field teaching.

Section 1. Definition. "Qualified teacher" means a teacher who holds the appropriate certification for the position unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.

Section 2.

(1)

~~[(a)] [Until December 31, 2014, a superintendent of a local school district shall apply to the Education Professional Standards Board for an emergency teaching certificate on behalf of an applicant by completing the Form TC-4F.]~~

~~[(b)] [Beginning January 1, 2015, a superintendent of a local school district shall apply to the Education Professional Standards Board for an emergency teaching certificate on behalf of an applicant by completing the Form CA-4F.]~~

[(2)] In accordance with KRS 161.100, prior to applying on behalf of an applicant for an emergency teaching certificate, the superintendent and board of education of a local school district shall document the following:

(a) Qualified teachers have not applied for the vacant position and qualified teachers are not available for the position;

(b) Diligent efforts have been made to recruit a qualified teacher for the vacant position, and furthermore, this vacancy has been made known locally by appropriate means;

(c) The local school district has been unsuccessful in recruiting qualified teachers for the vacant position from the listings of teachers supplied by the placement services of the teacher education institutions;

(d) The position shall be filled by the most suitable applicant available, giving preference to the factors of academic preparation, prior teaching experience or related educational work, and personal attributes compatible with the demands of the teaching profession; and

(e) The local school district has conducted a criminal records check as required by KRS 160.380 for each applicant prior to applying for the emergency certificate.

(2) The emergency certificate shall be valid for one (1) school year.

(3) The emergency teaching certificate shall be limited to two (2) issuances. A candidate may qualify for an additional issuance if ~~an emergency certificate was issued under the following conditions~~:

(a) The emergency certificate was issued after February 15 of a

school year; or

(b) The emergency certificate was issued for less than fifty (50) percent of the person's class schedule.

~~(4) The EPSB shall not issue an emergency certificate for teaching exceptional children or interdisciplinary early childhood education.~~

~~[(3)]~~

~~[(a)] [The Education Professional Standards Board, depending upon the assessment of need for the position and the availability of anticipated availability of qualified teachers, shall approve or disapprove a request for the employment of emergency teachers.]~~

~~[1.] [The term of validity of an emergency certificate may be limited to a period less than the full school year.]~~

~~[2.] [The beginning date shall be no earlier than the date the request form is received by the Education Professional Standards Board.]~~

~~[3.] [In accordance with the licensure requirements of KRS 334A.030, 334A.033, 334A.035, 334A.050, and 334A.060, the Education Professional Standards Board shall not issue an emergency certificate for teaching exceptional children with communication disorders.]~~

~~[(b)] [An emergency certificate shall not be issued to the same person in any subsequent year unless the original emergency certificate was issued under the following conditions:]~~

~~[1.] [The emergency certificate was issued after February 15 of a school year; or]~~

~~[2.] [The emergency certificate was issued for less than fifty (50) percent of the person's class schedule.]~~

~~[(c)] [If an emergency certificate is issued to a person pursuant to paragraph (b) of this subsection, there shall be no more than one (1) subsequent issuance of an emergency certificate to the same person.]~~

~~[(4)]~~

~~[(a)] [Emergency certification for an assignment as teacher of exceptional children shall be issued with the condition that the applicant shall receive intensive training on special education topics, including IEP, assessment, evaluation, individualized instruction, methods, and management. This training shall be accomplished as follows:]~~

~~[1.] [The applicant shall complete twelve (12) clock hours of training as required by the Office of Special Instructional Services of the Kentucky Department of Education;]~~

~~[2.]~~

~~[a.] [The applicant shall complete an additional six (6) clock hours of training during the fall conference conducted by the Division of Exceptional Children Services of the Kentucky Department of Education. Teachers employed after the fall conference shall complete these six (6) clock hours of training during the spring conference of the Council for Exceptional Children; or]~~

~~[b.] [If the applicant is unable to attend either the fall conference or the spring conference, the applicant shall complete an additional six (6) clock hours of training offered through one (1) of the state's eleven (11) special education cooperatives. The training shall be similar to the topics covered at the conferences; and]~~

~~[3.] [The applicant shall participate in at least one (1) day of flexible in-service training, relevant specifically to special education. The training shall be limited to visitation in a classroom of an exemplary special education teacher, special education training relevant to the identified needs of the teacher, or other training provided by the Office of Special Instructional Services.]~~

~~[(b)] [The Kentucky Department of Education shall report to the Education Professional Standards Board those emergency certified teachers of exceptional children who have not completed the training requirements established in this subsection by June 30 of each year for the preceding school year.]~~

(5) The superintendent of the local school district and the board of education may establish the need for emergency substitute

teachers on the basis of anticipated shortages of regularly certified teachers and in accordance with district policies and procedures established for the selection and employment of substitute teachers.

(6) The EP~~SB~~[Education Professional Standards Board] shall periodically review the numbers of emergency certificates issued for full-time, part-time, and substitute teaching by school district, by position, and by academic preparation.

Section 3. Emergency Teaching Certificate.

(1) Issuance of an emergency teaching certificate shall require a minimum of a bachelor's degree from a regionally or nationally accredited college or university with ~~one of the following~~:

(a) A cumulative minimum grade point average of 2.5 on a 4.0 scale; or

(b) A grade point average of 2.75 on a 4.0 scale on the last thirty ~~(30)~~ hours of credit completed, including undergraduate and graduate coursework.

(2) A candidate meeting the requirements of subsection (1) of this section shall be eligible for issuance of the emergency teaching certificate upon application to the EP~~SB~~, compliance with 16 KAR 2:010, Section 3(1), and ~~submitting~~submission of the following documentation of:

(a) Official transcripts showing all college or university credits necessary for the requested certificate;

(b) An offer of employment in a Kentucky school district in the area in which emergency certification is being sought; and

(c) Compliance with Section 2(1) of this administrative regulation.

(3) An emergency teaching certificate shall not be issued to individuals who have been judged to be unsatisfactory in the beginning teacher internship established in 16 KAR 7:010.

Section 4. Emergency Substitute Certificate.

(1) Issuance of an emergency substitute certificate shall require a minimum of sixty-four (64) semester hours of credit from a regionally or nationally accredited college or university with one of the following:

(a) a cumulative minimum grade point average of 2.5 on a 4.0 scale; or

(b) a grade point average of 2.75 on a 4.0 scale on the last thirty hours of credit completed, including undergraduate and graduate coursework;

(2) A candidate with a bachelor's degree from a regionally or nationally accredited college or university is exempt from the grade point average requirements in Subsection (1) of this section.

(3) A local school district shall review the qualifications and transcripts for each applicant for an emergency substitute certificate pursuant to the requirements of this administrative regulation.

(4) A candidate meeting the requirements of Subsection (1) of this section shall be eligible for issuance of the emergency substitute certificate upon application to the EP~~SB~~, compliance with 16 KAR 2:010, Section 3(1), and submission of the following documentation:

(a) An offer of employment in a Kentucky school district; and

(b) Compliance with Section 2(5) of this administrative regulation.

Section 5. Emergency Occupation-Based Career and Technical Education Substitute Certificate.

(1) Issuance of an emergency occupation-based career and technical education substitute certificate shall require a minimum of four (4) years of occupational experience in the area to be taught and a high school diploma or its equivalent as determined by evidence of a passing score on the General Education Development Test.

(2) A local school district shall review the qualifications and transcripts for each applicant for an emergency substitute certificate pursuant to the requirements of this administrative regulation.

(3) A candidate meeting the requirements of Subsection (1) of this section shall be eligible for issuance of the certificate upon application to the EP~~SB~~, compliance with 16 KAR 2:010, Section 3(1), and submission of the following documentation:

(a) An offer of employment in a Kentucky school district; and

(b) Certification of all educational attainment and work experience earned by the prospective emergency teacher.

~~(7)~~

~~(a)~~

~~1.] An emergency certificate for full-time or part-time employment shall be issued only to individuals who;~~

~~[a.] Have completed a minimum of a bachelor's degree from a regionally accredited college; and]~~

~~b.]~~

~~(i) Have a cumulative minimum grade point average of 2.5 on a 4.0 scale; or]~~

~~(ii) Have a minimum grade point average of 3.0 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework.]~~

~~2.] An emergency certificate for full-time or part-time employment shall not be issued to individuals who have been judged to be unsatisfactory in the beginning teacher internship established in 16 KAR 7:010.]~~

~~(b) An emergency certificate for substitute teaching shall be issued to individuals who:]~~

~~1.] Have completed a minimum of sixty-four (64) semester hours of credit from a regionally accredited institution; and]~~

~~2.]~~

~~[a.] Have a cumulative minimum grade point average of 2.5 on a 4.0 scale; or]~~

~~[b.] Have a minimum grade point average of 3.0 on a 4.0 scale on the last ~~thirty~~ ~~sixty~~ (60) hours of credit completed, including undergraduate and graduate coursework.]~~

~~(c) An emergency certificate for substitute teaching in any career and technical education or occupation-based position may be issued to persons who have a minimum of four (4) years of occupational experience in the area to be taught and a high school diploma or its equivalent as determined by evidence of a passing score on the General Education Development Test.]~~

~~(8)~~

~~(a)~~

~~1.] Until December 31, 2014, a Form TC-4F signed by the local school superintendent and approved by the local board of education shall be submitted for each anticipated emergency position for full-time or part-time employment. The application shall be accompanied by official transcripts of all college credits earned by the prospective emergency teacher.]~~

~~2.] Beginning January 1, 2015, a Form CA-4F signed by the local school superintendent and approved by the local board of education shall be submitted for each anticipated emergency position for full-time or part-time employment. The application shall be accompanied by official transcripts of all college credits earned by the prospective emergency teacher.]~~

~~(b)~~

~~1.] Until December 31, 2014, a TC-4VE signed by the local school superintendent and approved by the local board of education shall be submitted for each anticipated career and technical or occupation-based emergency position for full-time or part-time employment. The application shall be accompanied by official transcripts and certification of all educational attainment and work experience earned by the prospective emergency teacher.]~~

~~2.] Beginning January 1, 2015, a CA-4VE signed by the local school superintendent and approved by the local board of education shall be submitted for each anticipated career and technical or occupation-based emergency position for full-time or part-time employment. The application shall be accompanied by official transcripts and certification of all educational attainment and work experience earned by the prospective emergency teacher.]~~

~~(c) A local school district shall review the qualifications and transcripts for each applicant for an emergency certificate for substitute teaching pursuant to the requirements of this administrative regulation and other pertinent Kentucky statutes and~~

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administrative regulations regarding school personnel.]

[4.]

[a.]

[(i)] [Until December 31, 2014, a local school district shall initiate the online application process for candidates for an emergency certificate for substitute teaching using the EPSB On-line TC-4 Application System in accordance with the On-line TC-4 Implementation Guide for Kentucky School Districts.]

[(ii)] [Until December 31, 2014, a candidate for an emergency certificate for substitute teaching shall complete the Form TC-4 by using the EPSB On-line TC-4 Application System in accordance with the On-line TC-4 Implementation Guide for Kentucky School Districts.]

[b.]

[(i)] [Beginning January 1, 2015, a local school district shall initiate the online application process for candidates for an emergency certificate for substitute teaching using the EPSB On-line Emergency Substitute Application System in accordance with the On-line Emergency Substitute Application System Implementation Guide for Kentucky School Districts.]

[(ii)] [Beginning January 1, 2015, a candidate for an emergency certificate for substitute teaching shall complete the Form CA-4 by using the EPSB On-line Emergency Substitute Application System in accordance with the On-line Emergency Substitute Application System Implementation Guide for Kentucky School Districts.]

[2.] [A local school district shall require candidates for an emergency certificate for substitute teaching for career and technical education or occupation-based emergency positions to complete a Form TC-4VE or Form CA-4VE.]

[3.] [A local school district shall submit any TC-4VE or Form CA-4VE application on which the candidate has provided an affirmative answer to any question in the application's Section IV, Character and Fitness, to the Education Professional Standards Board for approval prior to employing the candidate in a substitute teaching position.]

Section 4.[Section 6.] [Section 3.] Rank and Salary Provisions.

[(1)] The EPSB[Education Professional Standards Board] shall issue the emergency teaching certificate [for full-time or part-time employment] established in Section 2 of this administrative regulation with a rank designation based upon the criteria established in this subsection.

[(1)(a)] A teacher holding a valid Kentucky teaching certificate shall be issued an emergency certificate for full-time or part-time employment at the rank designated on the teacher's regular certificate.

[(b)]

[1.] [A new teacher holding a valid one (1) year provisional certificate issued upon enrollment in the Kentucky Teacher Internship Program established in 16 KAR 7:010 shall be issued an emergency certificate for part-time employment at the rank designated on the teacher's one (1) year provisional certificate.]

[2.] [The teacher shall maintain a half-time enrollment in the internship as defined in 16 KAR 7:010 to remain eligible for the higher rank established in this paragraph.]

[3.] [If the teacher terminates or otherwise fails to continue enrollment in the internship prior to its successful completion, the teacher shall be reclassified at Rank IV until the teacher is properly reenrolled in the internship program.]

[(c)] [A new teacher holding a valid Kentucky Statement of Eligibility shall be issued an emergency certificate for full-time or part-time employment at Rank IV until the teacher:]

[1.] [Is properly enrolled in the Kentucky Teacher Internship Program on at least a half-time basis as established in 16 KAR 7:010; and]

[2.] [Possesses the one (1) year provisional certificate referenced in paragraph (b)1 of this subsection.]

[(2)(d)] An applicant for the emergency certificate for full-time or part-time employment who does not hold a valid Kentucky teaching certificate shall be issued the emergency certificate at Rank IV.

[(2)] [Local school districts][requesting][issuing][the emergency certificate for substitute teaching established in Section 2 of this administrative regulation shall adhere to the

rank classifications established in KRS 161.1211.]

Section 5.[Section 7.] [Section 4.] Out-of-field Teaching.

(1) Pursuant to KRS 161.1221(1), out-of-field teaching shall be classified in the following four (4) categories:

(a) The number of emergency certificates issued by grade range, subject field, and district;

(b) The number of probationary certificates issued by grade range, subject field, and district;

(c) The number of temporary provisional certificates issued by grade range, subject field, and district; and

(d) The number of teachers who do not possess a certificate of legal qualifications for the professional position they hold in the public schools, including a breakout of:

1. The number of teachers who hold no certificate;

2. The number of teachers who hold an expired certificate;

3. The number of certified teachers who are teaching outside of the subject field or fields indicated on their certificate who do not hold a credential listed in paragraph (a), (b), or (c) of this subsection; and

4. The number of certified teachers who are teaching outside the grade range indicated on their certificate who do not hold a credential listed in paragraph (a), (b), or (c) of this subsection.

(2) If data is available, reports on out-of-field teaching in the four categories established in subsection (1) of this section shall differentiate between teachers who possess the equivalent of a college major, minor, or area of concentration in the subject area they are teaching.

[Section 5.] [Beginning January 1, 2015, an applicant for any certificate described in this administrative regulation who is not currently certified as an educator in Kentucky shall submit a national and state criminal background check performed in accordance with KRS 160.380(5)(c) within twelve (12) months prior to the date of application.]

[Section 6.] [Incorporation by Reference.]

[(1)] [The following material is incorporated by reference:]

[(a)] ["Form CA-4", 08/2014;]

[(b)] ["Form CA-4F", 08/2014;]

[(c)] ["Form CA-4VE", 08/2014;]

[(d)] ["Form TC-4", 10/2009;]

[(e)] ["Form TC-4F", revised 10/2009;]

[(f)] [Form TC-4VE", 10/2009;]

[(g)] ["On-line Emergency Substitute Application Implementation Guide for Kentucky School Districts", August 2014; and]

[(h)] ["On-line TC-4 Implementation Guide for Kentucky School Districts", May 2012.]

[(2)] [This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

FILED WITH LRC: June 11, 2024

CONTACT PERSON: Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

OFFICE OF THE GOVERNOR
Department of Veterans' Affairs
Office of Kentucky Veterans Services
(As Amended at ARRS, June 11, 2024)

17 KAR 6:020. Kentucky Women Veterans Program and coordinating committee. Administrative procedures.

RELATES TO: KRS 40.310, [40.560,]40.600

STATUTORY AUTHORITY: KRS 40.600, 45A.097

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.600(1) establishes the Kentucky Women Veterans Program. KRS 40.600(5) requires the establishment of a Women Veterans

~~Coordinating Committee. KRS 40.600(6) authorizes the program] 40.540 requires the department to promulgate administrative regulations required for the effective administration of KRS 40.310 through KRS 40.560. KRS 40.600 authorizes the Kentucky Department of Veterans Affairs] to accept and expend moneys that may be appropriated by the General Assembly; and other monies received from any other source, including donations and grants. KRS 40.600(7) authorizes the Department of Veterans' Affairs to promulgate administrative regulations to implement KRS 40.600. KRS 45A.097 allows a governmental body to accept donations and gifts from persons or businesses to further the governmental body's mission or to benefit the Commonwealth. This administrative regulation establishes procedures for expenditures and fundraising by the Kentucky Women Veterans Program. It also establishes reporting requirements for the coordinating committee] and other contributions from a government unit and authorizes the department to administer the funds through the use of agency accounts. KRS 40.600 requires the Kentucky Department of Veterans Affairs to manage the funds and authorize expenditures]. [This administrative regulation also establishes a coordinating committee to make recommendations for fund expenditures and outlines the administrative procedures of the coordinating committee.]~~

Section 1. Definitions.

- (1) ~~"Commissioner" means the Commissioner of the Kentucky Department of Veterans Affairs.~~
 [(2)] "Coordinating Committee" means the Women Veterans Program Coordinating Committee.
 (2) ~~"KDVA" means the Kentucky Department of Veterans' Affairs.~~
 (3) ~~"Fund" means the Kentucky Women Veterans Program Fund.~~
 [(4)] "Woman Veteran" means a woman who served in the United States Armed Forces or in forces incorporated as part of the United States Armed Forces, and who was discharged under other than dishonorable conditions.

Section 2. Expenditures and Fundraising.

- (1) ~~Women Veterans Program funds shall be used solely for the purposes and functions described in KRS 40.600. In accordance with this subsection and subsection (2) of this section, money appropriated from the fund shall be expended in support of the Women Veterans Program's activities or events that directly benefit women veterans, including the following activities or events:]~~
 [(a)] ~~Educational sessions or training seminars focused on eligibility requirements for women veterans seeking federal and state veterans' benefits and services;~~
 [(b)] ~~Research projects focused on collecting and retaining demographic or service-connected disability data for Kentucky's women veterans;~~
 [(c)] ~~Dissemination of benefit information for women veterans through circulars, brochures, social media, and other media outlets;~~
 [(d)] ~~Annual meetings or conferences focused on engagement of Kentucky's women veterans and discussions of issues specific to women veterans;~~
 [(e)] ~~Job fairs, job placement services, other similar programs, or a combination of these focused on employing women veterans;~~
 [(f)] ~~Therapeutic opportunities focused on improving the mental and emotional wellbeing of Kentucky's women veterans;~~
 [(g)] ~~Entrepreneurial opportunities for women veterans seeking to establish or expand female veteran-owned businesses;~~
 [(h)] ~~Programs, memorials, monuments, and other projects that bring public recognition and awareness to the sacrifices, needs, and contributions of Kentucky's women veterans.]~~
 [(i)] ~~Other services designed to make gaining access to federal and state benefits and services more convenient,~~

~~efficient, or feasible for Kentucky's women veterans.]~~

~~[(f)] [Costs associated with the above, such as transportation, meals, lodging, and salaries].~~

(2) Fundraising. If fundraising on behalf of the Women Veterans Program, the Kentucky Department of Veterans Affairs may accept a gift, donation, or grant from an individual, a corporation, or a government entity, provided that the funds are not restricted to tax exempt organizations as defined by Title 26, Section 501(c) of the Internal Review Code.

(3) The Women Veterans Coordinating Committee established in KRS 40.600(5) shall:

- (a) Prepare an annual report each fiscal year that:
1. Provides meeting minutes for each committee meeting;
2. Summarizes the recommendations made by the committee; and
3. Details financial expenditures undertaken on behalf of Kentucky's women veterans; and
(b) Submit the annual report by July 20th to be included in KDVA's Annual Report and posted on the Women Veterans Program page of KDVA's Web site.

~~[Section 3.] [Coordinating Committee for the Women Veterans Program.]~~

~~[(1)] [The committee shall consist of ten (10) members, including:]~~

- ~~[(a)] [The commissioner of the Kentucky Department of Veterans Affairs;~~
~~[(b)] [The women veterans program coordinator of the Kentucky Department of Veterans Affairs;~~
~~[(c)] [Two (2) members from state government:]~~
~~[1.] [A Senator appointed by the President of the Kentucky Senate;~~

~~[2.] [A Representative appointed by the Speaker of the Kentucky House of Representatives.]~~

~~[(d)] [Two (2) members from public agencies that provide grants, benefits, or services to women veterans.]~~

~~[(e)] [Four (4) members from private organizations that provide grants, benefits, or service to women veterans.]~~

~~[(2)] [The commissioner of the Kentucky Department of Veterans Affairs shall appoint the public agencies and private organizations represented on the committee.]~~

~~[(a)] [A public agency and private organization specified in subsection (1)(d) and (e) of this section shall recommend two (2) members of the agency or organization to serve on to the committee.]~~

~~[(b)] [The commissioner of the Kentucky Department of Veterans Affairs shall appoint one (1) member from each agency and each organization from the names submitted by the agencies and organizations.]~~

~~[(c)] [Where possible, at least seven (7) members of the coordinating committee shall be women veterans.]~~

~~[(3)] [Terms of members. Except in cases of retirement, resignation, or other inability or unwillingness to serve, the initial appointments to the committee shall be as established in paragraphs (a) and (b) of this subsection.]~~

~~[(a)] [A member appointed pursuant to subsection (1)(c) of this section shall serve for a period of two (2) years.]~~

~~[(b)] [A member appointed pursuant to subsection (1)(d) and (e) of this section shall serve for a period of three (3) years.]~~

~~[(4)] [The committee shall:]~~

~~[(a)] [Meet at the call of the commissioner of Kentucky Department of Veterans Affairs, at least once per quarter.]~~

~~[(b)] [Make recommendations for fiscally responsible uses of funds donated, gifted, or designated to the Women Veterans Program, including:]~~

~~[1.] [Propose, investigate, and approve activities that support Kentucky's women veterans;]~~

~~[2.] [Establish guidelines for approved activities, including funding parameters.]~~

~~[(c)] [Prepare meeting minutes that summarize each meeting, including recommendations made by the committee;]~~

~~[(d)] [Prepare an annual report that summarizes recommendations made by the committee and financial~~

~~activities undertaken on behalf of Kentucky's women veterans;~~
[~~(e)~~] [~~Submit an annual report by July 20th of each year to be included in the Kentucky Department of Veterans Affairs Annual Report.~~]

[~~(5)~~] [~~The commissioner shall assign duties as appropriate to the Kentucky Department of Veterans Affairs' staff or members of the coordinating committee to assist with administration of the committee.~~]

[~~Section 4.~~] [~~Coordinating Committee Procedures. Coordinating committee procedures shall be in accordance with the approved by-laws of the Women Veterans Coordinating Committee.~~]

FILED WITH LRC: June 11, 2024

CONTACT PERSON: Juan Renaud, Deputy Commissioner, Office of the Commissioner, 1111 Louisville Rd., Suite B, Frankfort, Kentucky 40601; phone (502) 782-5721; fax (502) 564-9240; email juan.renaud@ky.gov.

OFFICE OF THE GOVERNOR
Department of Veterans Affairs
Office of Kentucky Veterans Services
(As Amended at ARRS, June 11, 2024)

17 KAR 6:030. Kentucky Wounded or Disabled Veterans Program. Administrative procedures.

RELATES TO: KRS 40.310, [~~40.560,~~]40.350

STATUTORY AUTHORITY: KRS 40.350

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.350(1) establishes the Kentucky Wounded or Disabled Veterans Program. KRS 40.350(7) authorizes the program[~~40.540 requires the department to promulgate administrative regulations required for the effective administration of KRS 40.310 through KRS 40.560. KRS 40.350 authorizes the Kentucky Department of Veterans Affairs to accept and expend moneys that may be appropriated by the General Assembly; and other monies received from any other source, including donations and grants. KRS 40.350(6) authorizes the Department of Veterans Affairs to promulgate administrative regulations to implement KRS 40.350. This administrative regulation establishes procedures for expenditures and fundraising by the Kentucky Wounded or Disabled Veterans Program~~] and other contributions from a government unit and authorizes the department to administer the funds through the use of agency accounts. KRS 40.350 requires the Kentucky Department of Veterans Affairs to manage the funds and authorize expenditures and establish a Program Coordinator to facilitate the administration of the Wounded or Disabled Veterans Program].

Section 1. Definitions.

(1) [~~"Commissioner" means the Commissioner of the Kentucky Department of Veterans Affairs.~~]

[~~(2)~~] [~~"Coordinator" means the Coordinator of the Wounded or Disabled Veterans Program.~~]

[~~(3)~~] "Disabled Veteran" means a veteran who was deemed disabled while serving in the United States Armed Forces, under conditions other than dishonorable, or was deemed disabled by the United States Department of Veterans Affairs after being discharged, under conditions other than dishonorable.

[~~(4)~~] "Fund" means the Wounded or Disabled Veterans Program Fund.

[~~(5)~~] "Wounded Veteran" means a veteran who was wounded while serving in the United States Armed Forces, who was discharged under conditions other than dishonorable.

Section 2. Expenditures and Fundraising.

(1) [~~In accordance with this section and sections (2)-(4),~~] Money appropriated from the fund shall be expended in support of

[~~the~~] Wounded or Disabled Veterans Program's initiatives as authorized by KRS 40.350[~~that are focused on easing the transition from active service for wounded or disabled veterans or ensuring that wounded or disabled veterans receive the federal, state, and private benefits to which they are entitled~~].

(2) Wounded or Disabled Veterans Program funds shall be used for the purposes and functions described in KRS 40.350[~~Program's initiatives shall focus on at least one (1) of the following:~~]

[~~(a)~~] [~~Performing outreach to improve wounded or disabled veterans' awareness of eligibility for federal, state, and private wounded or disabled veterans' services and benefits;~~]

[~~(b)~~] [~~Supporting legislation and policies on the local, state, and national levels to advocate and bringing public awareness to wounded or disabled issues;~~]

[~~(c)~~] [~~Collaborating with federal, state, and private agencies that provide services to wounded or disabled veterans, including entering into data-sharing agreements with the United States Department of Veterans Affairs and the Department of Defense to obtain timely information with regard to the addresses and medical statuses of Kentucky's wounded or disabled veterans;~~]

[~~(d)~~] [~~Assessing the needs of wounded or disabled veterans with respect to benefits and services;~~]

[~~(e)~~] [~~Reviewing programs, research projects, and other initiatives that are designed to address or meet the needs of Kentucky's wounded or disabled veterans;~~]

[~~(f)~~] [~~Incorporating wounded or disabled veterans' issues in strategic planning concerning benefits and services;~~]

[~~(g)~~] [~~Monitoring and researching issues relating to wounded or disabled veterans and disseminating information and opportunities throughout the Program's network;~~]

[~~(h)~~] [~~Providing guidance and direction to wounded or disabled veterans applying for grants, benefits, or services via conferences, seminars, and training workshops with federal, state, and private agencies;~~]

[~~(i)~~] [~~Promoting events and activities that recognize and honor wounded or disabled veterans;~~]

[~~(j)~~] [~~Providing facilities, as appropriate, in support of the Program through grants and other sources of funding.~~]

(3) [~~Terms of Data-Sharing. With the consent of a wounded or disabled veteran, the Program's coordinator, or his or her designee, may obtain personal information concerning wounded or disabled veterans for the sole purpose of implementing the Program. Under the provisions of KRS 61.878, the information shall not be subject to public disclosure.~~]

(4) Fundraising. If fundraising on behalf of the Wounded or Disabled Veterans Program, the Kentucky Department of Veterans Affairs may accept a gift, donation, or grant from an individual, a corporation, or a government entity, provided that the funds are not restricted to tax exempt organizations as defined by Title 26, Section 501(c) of the Internal Review Code.

FILED WITH LRC: June 11, 2024

CONTACT PERSON: Juan Renaud, Deputy Commissioner, Office of the Commissioner, 1111 Louisville Rd., Suite B, Frankfort, Kentucky 40601; phone (502) 782-5721; fax (502) 564-9240; email juan.renaud@ky.gov.

EXECUTIVE CABINET
Kentucky Commission on Human Rights
(As Amended at ARRS, June 11, 2024)

104 KAR 1:010. Posting, distribution and availability of notices and pamphlets.

RELATES TO: KRS 344.010, 344.030, 344.130, 344.190, 344.367

STATUTORY AUTHORITY: KRS [~~13A.100,~~]344.190(14)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 344.190(14) requires the Kentucky Commission on Human

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Rights to promulgate administrative regulations to effect the purposes of KRS Chapter 344, including requiring the posting of notices prepared or approved by the commission. This administrative regulation ~~establishes~~is necessary to establish requirements for persons defined in KRS 344.010, 344.030, 344.130, and 344.367, to post, distribute, and make available notices and pamphlets.

- [1.] [(502) 595-4024;]
- [2.] [(800) 292-5566;]
- [3.] [(502) 595-4084 (TDD), for the hearing-impaired;]
- [4.] [Kentucky Relay Service (800) 648-6056 (TTY/TDD).]

FILED WITH LRC: June 11, 2024
CONTACT PERSON: Colt C. Sells, Staff Attorney
Manager/Assistant General Counsel, Kentucky Commission on Human Rights, 312 Whittington Parkway, Suite 020, Louisville, Kentucky 40222, phone (502) 595-4024, email colt.sells@ky.gov.

EXECUTIVE CABINET
Kentucky Commission on Human Rights
(As Amended at ARRS, June 11, 2024)

104 KAR 1:040. Guidelines for advertising employment or licensing opportunities.

RELATES TO: KRS 344.040, 344.050, 344.060, 344.070, 29 U.S.C. 623(f), 42 U.S.C. 2000e-2(e)
STATUTORY AUTHORITY: KRS ~~344.080~~, 344.190, [~~344.080~~], 29 C.F.R. 1604.5

NECESSITY, FUNCTION, AND CONFORMITY: KRS 344.190(14) requires the Kentucky Commission on Human Rights to promulgate administrative regulations to effect the purposes of KRS Chapter 344, including requiring the posting of notices prepared or approved by the commission. This administrative regulation establishes the procedures to be used by an employer, licensing agency, labor organization, or employment agency in advertising for jobs or licensing opportunities.

Section 1. Definition. "Bona fide occupational qualification" is defined ~~by~~in 42 U.S.C. 2000e-2(e) and 29 U.S.C. 623(f). [~~USC 2000e-2(e) and 29 USC 623(f).~~]

Section 2. Help Wanted Notices or Advertisements.

[(4)] An advertisement or notice shall utilize a neutral job qualification, title, term, phrase, or description unless a person's sex, religion, age between forty (40) and seventy (70), or national origin is ~~determined~~deemed by the commission to be a bona fide occupational qualification.

[(2)] [Employers shall, if possible, utilize gender-neutral position titles and job descriptions selected from the commission's listing of "Gender-Neutral Employee Advertisement" or "Gender-Neutral Employment Terminology."]

Section 3. Bona-fide Occupational Qualification.

(1) An employer, labor organization, licensing agency, or employment agency shall have the burden of establishing with the commission that either sex, religion, age between forty (40) and seventy (70), or national origin is a bona fide occupational qualification.

(2) A sex or gender-based bona fide occupational qualification shall:

- (a) Be necessary for reasons of personal modesty or privacy; and
- (b) Comply with EEOC guidelines on "Job opportunities advertising" as found in Part 1604—Guidelines on Discrimination Because of Sex, 29 C.F.R. 1604.5. ["Guidelines on Job Opportunity Advertising on the Basis of Sex."]

Section 4.

(1) A person who intends to publish, print, circulate, or display a job advertisement may request the commission to determine whether sex, religion, age between forty (40) and seventy (70), or national origin is a bona fide occupational qualification for the job to be advertised.

(2)

(a) Within three (3) workdays of receipt of the request, the commission shall:

- 1. Make a determination in writing; and

Section 1. Equal Employment Opportunity Notices.

(1) An employer, employment agency, licensing agency, and labor organization, shall post and maintain at its establishment equal employment opportunity notices such as the Equal Employment Opportunity Poster.

(2) Equal employment opportunity notices shall be posted and shall be readily apparent to an employee and applicant for employment. They shall be posted:

- (a) In easily-accessible and well-lighted places; and
- (b) At or near each location where the employee's services are performed.

(3) A Labor organization shall post "equal employment opportunity" notices in easily-accessible and well-lighted places. The notices shall be readily apparent to member and an applicant for membership.

Section 2. Public Accommodations Welcome Notice.

(1) An owner, lessee, proprietor, or manager of a place of public accommodation, resort, or amusement, shall post and maintain at a place of public accommodation, resort, or amusement welcome notices such as the Public Accommodations Poster.

(2) Public accommodation welcome notices shall be posted where they may be readily observed by those seeking or granting any of the accommodations, advantages, facilities, or privileges of places of public accommodations, resort, or amusement.

Section 3. Equal Housing Opportunity Notices.

(1) A person or business entity engaged in a real estate or real estate-related transaction shall post and maintain at each location where services are regularly performed, the equal housing opportunity notices such as the Fair Housing Poster.

(2) Equal housing opportunity notices shall be posted at each location where services are regularly performed, in an easily-accessible and well-lighted place. The notice shall be readily apparent to a person seeking services.

Section 4. Fair Housing Law Brochure[Pamphlets]. A person or entity engaged in real estate or real estate-related transactions shall provide to owners and customers at the time of sale, purchase, rental, insuring, or financing of real property, a copy of the Fair Housing Brochure [pamphlet: "What Kentucky's Fair Housing Law Means."]

Section 5. Incorporation by Reference.[Material Incorporated by Reference.]

(1) The following material is incorporated by reference:

- (a) "Equal Employment Opportunity Poster", January 2024[Notice", February, 1993];
- (b) "Public Accommodations Poster", January 2024[Welcome Notice", February, 1993];
- (c) "Fair Housing Poster", January 2024[Equal Housing Opportunity Notice" February, 1993]; and
- (d) "Fair Housing Brochure", January 2024[Pamphlet: "What Kentucky's Fair Housing Law Means", February, 1993].

(2) This material may be inspected, copied, or obtained, [] subject to applicable copyright law, []

[(a)] at[At] the Office of the Kentucky Commission on Human Rights, 312 Whittington Parkway, Suite 020[The Heyburn Building, Suite 700,] [332 West Broadway,] [Suite 1400], Louisville, Kentucky 40222 [40202], Monday through Friday, 8:00 a.m. to 4:30 p.m.; or from the Kentucky Commission on Human Rights Web site at https://kchr.ky.gov/Resources/Pages/Brochures-and-Posters.aspx. [or]

[(b)] [By calling:]

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2. Forward its written determination.

(b) The determination of the commission shall be based on:

- 1. The specific job;
- 2. Whether the qualification is reasonably necessary to the normal operation of the business; and
- 3. Any other pertinent factors.

Section 5. Newspapers and other publications which print employment advertisements shall be encouraged by the commission to:

- (1) Maintain lists of gender-neutral terms; and
- (2) Instruct their employees to advise advertisers of gender neutral job qualifications, titles, and descriptions.

Section 6.

(1) In a conciliation agreement or order, the commission may include a provision requiring the respondent to use the term "equal opportunity employer", or a substantially similar term, in a notice or advertisement of employment or licensing opportunity.

(2) Persons advertising for employment opportunities shall be encouraged by the commission to use the terms specified in subsection (1) of this section in a notice or advertisement.

[Section 7.] [Materials Incorporated by Reference.]

[(1)] [The following material is incorporated by reference:]

[(a)] [~~Gender Neutral Employee Advertisement (February, 1993)-~~]

[(b)] [~~Gender Neutral Employment Terminology (February, 1993)-~~]

[(c)] [~~EEOC Guidelines on Job Opportunity Advertising on the Basis of Sex: 29 CFR 1604.5 - Job Opportunities Advertising-~~]

[(2)] [This material may be inspected, copied or obtained:]

[(a)] [At the offices of the Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202; or]

[(b)] [By calling:]

[1.] [(502) 595-4024;]

[2.] [(800) 295-5566;]

[3.] [(502) 595-4084, (TDD), for the hearing impaired;]

[4.] [Kentucky Relay Service, (800) 648-6056 (TTY/TDD). This is to certify that the Commissioners of the Kentucky Commission on Human Rights have approved this administrative regulation as amended prior to its filing with the Legislative Research Commission, as required by KRS 344.190(14).]

FILED WITH LRC: June 11, 2024

CONTACT PERSON: Colt C. Sells, Staff Attorney Manager/Assistant General Counsel, Kentucky Commission on Human Rights, 312 Whittington Parkway, Suite 020, Louisville, Kentucky 40222, phone (502) 595-4024, email colt.sells@ky.gov.

EXECUTIVE CABINET

Kentucky Commission on Human Rights
(As Amended at ARRS, June 11, 2024)

104 KAR 1:050. Standards and procedures for providing equal employment opportunities.

RELATES TO: KRS 344.010-344.500, 344.990, 29 C.F.R. 1604.1-1604.4, 1604.6-1604.11, 1605.1-1605.3, 1606.1-1606.8, 1607.1-1607.16, 1608, 1625, 1630

STATUTORY AUTHORITY: KRS 344.190, 29 C.F.R. 1604.1-1604.11, 1605, 1606, 1607, 1608, 1630, ~~29 C.F.R. 1606~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 344.190(14) requires the Kentucky Commission on Human Rights to promulgate administrative regulations to effect the purposes of KRS Chapter 344, including requiring the posting of notices prepared or approved by the commission. This administrative regulation establishes employment standards and procedures promulgated by the EEOC and enforced by the Kentucky Commission on Human Rights.

Section 1. Employment Discrimination Guidelines. In the determination of issues prohibiting employment discrimination the commission shall follow and enforce the following guidelines promulgated by the Equal Employment Opportunity Commission:[-]

[Section 2.] [Federal Regulations Adopted Without Change.]

(1) [~~The following federal regulations are adopted without change:~~]

[(a)] Part 1605—Guidelines on Discrimination Because of Religion (and Appendix A to 1605.2 and 1605.3—Background Information); [~~EEOC Guidelines on Discrimination Because of Religion (with Appendix A—Background Information);~~] 29 C.F.R. 1605.1 to 1605.3;[-] 45 Federal Register 72612, October 31, 1980;[-]

[(b)] Part 1604—Guidelines on Discrimination Because of Sex (and Appendix to Part 1604—Questions and Answers on the Pregnancy Discrimination Act); [~~EEOC Guidelines on Sex Discrimination (with Appendix to Part 1604—Questions and Answers on the Pregnancy Discrimination Act);~~] 29 C.F.R. 1604.1 to 1604.4 and 1604.6 to 1604.11;[-] 37 Federal Register 6836, April 5, 1972;[and] 44 Federal Register 23805, April 20, 1979; and 64 Federal Register 58333-01, October 29, 1999;[-]

[(c)] Part 1607—Uniform Guidelines on Employee Selection Procedures (1978); [~~EEOC Uniform Guidelines on Employee Selection Procedure;~~] 29 C.F.R. 1607.1 to 1607.16;[-] 43 Federal Register 38295, August 25, 1978;[-]

[(d)] Part 1606—Guidelines on Discrimination Because of National Origin; [~~EEOC Guidelines on Discrimination Because of National Origin;~~] 29 C.F.R. 1606.1 to 1606.8;[-] 45 Federal Register 85635, December 29, 1980, and 64 Federal Register 58333-01, October 29, 1999;[-]

[(e)] Part 1630—Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act (and Appendix to Part 1630—Interpretative Guidance On Title I of the Americans With Disabilities Act); 29 C.F.R. 1630.1 to 1630.16.; 76 Federal Register 16999, March 25, 2011; and 81 Federal Register 31140, May 17, 2016; and [~~"Equal Employment Opportunity for Individuals with Disabilities" with Interpretive Guidance on Title I of the Americans with Disabilities Act and the Final Rule and Regulations, 29 C.F.R. 1630", 56 Federal Register 35725, July 26, 1992.~~]

[(6)] Part 1625—Age Discrimination in Employment Act; 29 C.F.R. 1625.1 to 1625.32; 46 Federal Register 47726, Sept. 29 1981; 53 Federal Register 5972, Feb. 29, 1988; 72 Federal Register 36875, July 6, 2007; 72 Federal Register 72938-01, Dec. 26, 2007; and 79 Federal Register 13547, March 11, 2014.

[(2)] [The federal regulations may be inspected, copied or obtained:]

[(a)] [At the Office of the Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202; or]

[(b)] [By calling:]

[1.] [(502) 595-4024;]

[2.] [(800) 292-5566;]

[3.] [(502) 595-4084 (TDD), for the hearing impaired;]

[4.] [Kentucky Relay Service, (800) 648-6056 (TTY/TDD);]

[(c)] [The material referred to in subsection (1)(e) of this section is also available in the following alternative formats directly from the office of the Americans with Disabilities Act at (202) 514-0304 (voice), (202) 514-0381 (TDD) or (202) 514-6193 (electronic bulletin board):]

[1.] [Large print;]

[2.] [Braille;]

[3.] [Electronic file on computer disk;]

[4.] [Audio-tape.]

FILED WITH LRC: June 11, 2024

CONTACT PERSON: Colt C. Sells, Staff Attorney Manager/Assistant General Counsel, Kentucky Commission on Human Rights, 312 Whittington Parkway, Suite 020, Louisville, Kentucky 40222, phone (502) 595-4024, email colt.sells@ky.gov.

VOLUME 51, NUMBER 1– July 1, 2024

EXECUTIVE CABINET
Kentucky Commission on Human Rights
(As Amended at ARRS, June 11, 2024)

104 KAR 1:080. Guidelines on fair housing.

RELATES TO: KRS 344.010, 344.360-344.385, 344.600-344.680, 24 C.F.R. 100.75, 100.80

STATUTORY AUTHORITY: KRS 344.190(14); ~~24 C.F.R. 101.20, 101.25~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 344.190(14) requires the Kentucky Commission on Human Rights to promulgate administrative regulations to effect the purposes of KRS Chapter 344, including requiring the posting of notices prepared or approved by the commission. This administrative regulation establishes standards and procedures for determining permissible conduct by persons engaged in real estate or real estate-related transactions.

Section 1. Definitions.

(1) "Conduct" means, in addition to practices prohibited by KRS 344.360, any action including statements, words, and utterances.

(2) "Real estate operator" is defined ~~by~~in KRS 344.010(8), and includes, subject to KRS 344.362 and 344.365, any person engaging in housing practices or any real estate or real estate-related transaction and is not limited to those persons regularly engaging in real estate as a business.

~~[(2)] ["Conduct" means in addition to practices prohibited by KRS 344.360 any action including statements, words, and utterances.]~~

Section 2. Discriminatory conduct, notice, statements, and advertisements shall include:

(1) A written or oral notice or statement by a real estate operator; ~~and~~

(2) Written notice or statement including an application, flyer, brochure, deed, sign, banner, poster, billboard, or a document used with respect to the sale or rental of housing accommodations; ~~and~~

(3) Notices, statements, and advertisements, including~~and~~ include the following:

(a) The use of words, phrases, photographs, illustrations, symbols, or forms which convey that housing accommodations are available or not available to a particular group of persons because of race, color, religion, sex, disability, familial status, or national origin;

(b) Expressing to agents, brokers, employees, prospective sellers, ~~or~~ renters, or any other persons a preference for or limitation on any purchaser or renter because of race, color, religion, sex, disability, familial status, or national origin of such persons;

(c) Selecting media or locations for advertising the sale or rental of housing accommodations which deny particular segments of the housing market information about housing opportunities because of race, color, religion, sex, disability, familial status, or national origin; and

(d) Refusing to publish advertising for the sale or rental of housing accommodations or requiring different charges or terms for such advertising because of race, color, religion, sex, disability, familial status, or national origin; ~~and~~

(4) Discriminatory representations on the availability of dwellings, including shall include those specified in 24 C.F.R. 100.80(a) and (b);~~[(4)]~~ "Prohibited words, phrases, symbols and visual aids" shall include those specified in 24 CFR 109.20(a) to (f);

(5) Use of advertising media that fails to~~shall~~ comply with the provisions of 24 C.F.R. 100.75, 61 Federal Register 5205, February 9, 1996~~[24 CFR 109.25(a) to (e)]; and~~.

(6) Occupancy restrictions because of familial status unless warranted under paragraphs (a) and (b) of this subsection.

(a) Real estate operators may enforce nondiscriminatory policies or standards involving reasonable occupancy restrictions on the basis of familial status.

(b) In reviewing occupancy restrictions, the Kentucky Commission on Human Rights shall consider the:

1. Size of bedrooms and unit;
2. Age of children;
3. Configuration of unit; and
4. Other special circumstances which may warrant occupancy restrictions.

[Section 3.] [Material Incorporated by Reference.]

[(1)] [The following material is incorporated by reference:]

[(a)] ["Use of words, phrases, symbols, and visual aids, 24 CFR 109.20(a) to (f)", (54 Federal Register 3308, January 23, 1989, as amended at 55 FR 53294, December 28, 1990).]

[(b)] ["Selective Use of Advertising Media or Content, 24 CFR 109.25(a) to (c)", (54 Federal Register 3308, January 23, 1989, as amended at 55 FR 53294, December 28, 1990).]

[(2)] [This material may be inspected, copied, or obtained:]

[(a)] [At the offices of the Kentucky Commission on Human Rights, the Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202; or]

[(b)]

[1.] [(502) 595-4024;]

[2.] [(800) 292-5566;]

[3.] [(502) 595-4084 (TDD), for the hearing impaired;]

[4.] [Kentucky Relay Service, (800) 648-6056 (TTD/TDD).]

FILED WITH LRC: June 11, 2024

CONTACT PERSON: Colt C. Sells, Staff Attorney Manager/Assistant General Counsel, Kentucky Commission on Human Rights, 312 Whittington Parkway, Suite 020, Louisville, Kentucky 40222, phone (502) 595-4024, email colt.sells@ky.gov.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, June 11, 2024)

301 KAR 5:040. Migratory Bird Harvest Information Program.

RELATES TO: KRS 150.235, 150.603(1), (2)

STATUTORY AUTHORITY: KRS 150.195(1), 50 C.F.R. 20.20

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.195(1) authorizes the Kentucky

Section 1. Definition. "The Migratory Bird Harvest Information Program" means an online survey that a person completes prior to legally hunting waterfowl or migratory shore ~~or~~and upland game birds.

Section 2.

(1) Prior to hunting waterfowl or migratory shore ~~or~~and upland game birds, a person shall obtain a Migratory Bird Harvest Information Program verification number by completing the Migratory Bird Harvest Information Program Survey on the department's Web site at fw.ky.gov.

(2) A person shall possess the survey verification number established in subsection (1) of this section while hunting waterfowl or migratory shore and upland game birds.

Section 3. Incorporation by Reference.

(1) The "Migratory Bird Harvest Information Program Survey" form, 2016 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or at~~app.fw.ky.gov/myprofile/default.aspx?red=HipSurvey.~~

FILED WITH LRC: June 11, 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 fwpubliccom-ments@ky.gov.

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, June 11, 2024)**

301 KAR 5:210. Special agency fundraising permits.

RELATES TO: KRS ~~150.025[150.170]~~, 150.175, 150.195
STATUTORY AUTHORITY: KRS 150.025, 150.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the Department of Fish and Wildlife Resources[department] to promulgate administrative regulations to establish hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.175 requires[authorizes] the department to establish game permits to be used in combination with a statewide hunting license or valid youth statewide license, as well as requirements on[and] how those permits are to be used. KRS 150.195(1) requires the department to promulgate administrative regulations pertaining to the issuance of, and other matters relating to, licenses and permits issued by the department. This administrative regulation establishes the requirements for the issuance and use of Special Agency Fundraising Permits.

Section 1. Definitions.

- (1) "Elk hunt sweepstakes permit" means a permit ~~that, which~~ allows the holder to harvest one (1) elk of either sex.
- (2) "Immediate family" means a person's spouse, mother, father, daughter, brother, sister, grandparent, or son.
- (3) "Premium combination big game permit" means a permit that allows the holder to lawfully take during the year of selection, one (1) elk of either sex and, in addition to the statewide harvest limits,

the following species: one (1) deer of either sex, one (1) bear of either sex; and in the spring turkey season the year after selection, one (1) legal spring turkey.

(4) "Proceeds" means the amount of money received from the sale of applications for special agency fundraising permits.

(5) "Special Agency Fundraising Permit" means a Kentucky hunting permit subject to a special application and drawing process to select the holder, that includes privileges to take specified big game animals when used in conjunction with a statewide annual hunting license.

(6) "Standard combination big game permit" means a permit that allows the holder to lawfully take, in addition to the statewide harvest limits, the following species: one (1) deer of either sex, one (1) bear of either sex, and one (1) legal spring turkey.

Section 2. Application and Drawing Process.

(1) The application period shall be August 1 of the year preceding through May 30 (midnight eastern time) of the year in which the drawing occurs.

(2) An applicant shall:

(a) Complete the application process on the department's Web site at fw.ky.gov, in accordance with Section 1 of 301 KAR 5:030; and

(b) Pay the applicable nonrefundable application ~~fee[fee(s)]~~ for the ~~permit[permit(s)]~~ desired, as follows:

- 1. For elk hunt sweepstakes permit and premium combination big game permits:
 - a. Five (5) dollars for residents and ten (10) dollars for nonresidents for one (1) application;
 - b. Ten (10) dollars for residents and twenty (20) dollars for nonresidents per bundle of three (3) applications; and
 - c. Twenty-five (25) dollars for residents and fifty (50) dollars for nonresidents per bundle of ten (10) applications.
- 2. For standard combination big game permits:
 - a. Three (3) dollars for residents and six (6) dollars for nonresidents for one (1) application;
 - b. Eight (8) dollars for residents and sixteen (16) dollars for nonresidents per bundle of three (3) applications; and
 - c. Twenty (20) dollars for residents and forty (40) dollars for nonresidents per bundle of ten (10) applications.

(3) An applicant may purchase an unlimited number of applications or bundles ~~of applications[thereof]~~.

(4) The number of special agency fundraising permits available per year shall be:

(a) One (1) elk sweepstakes permit ~~[f]for a resident or nonresident holder[.];~~

(b) One (1) premium combination big game permit ~~[f]for a resident or nonresident holder[.];~~

(c) One (1) standard combination big game permit for a resident; and

(d) One (1) standard combination big game permit for a nonresident.

(5) There shall be a random electronic drawing~~[.]~~ conducted subsequent to the general elk hunt drawing each year. This drawing shall be taken[.] from among applications in each applicant pool for the corresponding special agency fundraising permits available for that fall's hunting seasons.

(a) Each drawing shall be sequential, in the following order:[with]

1. The elk hunt sweepstakes~~[drawing conducted]~~ first~~[.];~~ preceded by

2. The premium big game permit~~[drawing]~~ second~~[.];~~ and followed by

3. The standard combination big game permit~~[drawings]~~ for selection of resident and nonresident permit holders, third.

(b) If an individual applicant is selected for the elk hunt sweepstakes permit or the premium combination big game permit, upon selection that applicant shall be removed from the other special agency fundraising permits applicant pools prior to the drawings to determine the holders of those other permits.

(6) The commissioner shall extend the application deadline if technical difficulties with the application system prevent applications from being accepted for one (1) or more days during the application period.

(7) An applicant who is selected for a Kentucky elk hunt sweepstakes permit shall be ineligible to receive the elk hunt sweepstakes permit in any[a] subsequent drawing.

(8) A person subject to a waiting period resulting from being selected in the general Kentucky Elk Hunt Drawing shall be eligible to apply for special agency fundraising permits.

Section 3. Issuance and Use of Permits.

(1) Upon conclusion of the drawing process for special agency fundraising permits, the department shall announce the drawing results on the agency Web site and issue the permits to the recipients, subject to any applicable deferrals or transfers as described in Section 4 of this administrative regulation, prior to the first hunting season for which the permits are applicable.

(2) A permit holder shall only take animals ~~[with]~~

(a) Through the use of legal hunting equipment; and

(b) During the normal season dates for which take is otherwise allowed.

(3) A permit holder shall carry proof of purchase of a valid Kentucky hunting license, unless exempted from the requirement to be licensed in accordance with[by] KRS 150.170.

(4) The holder of a permit that allows take of an elk shall comply with the statewide bag limit of one (1) elk per hunter per license year and other requirements in 301 KAR 2:132.

(5) The holder of a special agency fundraising permit that includes privileges to take elk may use the permit in any elk hunting unit open to hunting during any open elk hunting season on:

(a) Private land with permission from the landowner~~[.];~~ or ~~[on Department]~~

(b) Lands that are:

1. Owned or managed by the department; and[lands that are]

2. The subject of public access agreements between the landowners and the department~~[.];~~ ~~[but]~~

(6) The permit holder referenced in subsection (5) shall only use methods allowed during the season segment that is open [as established in 301 KAR 2:132] while he or she is hunting, as established in 301 KAR 2:132.

Section 4. Deferral or Transfer of Permits.

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(1) A recipient of a special agency fundraising permit that includes privileges to take elk in Kentucky may:

(a) Defer use of the elk hunting privilege included in the permit for one (1) year if he or she has previously obtained an elk permit of any kind for use during the Kentucky elk hunting season to which the special agency fundraising permit pertains; or

(b) Transfer use of the elk hunting privilege included in the permit to one (1) member of his or her immediate family for use during any[the] hunting season[season(s)] to which the permit pertains.

(2) A holder wishing to transfer or defer use of the elk hunting privilege included in a permit shall contact the office of the commissioner in writing, no later than July 31 of the year in which he or she is selected through the drawing for the permit.

Section 5. Goods or Services May Be Included. The department may obtain goods or services of interest to prospective applicants, through purchase, donation or sponsorship, to incentivize applications for a special agency fundraising permit. The recipient of the permit shall also receive applicable goods or services included in the drawing for a permit, as posted on the agency Web site, except that a recipient may refuse an applicable good or service at his or her choosing.

Section 6. Use of Fees[Proceeds]. Fees[Proceeds] from the sale of special agency fundraising permits shall be deposited into the department's restricted Fish and Game Fund account and used solely for agency operational expenditures.

FILED WITH LRC: June 11, 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.

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Drivers Licensing
(As Amended at IJC on Transportation, June 23, 2024)**

601 KAR 12:080. Drivers license or personal ID renewal or replacement for persons without an established and fixed nighttime residence.

RELATES TO: KRS 186.412, 186.4122, 186.531, 42 U.S.C. 11434a(2)

STATUTORY AUTHORITY: KRS 186.412, 186.4122, 186.531

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.412 establishes procedures to allow applicants seeking to renew or obtain a duplicate operator's license when the applicant does not have an established and fixed nighttime residence. KRS 186.4122 establishes procedures for an applicant seeking an initial, renewal, or duplicate personal identification card when the applicant does not have an established and fixed nighttime residence. KRS 186.412 requires the Transportation Cabinet to promulgate administrative regulations establishing forms relating to both personal driver's licenses and personal identification cards.

Section 1. Definitions.

(1) "Homeless individual" means a person at least eighteen (18) years of age who lacks a fixed, regular, and nighttime residence.

(2) "Homeless youth" is defined by 42 U.S.C. § 11434a(2) and KRS 186.4122.

Section 2. Procedures for Renewing an Operator's License, Duplicate Operator's License, or Personal Identification Card.

(1)

(a) Until August 1, 2024, all applicants who meet the definition of homeless individual shall complete form TC94-199, 09/2023 edition, to renew an operator's license, receive a duplicate operator's license, or to receive an initial, renewal, or duplicate

personal identification card. This form shall not be used for issuance of an initial operator's license.

(b) Beginning August 1, 2024, all applicants who meet the definition of homeless individual shall complete form TC94-199, 08/2024 edition, to renew and operator's license, receive a duplicate operator's license, or to receive an initial, renewal, or duplicate personal identification card. This form shall not be used for issuance of an initial operator's license.

(2) All applicants who meet the definition of homeless youth and who are between the ages of sixteen (16) and seventeen (17) years old but younger than eighteen (18) years of age, shall complete form TC94-198 to receive a personal identification card.

Section 3. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "TC94-198", October 2023; ~~and~~

(b) "TC94-199", September 2023; ~~and~~

(c) "TC94-199", August 2024.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Driver Licensing, 2nd Floor, Transportation Cabinet Office Building, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on Transportation Cabinet's Web site at [https://transportation.ky.gov/Organizational-Resources/Pages/Forms-Library-\(TC-94\).aspx](https://transportation.ky.gov/Organizational-Resources/Pages/Forms-Library-(TC-94).aspx).

FILED WITH LRC: June 4, 2024

CONTACT PERSON: Jon Johnson, Staff Attorney Manager/Assistant General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 782-8180, fax (502) 564-5238, email Jon.Johnson@ky.gov.

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing
(As Amended at ARRS, June 11, 2024)**

601 KAR 23:040. Application form to become Kentucky electronic license title entity; and application form for electronic motor vehicle title application submission.

RELATES TO: KRS 186A.005, 186A.017

STATUTORY AUTHORITY: KRS 186A.017

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186A.017

establishes the requirements and procedures to become an approved entity pursuant to KRS 186A.005(1). KRS 186A.017(7) requires the Transportation Cabinet to promulgate administrative regulations to establish an electronic title application and registration system by which title applications, salvage title applications, title lien statements, other supporting documents, signatures, and fees can be transmitted through the title application process in an electronic format.

Section 1. Definitions.

(1) "Applicant" means any Kentucky automobile dealer or lienholder making application to become an approved entity.

(2) "Application" means form TC 96-361 available electronically to establish qualifications to be an approved entity.

(3) "Approved entity" is defined by KRS 186A.005(1).

(4) "Cabinet" means the Transportation Cabinet.

(5) "Electronic Title Application Review Committee" or "committee" means the committee responsible for approving or rejecting properly submitted applications.

Section 2. Electronic Title Application Review Committee.

(1) The committee shall consist of:

(a) The Director of the Division of Motor Vehicle Licensing, or a proxy;

(b) Assistant Director, Division of Motor Vehicle Licensing, or a

proxy;

(c) Title Branch Manager of the Division of Motor Vehicle Licensing, or a proxy;

(d) Investigator Supervisor of the Division of Motor Vehicle Licensing, or a proxy; and

(e) Assistant Director, Dealer Commission, Department of Vehicle Regulation, or a proxy.

(2) **For the committee to conduct business, there shall be a quorum present.** A simple majority of the members present at a meeting shall be required to recommend approval or denial of an application.

(3) If there is a tie vote, the tie-breaking vote shall be made by the Commissioner of the Department of Vehicle Regulation.

Section 3. Applicant Qualification Standards.

(1) Applicants that are dealerships shall be a legal entity ~~[legally]~~ authorized to conduct business in the Commonwealth of Kentucky, with proper documentation with the Commonwealth of Kentucky Secretary of State's office for all purposes including service of process and principal place of business address. A dealer approved entity shall submit electronically ~~its/their~~ title and registration applications to the county clerk's office of the county in which ~~it is/they are~~ doing business or the county where the buyer has their primary residence. **While scanning documents electronically, all applicants, dealerships, or lienholders shall use a color scanner capable of scanning double-sided with a minimum resolution of 600 dpi.**

(2) Applicants, dealerships, or lienholders shall be up to date on all annual reports or other required business filings and the entity in question shall be in good business standing.

(3) Applicant dealerships shall be in good standing with the ~~[Kentucky-]Motor Vehicle [Dealer-]Commission.~~

(4) Applicant dealerships shall not have any open ~~investigative~~ cases with the Division of Motor Vehicle Licensing, **or the Motor Vehicle Commission.**

(5) Applicant dealerships, lienholders, and any other user using this system consents to the requirements of KRS 186A.017 and other applicable laws.

(6) Applicant, dealership, or lienholder addresses shall be accurate and up to date with official street addresses. Post-office box addresses shall not be used. If the official street addresses change, notice of the address change shall be made as soon as possible to the county clerk of the county where the business is located.

(7) An applicant shall return the completed form, TC 96-361, to the Transportation ~~Cabinet~~ address listed on the application form. Pursuant to KRS 186A.017 ~~(4)(3)~~, the application fee of \$150 shall be submitted with the application.

(8) ~~[Possible-]Grounds for denial of a new application shall~~ include:

(a) An incomplete application;

(b) An application containing false or misleading information;

(c) Prior criminal history involving fraud, perjury, or history of trafficking in stolen vehicles covered under this administrative regulation;

(d) Any history of theft or other crime relating ~~to an~~ intentional or negligent concealment of title source;

(e) Evidence of past involvement in theft of vehicles or vehicle parts;

(f) Falsification or tampering with existing odometer readings; or

(g) Failure to maintain a proper street address, or failure to provide update of new address change.

(9) If an application becomes approved and later it is found by the committee that any of the possible grounds of denial in subsection ~~(8)(7)~~ of this section were concealed, or developed at a later date, the committee shall immediately notify the applicant by letter that ~~its/their~~ approved status shall be revoked.

(10) If an application has been denied or revoked for any cause, the cabinet shall notify the applicant at its most recent known address by letter. The letter shall provide a brief explanation for the denial.

Section 4. Appeal of Denials or Revocations of Prior Approval.

(1) Within thirty (30) days of the date of the denial or revocation letter, an applicant may appeal the decision ~~in writing~~ **by letter** stating that it is an appeal of ~~the~~ denial or revocation in question with a copy of ~~the~~ denial or revocation letter attached.

(2) Appeals shall be addressed to the Commissioner of the Department of Vehicle Regulation, 200 Mero Street, Frankfort, Kentucky 40622.

(3) Appeals shall be governed by KRS Chapter 13B.

Section 5. Incorporation by Reference.

(1) Form TC 96-361, "Application to Become a KYELT Approved Entity", October 2023, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Motor Vehicle Licensing, 2nd Floor, Transportation Cabinet Office Building, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on Transportation Cabinet's Web site at drive.ky.gov.

FILED WITH LRC: June 11, 2024

CONTACT PERSON: Jon Johnson, Staff Attorney Manager/Assistant General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238, email jon.johnson@ky.gov.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM Kentucky Fire Commission (As Amended at ARRS, June 11, 2024)

739 KAR 2:160. Reimbursement for line-of-duty stress injury treatment.

RELATES TO: KRS 42.190, ~~75.400(3)~~, 95A.200, 95A.210, 95A.220, 95A.240, 136.392, 335.500 - 335.599

STATUTORY AUTHORITY: KRS 95A.220 ~~(2), (5)~~, 95A.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 95A.220 ~~(2) authorizes~~ **establishes** the Firefighters Foundation Program fund and appropriates the ~~moneys/monies~~ in the fund for the purposes provided in KRS 95A.200 ~~through to~~ 95A.300. KRS 95A.240 requires the Kentucky Fire Commission to administer the Firefighters Foundation Program fund and authorizes the commission to ~~promulgate administrative issue such reasonable rules and~~ regulations ~~to administer~~ **as will facilitate the administration of** the fund and further the purposes of KRS 95A.200 ~~through to~~ 95A.300. KRS 95A.220(5) ~~authorizes~~ **requires** the Kentucky Fire Commission to reimburse a qualifying firefighter for his or her out-of-pocket expenses for treatment of a qualifying stress injury. This administrative regulation establishes requirements for obtaining stress injury reimbursement benefits.

Section 1. Definitions.

(1) "Full-time ~~paid career~~ firefighter" **is defined by KRS 75.400(3) means any member of a paid municipal fire department organized under KRS Chapter 95, 67A, or 67C, any member of a fire protection district organized under KRS Chapter 75, any member of a county fire department created pursuant to KRS Chapter 67, or any firefighter employed by an air board created under KRS Chapter 183.**

(2) "Fund" is defined by KRS 95A.210(4).

(3) "Mental health professional" means a psychiatrist, psychologist, or professional counselor credentialed under KRS 335.500 ~~through to~~ 335.599.

(4) "Qualifying firefighter" means an individual who satisfies the requirements of Section 3 of this administrative regulation.

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(5) "Stress injury" is defined by KRS 95A.220(1).

(6) "Volunteer firefighter" means an individual who receives either no salary or less than \$8,000 annually for firefighting services to a volunteer fire department[any member of a fire department organized under KRS Chapter 273].

Section 2. Funding.

(1) For each fiscal year, \$1,250,000 shall be made available from the fund for a program to reimburse current and former full-time paid[career] firefighters and volunteer firefighters for their out-of-pocket expenses for treatment of stress injuries caused by an event or an accumulation of events occurring in the course and scope of their employment.

(2) Upon exhaustion or termination of funding, reimbursement benefits pursuant to this administrative regulation shall cease.

Section 3. Eligibility. An individual shall be eligible to receive reimbursement pursuant to Section 4 of this administrative regulation if:

(1) The individual is currently a full-time paid[career] firefighter or volunteer firefighter or was formerly a full-time paid[career] firefighter or volunteer firefighter;

(2) The individual has been diagnosed with a stress injury by a mental health professional;

(3) The stress injury has been caused by an event or an accumulation of events that have occurred in the course and scope of the individual's employment as a full-time paid[career] firefighter or volunteer firefighter; and

(4) The individual submits to the commission a completed:

- (a) Stress Injury Reimbursement Application form;
- (b) Substitute W-9 Form; and
- (c) Certification of Stress Injury Diagnosis form.

Section 4. Reimbursement.

(1) After receiving treatment for a stress injury, a qualifying firefighter may submit to the commission, corresponding receipts for the out-of-pocket expenses for ~~[such]~~ treatment for reimbursement from the funds allocated for stress injury reimbursement pursuant to Section 1 of this administrative regulation. Reimbursable out-of-pocket expenses for stress injury treatment include expenses paid by a qualifying firefighter for:

- (a) Initial diagnosis;
- (b) Counseling or therapy;
- (c) Medication;
- (d) Mental health facility expenses;
- (e) In-patient treatment; or
- (f) Out-patient treatment.

(2) A qualifying firefighter shall pay any out-of-pocket expenses for stress injury treatment before submitting receipts for reimbursement.

(3) After a qualifying firefighter has paid any out-of-pocket expenses for which reimbursement is sought, a qualifying firefighter seeking reimbursement shall submit to the commission:

- (a) All insurance payment receipts for treatment of the stress injury;
- (b) A completed Stress Injury Voucher; and
- (c) All receipts for out-of-pocket expenses for treatment of the stress injury that[which] have been paid by the qualifying firefighter and for which reimbursement is sought.

Section 5. Limitations on Reimbursement Benefits. Reimbursement benefits for each qualifying firefighter shall not exceed \$50,000 unless:

(1) A written request for additional benefits is submitted to the commission by the qualifying firefighter, which shall include the dollar amount of the additional reimbursement benefits requested; and

(2) The financial department of the commission determines that the requested additional reimbursement benefits are available pursuant to Section 1 of this administrative regulation.

Section 6. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Certification of Stress Injury Diagnosis", PTSD-3, June 2024[form];

(b) "Stress Injury Reimbursement Application", PTSD-1, June 2024[form];

(c) "Stress Injury Voucher", PTSD-2, June 2024; and

(d) "Substitute W-9 Form", W-9, December 6, 2013[form].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Fire Commission office, 110 Cleveland Drive, Paris, Kentucky 40361, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained at: <http://kyfires.acadisonline.com/>.

FILED WITH LRC: June 11, 2024

CONTACT PERSON: John K. Wood, counsel for the Kentucky Fire Commission, 163 East Main Street, Suite 200, Lexington, Kentucky 40507, phone (859) 225-4714, email administrativeregulations@wgmfirm.com.

ENERGY AND ENVIRONMENT CABINET
Public Service Commission
(As Amended at ARRS, June 11, 2024)

807 KAR 5:078. Alternative rate adjustment for electric cooperatives.

RELATES TO: KRS Chapter 278, Chapter 279

STATUTORY AUTHORITY: KRS 278.030(1), (2), 278.040(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes[provides—that] the Public Service Commission to[may] promulgate administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.030(1) requires[provides—that] all rates received by an electric utility subject to the jurisdiction of the Public Service Commission to[shall] be fair, just, and reasonable. KRS 278.030(2) requires[provides—that] every utility to provide[shall furnish] adequate, efficient, and reasonable service. This administrative regulation establishes a simplified and less expensive procedure for rural electric cooperatives to use to apply to the commission for rate adjustments.

Section 1. Definitions.

(1) "Annual report" means the financial and statistical report incorporated by reference in 807 KAR 5:006, which requires a utility to file the annual report with the commission.

(2) "Attorney General" means the Attorney General, Office of Rate Intervention.

(3) "General rate adjustment" means an adjustment in rates received pursuant to an application filed pursuant to 807 KAR 5:001, Section 16.

(4) "Base rate adjustment" mean a general rate adjustment or an adjustment in rates received pursuant to an application filed pursuant to Section 2 of this administrative regulation.

(5) "Cooperative" means any rural electric cooperative corporation formed under KRS Chapter 279 that distributes electricity.

(6) "OTIER" means the operating times interest earned ratio for the cooperative.

(7) "Rate" is defined by KRS 278.010(12).

(8) "TIER" means the times interest earned ratio for the cooperative.

Section 2. Increase in Rates. [Cooperatives Permitted to File Application.]A cooperative may apply for an adjustment of rates using the procedure established in this administrative regulation if:

(1) [No more than]Ten (10) or fewer years have[years has] elapsed since the effective date of new rates resulting from a cooperative's most recent base rate adjustment;

(2) At least twelve (12) months have elapsed since the effective date of the cooperative's most recent base rate adjustment;

(3) The cooperative requests a rate increase not exceeding one

(1) percent per twelve (12) month period since the

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cooperative's[its] last base rate adjustment;

(4) The cooperative requests an increase that does not exceed 1.85 OTIER;

(5) [~~#~~]Aggregating multiple twelve (12) month periods in the application, the overall cumulative rate increase does not exceed five (5) percent;

(6) The cooperative's most recent embedded class cost of service study was completed within the five (5) years prior to the submission of the cooperative's application under this section;

(7) The cooperative's application includes only request for:

(a) Adjustments in revenue requirements;

(b) Changes to rate design; and

(c) Changes to the cooperative's tariff necessary to reflect changes in rates;

(8) The proposed rate increase is based upon a historical test year that corresponds with the most recent annual report filed with the commission;

(9) The cooperative's application is filed electronically pursuant to the requirements of 807 KAR 5:001, Section 8;

(10) The cooperative has notified the commission in writing of the cooperative's[its] intent to file a rate application at least thirty (30) days, but not more than sixty (60) days, prior to filing an[its] application; and

(11) Upon filing the notice of intent with the commission, the cooperative mailed to the Attorney General a copy of the notice of intent or sent by electronic mail in a portable document format, to rateintervention@ag.ky.gov.

Section 3. An application filed pursuant to ~~this~~Section 2 of this administrative regulation shall include:

(1) A narrative statement discussing any changes materially affecting the cooperative's rates or service that have occurred since the effective date of its last base rate adjustment and stating the reasons for the proposed adjustment;

(2) If ~~more than~~ five (5) or more years have years has elapsed since the cooperative's most recent general rate adjustment, a detailed explanation of why the cooperative did not seek a general rate adjustment in that period;

(3) New or revised tariff sheets, if applicable, in a format that complies with 807 KAR 5:011, Section 3, with an effective date not less than thirty (30) days from the date the application is filed;

(4) New or revised tariff sheets, if applicable, identified in compliance with 807 KAR 5:011, shown either by providing:

(a)

1. The present and proposed tariffs in comparative form on the same sheet side by side or on facing sheets side by side; or

2. [(b)] A copy of the present tariff indicating proposed additions by italicized inserts or underscoring and striking over proposed deletions; and

[(b)] (c)] A statement that notice has been given in compliance with Section 7 of this administrative regulation with a copy of the notice;

(5) A general statement identifying any electric property or plant held for future use;

(6) All current agreements related to vegetation management, as well as a statement identifying any changes that occurred since the cooperative's base rate adjustment to the cooperative's policies on vegetation management, indicating the effective date and reason for these changes;

(7) A statement identifying any changes that occurred during the test year to the cooperative's written policies on the compensation of its attorneys, auditors, and all other professional service providers, indicating the effective date and reason for these changes;

(8) A statement explaining whether or not the depreciation rates reflected in the application are identical to those most recently approved by the commission.

(a) If the depreciation rates are identical, the application shall identify the case in which they were approved.

(b) If the depreciation rates are different, the application shall include a depreciation study that supports the rates reflected in the application;

(9) The estimated dates for drawdowns of unadvanced loan

funds at test year end and the proposed uses of these funds;

(10) A schedule of the cooperative's standard directors' fees, per diems, and any other compensation in effect during the test year. The schedule shall:

(a) Include a description of any changes that occurred during the test year to the cooperative's written policies, including specifying the compensation of directors; and

(b) Indicate the effective date and explanation for any change;

(11) A schedule reflecting the salaries and other compensation of each executive officer for the test year and two (2) preceding calendar years. The schedule shall include:

(a) The percentage of annual increase and the effective date of each salary increase;

(b) The job title, duty, and responsibility of each officer;

(c) The number of employees who report to each executive officer;

(d) To whom each executive officer reports; and

(e) For employees elected to executive officer status during the test year, the salaries for the test year for those persons whom they replaced;

(12) The cooperative's TIER, OTIER, and debt service coverage ratio, as calculated by the Rural Utility Service, for the test year and the five (5) most recent calendar years, including the data used to calculate each ratio;

(13) The cooperative's debt instruments;

(14) A copy of all exhibits and schedules that were prepared for the rate application in Excel spreadsheet format with all formulas intact and unprotected and with all columns and rows accessible;

(15) A schedule comparing balances for each balance sheet account or subaccount included in the cooperative's chart of accounts for each month of the test year to the corresponding month of the twelve (12)-month period immediately preceding the test year;

(16) A schedule comparing each income statement account or subaccount included in the cooperative's chart of accounts for each month of the test year to the same month of the twelve (12)-month period immediately preceding the test year. The amounts shall reflect the income or expense activity of each month, and not the cumulative balances at the end of the particular month;

(17) A schedule showing anticipated and incurred rate case expenses, with supporting documentation, which shall be updated every thirty (30) days during the proceeding.

(18) A statement estimating the effect that each new rate will have upon the revenues of the utility including, at minimum, the total amount of revenues resulting from the increase or decrease and the percentage of the increase or decrease; ~~and~~

(19) A statement of the effect upon the average bill for each customer classification to which the proposed rate change will apply;

(20) A summary of the cooperative's determination of its revenue requirements based on return on TIER, OTIER, debt service coverage, and any metric required by the cooperative's current debt instruments, with supporting schedules;

(21) If the cooperative had amounts charged or allocated to it by an affiliate or general or home office or paid monies to an affiliate or general or home office during the test period or during the previous three (3) calendar years, the cooperative shall file:

(a) A detailed description of the method and amounts allocated or charged to the utility by the affiliate or general or home office for each charge allocation or payment;

(b) An explanation of how the allocator for the test period was determined; and

(c) All facts relied upon, including other regulatory approval, to demonstrate that each amount charged, allocated, or paid during the test period was reasonable;

(22) A calculation of the normalized depreciation expense (test-year end plant account balance multiplied by depreciation rate);

(23) An analysis of FERC Account No. 930, Miscellaneous General Expenses, for the test year. The analysis shall include:

(a) A complete breakdown of this account by the following categories:

1. Industry association dues;

2. Debt-serving expenses;

3. Institutional and conservation advertising;

4. Rate department load studies;

5. Director's fees and expenses;
6. Dues and subscriptions; and
7. Miscellaneous; **and**

(b) Detailed supporting workpapers ~~that~~ **which** shall include for amounts over \$100, the date, vendor, reference, dollar amount, and a brief description of each expenditure.[-]

(24) An analysis of FERC Account No. 426, Other Income Deductions, for the test period. The analysis shall include:

- (a) A breakdown of this account by the following categories:
 1. Donations;
 2. Civic activities;
 3. Political activities; and
 4. Other; **and**

(b) Detailed supporting workpapers ~~that~~ **which** shall include for amounts over \$1,000, the date, vendor, reference, dollar amount, and a brief description of each expenditure;

(25) A trial balance as of the last day of the test year showing account number, subaccount number, account title, subaccount title, and amount. The trial balance shall include:

(a) All asset, liability, capital, income, and expense accounts used by the cooperative; and

(b) All income statements accounts ~~showing~~ **should show** activity for twelve (12) months that ~~includes~~ **shows** the balance in each control account and all underlying subaccounts per the company books;

(26) A schedule showing employee health, dental, vision, and life insurance premium contributions by coverage type, including the cost split of each identified premium between the employee and the cooperative;

(27) A detailed income statement and balance sheet reflecting the impact of all proposed adjustments; and

(28) The number of customers to be added to the test period end level of customers and the related revenue requirements impact for all pro forma adjustments with complete details and supporting work papers.

Section 4. Revenue Neutral Application[~~—Cooperatives Permitted to File Application~~]. A cooperative may apply for a revenue neutral adjustment of rates using the procedure established in this section if:

(1) It has been at least twelve (12) months since the effective date of the cooperative's last base rate adjustment;

(2) The change in rates does not result in an increase in the revenue requirement used to determine the rates in the cooperative's most recent base rate adjustment case;

(3) The cooperative's application includes only requests for:

- (a) Adjustments in revenue allocations;
- (b) Changes to rate design; and

(c) Changes to the cooperative's tariff necessary to reflect changes in rates;

(4) The cooperative's most recent embedded class cost of service study was completed within the five (5) years prior to the submission of the cooperative's application under this section;

(5) The cooperative's application is filed electronically pursuant to the requirements of 807 KAR 5:001, Section 8;

(6) A cooperative has notified the commission in writing of its intent to file a rate application at least thirty (30) days, but not more than sixty (60) days, prior to filing its application; and

(7) Upon filing the notice of intent with the commission, the applicant has mailed to the Attorney General Intervention, a copy of the notice of intent or sent by electronic mail in a portable document format, to rateintervention@ag.ky.gov.

Section 5. An application filed pursuant to Section 4 of this administrative regulation shall include:

(1) A narrative statement discussing any changes that have occurred for the cooperative since the effective date of its last change in rate design or revenue allocation and stating the reasons for the proposed adjustment;

(2) If more than five (5) years has elapsed since cooperative's most recent general rate adjustment, a detailed explanation of why the cooperative has not sought a general rate adjustment;

(3) New or revised tariff sheets, if applicable, in a format that

complies with 807 KAR 5:011, **Section 3**, with an effective date not less than thirty (30) days from the date the application is filed;

(4) New or revised tariff sheets, if applicable, identified in compliance with 807 KAR 5:011, shown either by providing:

(a)

1. The present and proposed tariffs in comparative form on the same sheet side by side or on facing sheets side by side; or

2.(b) A copy of the present tariff indicating proposed additions by italicized inserts or underscoring and striking over proposed deletions; and

(b)(c) A statement that notice has been given in compliance with Section 7 of this administrative regulation with a copy of the notice.[-]

(5) A general statement identifying any electric property or plant held for future use;

(6) All current agreements related to vegetation management, as well as a statement identifying any changes that occurred since the cooperative's most recent base rate adjustment to the ~~cooperative's~~ **cooperatives** policies on vegetation management, indicating the effective date and reason for these changes; **and**

(7) A statement identifying any changes that occurred during the test year to the cooperative's written policies on the compensation of its attorneys, auditors, and all other professional service providers, indicating the effective date and reason for these changes.[-]

Section 6. Exclusions for Ratemaking Purposes. The following ~~shall be~~ **are** excluded for ratemaking purposes and ~~[shall be excluded]~~ from the pro forma test year income statement and supporting documentation included in an application made pursuant to Section 2 of this administrative regulation.[-]

(1) The contribution made for the least generous plans for employer retirement contributions for employees participating in multiple benefit packages;

(2) If employee health care insurance premium contribution is zero, ~~the difference between the amount contributed by the cooperative and the for ratemaking purposes the pro forma income statement shall reflect~~ **adjusted for employee** contributions **by employees** based on the national average for coverage type;

(3) Life insurance premiums for coverage above an employee's annual salary or \$50,000, whichever is less;

(4) Advertising expenses prohibited from rate recovery by 807 KAR 5:016, **Section 4**;

(5) All fuel adjustment clause and environmental surcharge revenues and expenses;

(6) Charitable and political contribution both in cash and services;

(7) Salary and all company-paid or reimbursed expenses or allowances for lobbying on the local, state, or national level. If any amounts are allocated, show a calculation of the factor used to allocate each amount;

(8) Any non-regulated activities;

(9) All non-utility property and related property taxes; and

(10) For board of directors:

(a) Per diems for attending industry association meetings;

(b) Costs of health insurance coverage;

(c) Costs of post-retirement benefits;

(d) Costs of gifts;

(e) Cost of insurance for spouses or dependents of deceased directors; and

(f) Any costs for a director's spouse.

Section 7. Notice. Upon filing an application pursuant to this administrative regulation, a cooperative shall provide notice as established in this section.

(1) Public postings.

(a) A cooperative shall post at ~~the cooperative's~~ **its** place of business, a copy of the notice required by 807 KAR 5:001, Section 17, no later than the date the application is submitted to the commission.

(b) Within five (5) business days of the date the application is submitted to the commission, the cooperative shall conspicuously

post on the cooperative's [its] Web sites and social media accounts:

1. A copy of the public notice; and
2. A hyperlink to the commission's Web site where the case documents are available.

(c) The information required in paragraphs (a) and (b) of this subsection shall not be removed until the commission issues a final decision on the application.

(2) Customer notice. A cooperative shall provide public notice by:

(a) Including the notice with customer bills mailed no later than the date on which the application is submitted to the commission;

(b) Mailing a written notice to each customer no later than the date on which the application is submitted to the commission;

(c) Publishing the notice in a newspaper of general circulation, with the first publication being no later than the date on which the application is submitted to the commission, for at least three (3) consecutive weeks inclusive of the first publication; or

(d) Publishing the notice in a trade publication or newsletter received by all cooperative members, delivered no later than the date on which the application is submitted to the commission.

(3) Proof of notice. A cooperative shall file with the commission no later than thirty (30) days from the date the application was initially submitted to the commission:

(a) If notice is mailed to its customers, an affidavit from an authorized representative of the cooperative verifying:

1. The contents of the notice; [;]
2. That notice was mailed to all customers; [;] and
3. The date of the mailing;

(b) If notice is published in a newspaper of general circulation in the cooperative's service area, an affidavit from the publisher verifying:

1. The contents of the notice; [;]
2. That the notice was published; [;] and
3. The dates of the notice's publication; or

(c) If notice is published in a trade publication or newsletter delivered to all customers, an affidavit from an authorized representative of the cooperative verifying:

1. The contents of the notice; [;]
2. The mailing of the trade publication or newsletter; [;]
3. That notice was included in the publication or newsletter; [;]

and

4. The date of mailing.

(4) Notice content.

(a) The notice required by subsection (1) of this section shall include the notice contents required by 807 KAR 5:001, Section 17(4), except for the statement required by 807 KRS 5:001, Section 17(4)(j).

(b) The customer notice required by subsection (2) of this section shall include:

1. The case number for the proceeding;
2. The proposed effective date and the date the proposed rates are expected to be filed with the commission;
3. The present rates and proposed rates for each customer classification to which the proposed rates will apply;
4. The amount of the change requested in both dollar amounts and percentage change for each customer classification to which the proposed rates will apply;
5. The cooperative's business address where a copy of the notice required by subsection (1) of this section may be viewed;
6. A link to Web site notifications where a copy of the notice required by subsection (1) of this section may be viewed;
7. Links or references to social media posts where a copy of the notice required by subsection (1) of this section (or link thereto) may be viewed;

8. A statement that a person may submit a timely written request for intervention to the Public Service Commission, Post Office Box 615, Frankfort, Kentucky 40602, or emailed to PSCED@ky.gov, establishing the grounds for the request including the status and interest of the party;

9. A statement that the commission is required to take action within seventy-five (75) days of the date the application is accepted for filing; and

10. A summary of proposed changes to lighting and other miscellaneous rates.

(c) Customer notice required by subsection (2) of this section may omit from the notice any rates under which no customers are receiving service at the time the application is submitted to the commission.

Section 8. Procedure.

(1) Upon submission of the application, the commission shall issue an order that:

(a) Grants the Attorney General intervention; ~~and;~~

(b) Allows seven (7) days for the Attorney General to file a written statement that the Attorney General, or the Attorney General's authorized agent, possesses the facilities to receive electronic transmissions ~~its statement as required by 807 KAR 5:001, Section 8(9)(b)~~ or notify the commission in writing that the Attorney General will not participate in the proceeding; [;] and

(c) Allows seven (7) days to file comments regarding the cooperative's application and whether or not it should be accepted for filing pursuant to this administrative regulation or treated as an application file pursuant to 807 KAR 5:001, Section 16.

(2) Within ten (10) business days of the filing of the application, the commission shall complete its initial review of the application and issue an order either accepting or rejecting the application for filing under this administrative regulation.

(3) The commission may only reject an application submitted pursuant to this administrative regulation based on a finding that the:

(a) Application does not comply with the relevant administrative regulations and statutes; or [;]

~~(b) (4) [The commission may only reject an application filed pursuant to this administrative regulation based on a finding that the-~~ Proposed rates will not provide the cooperative sufficient revenue to provide the service required by KRS 278.030(2).

~~(4) (5)~~ If the commission rejects the application for processing under this administrative regulation, the application shall/will be deemed submitted pursuant to KRS 278.190 and 807 KAR 5:001, Section 16.

~~(5) (6)~~ An order rejecting the application for the processing under this administrative regulation shall, at minimum, include:

(a) Findings explaining the reason the application was not accepted under this administrative regulation;

(b) An opportunity for the cooperative to amend its application if it wants to proceed for a general rate adjustment pursuant to KRS 278.190 and 807 KAR 5:001, Section 16;

(c) A schedule for the processing of the application, including a deadline by which the cooperative shall/may amend its application if seeking reconsideration; and

(d) A list of any additional evidence necessary to support reconsideration that the cooperative shall/should provide in an amended application.

~~(6) (7)~~ If the commission rejects the cooperative's application for processing under this administrative regulation, the cooperative may, with written notice to the commission, withdraw its application.

~~(7) (8)~~ An order accepting the cooperative's application for processing under this administrative regulation shall incorporate into the record the two (2) most recent annual reports of the cooperative on file with the commission.

~~(8) (9)~~ An order accepting the cooperative's application for processing under this regulation shall establish a procedural schedule that includes deadlines for:

(a) Filing of one written set of requests for intervention by parties and commission staff;

(b) Parties' submission of written comments upon the conclusion of the filing of evidence; and

(c) The submission of the case to the commission for a final decision.

~~(9) (10)~~ Commission staff may issue/proound written requests for information at any time.

~~(10) (11)~~ The commission shall notify the cooperative of any deficiencies in the application within fourteen (14) days of the application's submission. An application shall not be accepted for filing until the cooperative has cured all noted deficiencies.

~~(11) (12)~~ The commission shall issue a final order within

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seventy-five (75) days after an application is filed with the commission, unless it is necessary for good cause to continue the application for longer time than seventy-five (75) days, in which case the order making the continuance shall state fully the facts that make it necessary. Any continuance shall not exceed fourteen (14) days.

Section 9. Communication with Parties.

(1) The cooperative may state in its application that members of commission staff may contact the cooperative's witnesses directly, without counsel present, to seek clarification of certain factual information contained in the application or in responses to requests for information.

(2) Following a communication as ~~established~~~~provided~~ for in subsection ~~(1)~~~~(5(a))~~ of this section, commission staff shall file in the record a memorandum detailing the content and subject of the communication.

(3) In cases ~~in which~~~~where~~ there are intervenors, commission staff shall not have direct communication with the cooperative's witnesses unless the intervenor participates or has waived participation.

Section 10. Exceptions.

(1) A utility may submit a written request to the commission to obtain an exception, based on good cause, for a requirement established in this administrative regulation. The utility shall attach supporting evidence of good cause to the written request.

(2) Once the request is received, the commission shall, based on the evidence in the written request and as established in subsection (3) of this section, determine if good cause exists. The commission shall notify the utility, in writing, of:

(a) The decision of whether or not good cause is determined to exist; and

(b) If good cause is determined to exist:

1. The scope and duration of any exception granted; and

2. Any conditions that the utility shall meet to maintain the exception.

(3) In determining if good cause exists, the commission shall consider whether or not the evidence shows that compliance with the requirement would be impracticable or contrary to the public interest. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

FILED WITH LRC: June 11, 2024

CONTACT PERSON: John E.B. Pinney, Executive Advisor, Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-2587, fax (502) 564-7279, email Jeb.Pinney@ky.gov.

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (As Amended at ARRS, June 11, 2024)

810 KAR 7:040. Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund.

RELATES TO: KRS 230.215, 230.260, 230.770, 230.802

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8), 230.770(1), (6), (7), 230.802(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the Kentucky Horse Racing Commission to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky and to fix and regulate the minimum amount of purses, stakes, or awards to be offered for the conduct of any horse race meeting. KRS 230.770(1) establishes the Kentucky standardbred development fund. KRS 230.770(6) and (7) authorize the commission to promulgate administrative regulations establishing the eligibility of horses participating in races for which a portion of the purse is provided by the Kentucky Standardbred Development

Fund and the conditions, class, and quality of the races. KRS 230.802(1) establishes the Kentucky standardbred breeders' incentive fund. KRS 230.802(2)(b) requires the commission to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund. This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, criteria for the distribution of moneys from these funds, mandatory criteria for races, and the administration of purses and payments in these races.

Section 1. Definitions.

(1) "Commission" means the Kentucky Horse Racing Commission.

(2) "Consolation" means the race following a series of preliminary legs for the next preferred horses, as established in Section 6 of this administrative regulation, which did not qualify for the finals of each racing division of the Kentucky Sire Stakes program.

(3) "Final" means the race following a series of preliminary legs established to determine the divisional champion of each racing division of the Sire Stakes Program.

(4) "Kentucky-bred" means a standardbred horse that is:

(a) Foaled out of a standardbred mare that is registered with the commission ~~and meets the requirements of this administrative regulation~~; or

(b) Sired by a standardbred stallion ~~standing~~~~residing~~ in Kentucky ~~that is registered with the commission~~~~that meets the requirements of this administrative regulation~~.

(5) "Kentucky Sire Stakes" means the series of races held annually in Kentucky for two (2) and three (3) year old Kentucky-bred fillies and colts, both trotting and pacing, and funded in whole or in part by the Kentucky Standardbred Development Fund or the Kentucky Standardbred Breeders' Incentive Fund.

(6) "KSBIF" means the Kentucky Standardbred Breeders' Incentive Fund as established in KRS 230.802.

(7) "KSDF" means the Kentucky Standardbred Development Fund as established in KRS 230.770.

(8) "Stallion ~~standing~~~~residing~~ in Kentucky" means a stallion physically located and standing in Kentucky for 180 days of the calendar year in which the stallion is registered ~~with the commission~~ that ~~does not service mares in any other state~~~~jurisdiction~~~~or country~~ outside Kentucky during the calendar year in which the stallion is registered.

(9) "USTA" means the United States Trotting Association.

Section 2. Domicile Requirements.

(1)

(a) An owner, lessee, stallion manager, or syndicate manager of a standardbred stallion residing in Kentucky who desires to use the stallion to breed and to have his progeny eligible for the KSDF or KSBIF shall register the stallion with the commission by December 31st of the year of conception of the horse sought to be eligible by submitting a completed "KSDF/KSBIF Stallion Certificate of Eligibility Form", KHRC 7-040-2.

(b) Standardbred stallions not residing in Kentucky ~~shall~~~~are~~ not ~~be~~ required to register with the commission. The progeny of a standardbred stallion not residing in Kentucky ~~shall~~~~is~~ not ~~be~~ eligible for the KSDF or KSBIF unless the progeny is that of a standardbred mare registered under and meeting the requirements of this administrative regulation.

(c) All standardbred stallions shall be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency, whether residing in Kentucky or not.

(2)

(a) An owner, lessee, manager, or syndicate manager of a standardbred mare who desires to use the mare for breeding purposes and to have her progeny eligible for the KSDF or KSBIF shall register the mare by December 31st of the year of conception of the horse sought to be eligible by submitting a completed "KSDF/KSBIF Mare Certificate of Eligibility Form", KHRC 7-040-3.

(b) To be eligible for registration, the mare shall:

1. Be registered with the USTA, Standardbred Canada, or other

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appropriate international harness racing governing agency; and

2. Have resided in Kentucky for a period of not less than 180 days in the calendar year of conception of the horse sought to be eligible.

(c) If a horse is conceived by embryo and ovum transplant (ET), both the donor mare and recipient mare shall be registered during the year of conception, and the recipient mare shall reside in Kentucky for a period of not less than 180 days in the calendar year of conception of the horse sought to be eligible.

(3) Registrations shall be received by the commission by the close of business or postmarked on the deadline established in this section in order to be eligible.

(4) An owner, lessee, stallion manager, manager, or syndicate manager of a stallion or mare eligible for the KSDF and KSBIF shall be responsible for:

(a) The registrations and records of the farm where the stallion stands or the mare resides; and

(b) Complying with all applicable requirements of this administrative regulation.

Section 3. Eligibility.

(1) In order to qualify for the Kentucky Sire Stakes, a foal shall be a two (2) or three (3) year old Kentucky-bred and shall maintain eligibility for the KSDF and KSBIF as established in Sections 16, 19, and 20 of this administrative regulation.

(2) Notwithstanding the foregoing, semen from a stallion standing in Kentucky may be shipped to mares in any jurisdiction outside of Kentucky at any time during the calendar year in which the stallion is registered. Additionally, a registered stallion may shuttle to countries in the Southern Hemisphere to service mares, provided the stallion meets all other standing requirements. But, a registered stallion shall not service mares in any country, other than the United States or countries in the Southern Hemisphere by way of shuttle. Also, a registered stallion shall not shuttle to any state or jurisdiction in North America, other than Kentucky, in order to service mares. The changes in this subsection shall be[are] effective starting with the 2020 breeding season and in subsequent years.

(3)

(a) Except as provided by paragraph (b) of this subsection, only a foal that is the first born to a mare (donor or recipient) in each calendar year produced by any method, including embryo and ovum transplant (ET), shall be eligible for the Kentucky Sire Stakes.

(b) Natural birth twins produced from the same pregnancy and foaling by the natural, nonrecipient mare shall also be eligible.

(4)[(3)] Any future offspring of foals ineligible for racing under this section shall be ineligible for the Kentucky Sire Stakes.

Section 4. Distance. Each Kentucky Sire Stakes race shall be a one (1) mile dash.

Section 5. Post Positions. Post positions for the final, consolation, and all preliminary legs of the Kentucky Sire Stakes race shall be an open draw with two (2) horses drawn for the final and consolation races that are designated as "also eligibles" under Section 6(7) of this administrative regulation.

Section 6. Eligibility for the Final and Consolation Races.

(1) Beginning with the 2018 Kentucky Sire Stakes races, consolation races may be eligible for funding.

(2) A horse that does not start in at least one (1) of the preliminary legs scheduled shall not be eligible for the final or consolation.

(a) All horses earning points may enter in the final with:

1. The top eight (8) point earners, if the horses raced on a half (1/2) mile track or five-eighths (5/8) mile track; or

2. Top ten (10) point earners, if the horses raced on a one (1) mile track, to be declared eligible.

(b) On a half (1/2) mile track or five-eighths (5/8) mile track, the top eight (8) point earners shall not be eligible for the consolation. On a one (1) mile track, the top ten (10) point earners shall not be eligible for the consolation.

(c) A horse that is eligible to race in the final shall only be eligible to race in the final, unless the horse is qualified as an also eligible.

(d) A horse that is eligible to race in the consolation shall only be eligible to race in the consolation, unless qualified in the final as an also eligible.

(e) A horse that scratches from the final shall not race in the consolation.

(f) A horse that has qualified for the final or consolation shall remain eligible for the final or consolation.

(g) At least seven (7) eligible horses shall be declared for a consolation race to be contested.

(h) A horse that is automatically eligible to race in the final race shall not start in the consolation race.

(3) A horse that enters a preliminary leg that does not fill and is not raced shall receive credit toward fulfilling the minimum starting requirements established in subsection (2) of this section and toward determining tiebreaker status as established in subsection (6)(b) of this section.

(4) A horse that has been scratched from an event that is raced shall not receive credit toward meeting the starting requirements established in subsection (2) of this section.

(5) A horse, in order to start in the final or consolation, shall be declared at the host track where the race is being held on or before the time posted on the track condition sheet.

(6)

(a) If the number of horses eligible and declared into any final or consolation event exceeds the maximum number specified by the KSDF or KSBIF or the number of positions on the starting gate, the following point system as applied to KSDF preliminary legs shall determine preference for the final:

1. 1st place - fifty (50) points;

2. 2nd place - twenty-five (25) points;

3. 3rd place - twelve (12) points;

4. 4th place - eight (8) points;

5. 5th place - five (5) points;

6. 6th place and all other starters - one (1) point; and

7. A horse finishing in a dead heat for any position in a preliminary leg shall be awarded an equal share of the total number of points awarded for that position.

(b) If there is a tie among horses after the awarding of points pursuant to paragraph (a) of this subsection, there shall be a drawing by lot among those horses tied in total points to determine which horses shall be included in the final field.

(c) If a horse that is qualified for the final or consolation is not declared, the horse with the next highest point total, pursuant to paragraph (a) of this subsection, that is declared shall be eligible for the final or consolation.

(7) Also eligibles.

(a) The two (2) horses accumulating the highest point total, pursuant to subsection (6) of this section, that are declared into the final or consolation, but do not qualify for the final or consolation, shall be designated "also eligible". The horse with the highest point total from the preliminary legs shall be designated as the "first also eligible" and the horse with the next highest point total shall be designated as the "second also eligible".

(b) A horse that is scratched in the final or consolation shall be replaced by the "first also eligible" and then the "second also eligible", if necessary.

1. If post positions have not been drawn at the time of the scratch, the "also eligible" shall take the place of the horse that has been scratched and shall participate in the normal draw.

2. If post positions have been drawn at the time of the scratch, the "also eligible" shall assume the post position of the horse that has been scratched.

3. A horse shall not be moved into the final or consolation as a replacement after the official scratch time deadline that is in effect at the host track.

Section 7. Final Order of Finish. The judges' "official order of finish" shall be used in determining eligibility to the final exclusive of all appeals yet to be decided at the time of closing of the entry box for final events.

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Section 8. Detention. All starters shall be subject to the detention policy of the racetrack.

Section 9. Number of Starters.

- (1) There shall not be more than:
 - (a) Ten (10) starters in each final race on a one (1) mile track; and
 - (b) Eight (8) horses on a one-half (1/2) or five-eighths (5/8) mile track.
- (2) All horses shall be on the gate for the final race.

Section 10. Declaration Fees.

(1) For each horse declared to race in a preliminary leg, there shall be a declaration fee of one-half of one percent (0.5%) of the total purses distributed or to be distributed for each race in which the horse is declared.

(2) The declaration fee shall be due to the racing association at the time of declaration and payable one (1) hour prior to post time of the race.

(3) Purses for the KSDF and KSBIF shall consist of money from:

- (a) Nominating fees;
- (b) Sustaining fees;
- (c) Declaration fees; and
- (d) Added money from the Commonwealth of Kentucky.

(4)

(a) Distribution of revenue for Kentucky Sire Stakes races shall be reviewed and addressed annually, not later than December 15 of each calendar year, by an advisory panel appointed by the Chairman of the commission and consisting of one (1) representative from each of the following:

1. The commission, who shall serve as the chairman of the panel;

2. The Kentucky Harness Horseman's Association;
3. The Kentucky Harness Association;
4. The host racetrack; and

5. One (1) participant in the fund nominated by the chairman of the commission from a group of up to four (4) nominees recommended by each of the above four (4) members having one (1) nomination each.

(b) Each member of the panel shall serve from July 1 through June 30 of the following year and shall be a resident of Kentucky.

(c) The final determination regarding distribution of revenue shall be made by the commission.

Section 11. Divisions of Preliminary Legs.

(1) The total number of horses entered shall determine the number of divisions of the preliminary legs that shall be required.

(2) Preliminary legs shall be split into divisions as follows:

(a) One (1) mile track:

1. Twelve (12) horses or less entered - one (1) division race.
2. Thirteen (13) to twenty (20) horses entered - two (2) divisions.
3. Twenty-one (21) to thirty (30) horses entered - three (3) divisions.
4. Thirty-one (31) to forty (40) horses entered - four (4) divisions.
5. Forty-one (41) to fifty (50) horses entered - five (5) divisions.
6. Fifty-one (51) to sixty (60) horses entered - six (6) divisions.

(b) One-half (1/2) and five-eighths (5/8) mile track:

1. Nine (9) to ten (10) horses entered - one (1) division.
2. Eleven (11) to sixteen (16) horses entered - two (2) divisions.
3. Seventeen (17) to twenty-four (24) horses entered - three (3) divisions.
4. Twenty-five (25) to thirty-two (32) horses entered - four (4) divisions.
5. Thirty-three (33) to forty (40) horses entered - five (5) divisions.
6. Forty-one (41) to forty-eight (48) horses entered - six (6) divisions.

(c) If the need exists for seven (7) or more divisions, eligibility to the final shall be determined in a manner consistent with the published conditions.

Section 12. Gait.

(1) Gait shall be specified by the owner of the horse on or before the first two (2) year old payment.

(2)

(a) Change of gait may be made at the time of declaration at the track.

(b) Sustaining payments shall remain in the funds of the original gait specified.

(3) A horse shall not race on both gaits in the same year.

Section 13. Divisions. A race shall be raced in separate divisions as follows:

(1) Colt, gelding, ridgeling divisions; and

(2) Filly divisions.

Section 14. Purse Distributions.

(1) The purses awarded for all races shall be distributed on the following percentage basis:

(a) Five (5) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and five (5) percent;

(b) Four (4) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, eight (8) percent, and the remaining five (5) percent reverts back to the fund;

(c) Three (3) starters - fifty (50) percent, twenty-five (25) percent, twelve (12) percent, and the remaining thirteen (13) percent reverts back to the fund;

(d) Two (2) starters - fifty (50) percent, and twenty-five (25) percent, and the remaining twenty-five (25) percent reverts back to the fund; and

(e) One (1) starter - fifty (50) percent, and the remaining fifty (50) percent reverts back to the fund.

(2) The percentage basis established by subsection (1) of this section shall apply at each of the Kentucky pari-mutuel tracks.

Section 15. Cancellations.

(1) If circumstances prevent the racing of an event and the race is not drawn, all funds allocated to the division in each of the preliminary legs or the final shall be refunded and prorated to the owners of the horses eligible at the time of cancellation.

(2) The eligible horses shall include only horses that made the payments required by Section 20 of this administrative regulation.

(3) The added monies provided by the Commonwealth of Kentucky for use in the KSDF and KSBIF shall be disbursed by December 15 of each calendar year in accordance with the formula created by the panel as set out in Section 10(4) of this administrative regulation.

Section 16. Qualifying.

(1) Any horse declared into a Kentucky Sires Stakes race shall:

- (a) Show at least one (1) charted race line with no breaks within forty-five (45) days prior to the day of the race; and
- (b) Have satisfied the following time requirements:

1. On a track larger than five-eighths (5/8) of a mile:
 - a. A two (2) year old trotter shall have been timed in two minutes and six seconds (2:06) or faster;
 - b. A two (2) year old pacer shall have been timed in two minutes and four seconds (2:04) or faster;
 - c. A three (3) year old trotter shall have been timed in two minutes and two seconds (2:02) or faster; and
 - d. A three (3) year old pacer shall have been timed in two minutes and zero seconds (2:00) or faster.

2. On a five-eighths (5/8) mile track:
 - a. A two (2) year old trotter shall have been timed in two minutes and seven seconds (2:07) or faster;
 - b. A two (2) year old pacer shall have been timed in two minutes and five seconds (2:05) or faster;
 - c. A three (3) year old trotter shall have been timed in two minutes and three seconds (2:03) or faster; and
 - d. A three (3) year old pacer shall have been timed in two minutes and one second (2:01) or faster.

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3. On a one-half (1/2) mile track:

- a. A two (2) year old trotter shall have been timed in two minutes and eight seconds (2:08) or faster;
- b. A two (2) year old pacer shall have been timed in two minutes and six seconds (2:06) or faster;
- c. A three (3) year old trotter shall have been timed in two minutes and four seconds (2:04) or faster; and
- d. A three (3) year old pacer shall have been timed in two minutes and two seconds (2:02) or faster.

(2) A horse shall be scratched from a race if the person declaring the horse has failed to advise the race secretary of a start that is not reflected on the electronic eligibilities.

(3) The requirements of this section shall apply both to wagering and nonwagering races.

Section 17. Purse Allocations.

(1) At a scheduled meeting of the commission, the commission shall:

- (a) Establish the distribution of funds for stakes races for the upcoming year; and
- (b) Authorize expenditures at a time it designates.

(2) The racing dates for KSDF and KSBIF stakes shall be issued after the track has established its race dates.

Section 18. Promotions. The KSDF or KSBIF may provide a trophy for each event, and the program that provides the trophy shall purchase the trophy out of its fund.

Section 19. Nomination Fees.

(1) After payment of the mare or stallion nomination fee, foals shall remain eligible for events each year by making the required sustaining and declaration payments for that year, as set forth in Section 20. The "KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form," KHRC 7-040-1, shall be filed with the commission along with the nomination and sustaining fees.

(2) After payment of the yearling nomination fee, foals shall remain eligible for events each year by making the required sustaining and declaration payments for that year, as set forth in Section 20. The "KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form," KHRC 7-040-1, shall be filed with the commission along with the nomination and sustaining fees.

(3) The two (2) year old March 15 payment shall be made to remain eligible to the KSDF and KSBIF as a three (3) year old without penalty, except as provided in Section 20.

(4) Nomination and sustaining payments shall be made to the KSDF and KSBIF in U.S. funds by a money order or a check drawn on a U.S. bank account.

Section 20. Nomination Schedule.

(1) Mares or Stallions shall be nominated by December 31 of the year of conception of the horse sought to be eligible by submitting a completed "KSDF/KSBIF Stallion Certificate of Eligibility Form," KHRC 7-040-2, or "KSDF/KSBIF Mare Certificate of Eligibility Form," KHRC 7-040-3. The nomination fee shall be set forth in KHRC 7-040-2 or 7-040-3, except as provided in subsection (4) of this section.

(2) For yearlings sired by a standardbred stallion or mare that resided in Kentucky during the year of conception for a period no less than 180 days and registered with the KSDF and KSBIF, the nomination fee shall be set forth in the "KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form," KHRC 7-040-1, except as provided in subsection (5) of this section.

(3) Nominated horses shall be registered with the USTA, Standardbred Canada, or other appropriate international harness racing governing agency and shall be properly identified to the satisfaction of the commission at the time of the nomination. Identification shall be determined by the official registration maintained by the USTA, Standardbred Canada, or other appropriate international harness racing governing agency.

(4) If a mare is not nominated to the KSDF and KSBIF by December 31 of the year of conception, the mare shall be nominated by submitting a KSDF/KSBIF Application for Late Mare Registration,

KHRC 7-040-4, and paying a penalty as set forth in KHRC 7-040-4.

(5) If a horse sired by a standardbred stallion or mare that resided in Kentucky during the year of conception, for a period no less than 180 days, and registered with the KSDF and KSBIF is not nominated during its yearling year, the horse may be nominated by March 15 of its two (2) year old year by submitting the "KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form," KHRC 7-040-1, and paying a penalty as set forth in KHRC 7-040-1.

(6) For three (3) year old horses that fail to make the mandatory March 15 two (2) year old sustaining payment, the horse may be nominated by February 15 of its three (3) year old year by submitting a KHRC 7-040-1 and paying a penalty as set forth in KHRC 7-040-1.

Section 21. Early Closing Events. The commission may provide for separate early closing events for Kentucky-bred horses.

Section 22. Stallion and Breeder Awards. The commission may provide for stallion and breeder awards for Kentucky-bred horses.

Section 23. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "KSDF/KSBIF Kentucky Sire Stakes (KYSS) Nomination Form", KHRC 7-040-1, 2023;
- (b) "KSDF/KSBIF Stallion Certificate of Eligibility Form", KHRC 7-040-2, 2023;
- (c) "KSDF/KSBIF Mare Certificate of Eligibility Form", KHRC 7-040-3, 2023; and
- (d) "KSDF/KSBIF Application for Late Mare Registration", KHRC 7-040-4, 2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available at https://khrc.ky.gov/new_docs.aspx?cat=32.

FILED WITH LRC: June 11, 2024

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CABINET FOR HEALTH AND FAMILY SERVICES Office of Inspector General Division of Health Care (As Amended at ARRS, June 11, 2024)

902 KAR 20:036. Operation and services; personal care homes.

RELATES TO: KRS 194A.700(1), (2), (15), (26), 194A.705(2)(c), [(9), (14)], 202A.011(12), 209.030, 209.032, 216.510 – 216.525, 216.530, 216.532, 216.555 [to 216.567, 216.570]-216.597, 216.765, 216.785-216.793, [216.597], 216A.080, 216B.010, [-216B.130], 216B.040, 216B.042, 216B.045-216B.130, 216B.990, 310.021, 310.031, 314.011(3), 21 C.F.R. Part 1317

STATUTORY AUTHORITY: KRS 216B.042, 216.597(7)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. KRS 216.597(7)(a) requires the cabinet to promulgate administrative regulations related to licensure and relicensure of personal care homes (PCHs) and specialized personal care homes (SPHCs). This administrative regulation establishes minimum licensure requirements for the operation of and services provided by personal care homes, including specialized personal care homes.

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Section 1. Definitions.

(1) "Activities of daily living" or "ADL" is defined by KRS 194A.700(1).

(2) "Administrator" means an individual who:

(a)

1. Has a license to practice long-term care administration pursuant to KRS 216A.080; or

2. Has a high school diploma, a general equivalency diploma (GED), or qualifying documentation from a comparable educational entity; and

(b) Is age twenty-one (21) or older.

(3) "Ambulatory" is defined by KRS 216.597(2)(b) as having the same meaning as "ambulatory" as defined ~~by~~ in KRS 194A.700(2) [means able to walk without assistance].

(4) "Certified nutritionist" means a health care professional who is certified pursuant to KRS 310.031.

(5) "Instrumental activities of daily living" or "IADL" is defined by KRS 194A.700(15) [(9)].

(6) "Licensed dietician" means a health care professional who is licensed pursuant to KRS 310.021.

(7) "Mobile nonambulatory" ~~means unable to walk without assistance, but able to move from place to place with the use of a device including walkers, crutches, wheelchairs, or other assistive medical devices~~ is defined by KRS 194A.700(11) and includes the ability to:

(a) Self exit the building; and

(b) Transfer independently or with minimal assistance from bed-to-chair.

(8) "Nonambulatory" means unable to walk without assistance.

(9) "Nonmobile" means unable to move from place to place.

(10) "Nurse" is defined by KRS 314.011(3).

(11) "Personal care home" or "PCH" ~~is defined by KRS 216.597(1)(b)~~ means an establishment located in a permanent building that has resident beds and provides:

~~[(a)] [Supervision of residents;]~~

~~[(b)] [Basic health and health-related services;]~~

~~[(c)] [Personal care services;]~~

~~[(d)] [Residential care services; and]~~

~~[(e)] [Social and recreational activities].]~~

~~(12) [(11)] "Qualified mental health professional" or "QMHP" is defined by KRS 202A.011(12).~~

~~(13) [(12)] "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a portion of a patient's body.~~

~~(14) [(13)] "Serious mental illness" or "SMI" means a mental illness or disorder (but not a primary diagnosis of Alzheimer's disease or dementia), that is described in the Diagnostic and Statistical Manual of Mental Disorders (DSM), 5th Edition, or the DSM currently in use, that impairs or impedes functioning in one (1) or more major areas of living and is unlikely to improve without treatment, services, or supports.~~

~~(15) [(14)] "Specialized personal care home" or "SPCH" is defined by KRS 216.597(1)(c) [means a personal care home that:]~~

~~[(a)] [Participates in the mental illness or intellectual disability supplement program pursuant to 921 KAR 2:015, Section 13; or]~~

~~[(b)] [Serves residents with thirty-five (35) percent or more having an SMI].~~

~~(16) "Temporary condition" is defined by KRS 194A.700(26) in accordance with KRS 216.597(4).~~

~~(17) "PRN" is defined as medications administered as needed.~~

Section 2. Licensure Application and On-site Visits.

~~(1) Upon approval of certificate of need followed by approval of plans and specifications submitted in accordance with 902 KAR 20:031, an applicant for a provisional license as a PCH or SPCH shall submit the following to the Office of Inspector General:~~

~~(a) A completed Application for License to Operate a Long Term Care Facility incorporated by reference in 902 KAR 20:008, Section 9(1)(f) accompanied by the licensure fee established by 902 KAR 20:008, Section 3(2)(g);~~

~~(b) Proof of approval by the State Fire Marshal's office; and~~

~~(c) A copy of the applicant's compliance history for any other care facility the applicant operates, including a copy of all~~

~~enforcement actions issued by the regulatory agency against the care facility, such as violations, fines, or negative action against the facility's license during the seven (7) year period prior to application for a provisional license.~~

~~(2) A licensed PCH or SPCH shall comply with the annual renewal process established by 902 KAR 20:008, Section 2(14)(b).~~

~~(3) On-site inspections shall be conducted in accordance with the survey intervals established by KRS 216.597(7)(c).~~

~~(4) Nothing in this administrative regulation shall prevent the cabinet from:~~

~~(a) Conducting an investigation related to a complaint; or~~

~~(b) Making an on-site survey of a PCH or SPCH more often, if necessary.~~

~~(5) A PCH or SPCH shall comply with the:~~

~~(a) Inspection requirements of 902 KAR 20:008, Section 2(12)(b) and (c);~~

~~(b) Procedures for correcting violations established by 902 KAR 20:008, Section 2(13); and~~

~~(c) Civil monetary penalties established by KRS 216.555 through ~~to~~ 216.567.~~

Section 3. Scope of Operations and Services.

(1) A resident in a PCH or SPCH shall:

(a) Be admitted in accordance with KRS 216.765;

(b) Be ambulatory or mobile nonambulatory, unless the facility elects to provide services in accordance with KRS 216.597(4) to a resident who is deemed to have a temporary condition;

(c) Be able to manage most of the activities of daily living; and

(d) Have care needs that do not exceed the capability of the PCH or SPCH.

(2) An individual who is nonambulatory or nonmobile shall not be eligible for residence in a PCH or SPCH pursuant to KRS 216.597(3).

Section 4. ~~Section 3.~~ Administration and Operation.

(1) Licensee. The licensee shall be legally responsible for:

(a) The operation of the PCH or SPCH;

(b) Compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the facility;

(c) The development and implementation of policies related to administration and operation of the facility; ~~and]~~

(d) If the licensee is a [an] SPCH, the development and implementation of written transition procedures to ensure cooperation with an individual or entity that assists with transitioning residents with an SMI to community living arrangements; and

(e) If the licensee is an SPCH, access to confidential and secure telehealth services unless access is impossible to provide due to a lack of:

1. Broadband service; or

2. An appropriate physical space for residents.

(2) Administrator.

(a) The administrator shall:

1. Be responsible for the day-to-day operation of the PCH or SPCH; and

2. Designate one (1) or more staff to act on behalf of the administrator or to perform the administrator's responsibilities in the administrator's absence.

(b) Each SPCH shall ensure that the administrator completes the mental illness or intellectual disability training workshop established by 921 KAR 2:015, Section 14, within six (6) months of ~~hire~~ from the most recent effective date of this administrative regulation and every two (2) years thereafter.

(3) Admission.

(a) A PCH or SPCH shall not care **for** or be responsible for the care of more residents than the capacity indicated on the license.

(b) Upon admission, a PCH or SPCH shall provide the resident and a responsible member of the resident's family or other designated representative with written information regarding the facility's policies, including:

1. Services offered and charges;

2. The right to arrange for additional services under direct contract or arrangement with an outside party pursuant to KRS 216.597(5) if **allowed** ~~permitted~~ by the policies of the PCH or

SPCH:

3. The right to visitation with family and friends, subject to visiting rules and hours established by the facility; and

4. ~~[3.]~~ Meal services.

(c) Prior to admission, each resident shall have a complete medical examination in accordance with KRS 216.765.

(d) ~~[No later than three (3) months from the most recent effective date of this administrative regulation, a PCH or SPCH shall complete the SMI Screening Form for each current resident.]~~ Upon admission, a PCH or SPCH shall complete the SMI Screening Form for each new or returning resident.

(4) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 ~~through [to]~~ 216.525.

(5) Adult protection. PCHs and SPCHs shall have written policies that ~~ensure~~assure the reporting of allegations of abuse, neglect, or exploitation of adults pursuant to KRS 209.030, including evidence that all allegations of abuse, neglect, or exploitation shall be thoroughly investigated internally to prevent further potential abuse while the investigation is in progress.

(6) Emergency evacuation. Each PCH and SPCH shall have a written policy in accordance with KRS 216.597(6)(c) that describes how priority will be given to assist a resident during an emergency if evacuation of the facility is necessary and the resident requires hands-on assistance from another person to walk, transfer, or move from place to place with or without an assistive device.

(7) Nursing tasks. If nursing tasks are delegated, each PCH or SPCH shall have a written policy regarding the supervision of unlicensed personnel performing delegated tasks, including how the facility ensures compliance with the supervision requirements of 201 KAR 20:400, Section 4.

(8) Transfer and discharge.

(a) PCHs and SPCHs shall:

1. Comply with the requirements of 900 KAR 2:050 upon transferring or discharging a resident; and

2. Have written transfer procedures and agreements for the transfer of residents to a higher intensity level of care, if indicated.

(b) A PCH or SPCH that does not have a transfer agreement in effect, but has attempted in good faith to enter into an agreement shall be considered to be in compliance with the requirements of paragraph (a)2. of this subsection.

(c) The transfer procedures and agreements shall:

1. State/Specify the responsibilities each party assumes in the transfer of residents;

2. Establish responsibility for notifying the other party of an impending transfer; and

3. Arrange for safe transportation and transfer of files.

(d) The administrator shall initiate a transfer through the resident's physician or appropriate agencies if the resident's condition is not within the scope of services of the PCH or SPCH.

(e) PCH or SPCH resident records.

1. If a resident transfers to another health care facility, a current summary of the resident's medical record shall accompany the resident.

2. If a resident transfers to another level of care within the same facility, a copy of the resident's record or current summary of the resident's medical record shall accompany the resident.

3. If a resident transitions into a community living setting, a current summary of, or a copy of the resident's records shall be provided to the resident and the resident's guardian.

~~(9)[(7)]~~ Tuberculosis Testing.

(a) All employees of a PCH or SPCH shall be screened and tested for tuberculosis in accordance with 902 KAR 20:205.

(b) Residents of a PCH or SPCH shall be screened and tested in accordance with 902 KAR 20:200.

~~(10)[(8)]~~ Personnel.

(a) In accordance with KRS 216.532, a PCH or SPCH shall not employ or be operated by an individual who is listed on the nurse aide and home health aide abuse registry established by 906 KAR 1:100.

(b) In accordance with KRS 209.032, a PCH or SPCH shall not employ or be operated by an individual who is listed on the caregiver misconduct registry established by 922 KAR 5:120.

(c) A PCH or SPCH shall obtain a criminal record check on each

applicant for initial employment in accordance with KRS 216.789 and 216.793.

(d) Current employee records shall be maintained on each staff member and contain:

1. Name and address;
2. Verification of all training and experience, including evidence of current licensure, registration, or certification, if applicable;
3. Employee health records;
4. Annual performance evaluations; and
5. Documentation of compliance with the background check requirements of paragraphs (a) through (c) of this subsection.

(e) Each employee shall be of an age in conformity with state laws.

(f) An employee who contracts a communicable or an infectious disease shall:

1. Be immediately excluded from work; and
2. Remain off work until cleared as noninfectious by a health care practitioner acting within the practitioner's scope of practice.

(g) Each dietary staff member shall wear a hair net.

(h) In-service training.

1. Each PCH or SPCH employee shall receive orientation and annual in-service training that corresponds with the staff member's job duties.

2. Documentation of orientation and in-service training shall be maintained in the employee's record and shall include:

- a. Name of the individual or individuals who provided the training;
 - b. Date and number of hours the training was given; and
 - c. A summary of the training program's content.
3. In-service training shall include:
- a. Policies regarding the responsibilities of specific job duties;
 - b. Services provided by the facility;
 - c. Recordkeeping procedures;
 - d. Procedures for the reporting of cases of adult abuse, neglect, or exploitation pursuant to KRS 209.030;
 - e. Resident rights established by KRS 216.510 ~~through [to]~~ 216.525;
 - f. Adult learning principles and methods for assisting residents to achieve maximum abilities in ADLs and IADLs;
 - g. Procedures for the proper application of emergency manual restraints;
 - h. Procedures for maintaining a clean, healthful, and pleasant environment;
 - i. The aging process;
 - j. The emotional problems of illness;
 - k. Use of medication; and
 - l. Therapeutic diets.

4. Each SPCH shall ensure that at least one (1) direct care staff member in addition to the administrator completes the mental illness or intellectual disability training workshop established by 921 KAR 2:015, Section 14, within six (6) months of hire ~~from the most recent effective date of this administrative regulation~~ and every two (2) years thereafter. An SPCH shall employ at least one (1) direct care staff member who has received the training.

- (i) Staffing requirements.
 1. The number of personnel required shall be based on:
 - a. The number of patients; and
 - b. Amount and kind of personal care, health care, and supervision needed to meet the needs of the residents.
 2. The administrator shall designate one (1) or more staff members to be responsible for:
 - a. Recordkeeping;
 - b. Basic health and health related services; and
 - c. Activity services.
 3. Each PCH or SPCH shall have a full-time staff member who shall be:
 - a. Responsible for the total food service operation of the facility; and
 - b. On duty a minimum of thirty-five (35) hours each week.

4. In accordance with KRS 216.597(6)(a) and (b); a. Staffing in a PCH or SPCH shall be sufficient in number and qualifications to meet the twenty-four (24) hour scheduled needs of each resident; and

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b. ~~At least~~~~ensure that sufficient staff, but no less than~~ one (1) staff member shall be awake and ~~on-site at all times at each licensed facility~~~~on duty on each floor in the facility at all times~~.

~~(11)~~~~(9)~~ Medical records.

(a) The PCH or SPCH administrator or staff member in charge of medical records shall ~~ensure~~~~assure~~ that a complete medical record is kept for each resident with all entries current, dated, and signed.

(b) Each record shall include:

1. Identification information, including:
 - a. Resident's name;
 - b. Social Security, Medicare, and Medical Assistance identification number (if appropriate);
 - c. Marital status;
 - d. Birthdate;
 - e. Age;
 - f. Sex;
 - g. Home address;
 - h. Religion and personal clergyman, if any (with consent of the resident);
 - i. Attending physician, health care practitioner acting within the practitioner's scope of practice, QMHP, dentist, and podiatrist, if any, and address and phone number for each;
 - j. Next of kin or responsible person, address, and telephone number;
 - k. Date of admission and discharge;
 1. If the resident is discharged, transferred, or transitioned to a community living arrangement, a copy of the summary of resident's records; and
 - m. Monthly recording of the resident's weight;
 2. If admitted from another facility, a discharge summary or transfer summary;
 3. Admitting medical evaluation;
 4. Report by the physician or health care practitioner acting within the practitioner's scope of practice, documenting completion of an annual medical evaluation of each resident;
 5. Physician, health care practitioner, or QMHP progress notes indicating any changes in the resident's condition, documented at the time of each visit by the physician, health care practitioner, QMHP, or consultant;
 6. Orders for medication or therapeutic services;
 7. Nurses' or staff notes indicating any changes in the resident's condition as changes occur;
 8. Documentation of any accident, injury, illness, medication error, or drug reaction impacting the resident;
 9. Documentation of social services, dental, laboratory, x-ray, or reports from consultants or therapists if the resident receives any of these services;
 10. Medication and treatment sheets, including all medications, treatments, and special procedures performed for that resident, with the date and time of each service documented and initiated by the individual rendering treatment or administering medication;
 11. Documentation of the use of an emergency manual restraint for that resident, including justification for why the procedure was used;
 12. Documentation of the resident's discharge, transfer, or transition destination, if applicable;~~and~~
 13. Copy of a completed SMI Screening Form for each PCH or SPCH resident; and
 14. Monthly documentation of ADL and IADL skills instruction provided to, or made available and refused by, the resident if the resident is an SPCH resident who is transitioning to living independently in the community pursuant to 908 KAR 2:065.

~~(12)~~~~(10)~~ Retention of records. After death or discharge, the completed medical record shall be placed in an inactive file and retained for at least six (6) years.

Section 5.~~Section 4.~~ Provision of Services.

(1) Basic health and health related services.

(a) A PCH or SPCH shall provide basic health and health related services, including:

1. Supervision and monitoring of the resident to ~~ensure~~~~assure~~ that the resident's health care needs are met;

2. Supervision of self-administration of medications;
3. Storage and control of medications; and
4. Arranging for therapeutic services ordered by the resident's health care practitioner, if the services are not available in the facility.

(b) For a PCH or SPCH, the administrator or staff person designated by the administrator shall, relating to the provision of basic health and health-related services:

1. Be responsible for obtaining medical care promptly in response to an accident, injury, or acute illness of any resident; and
2. Document any accident, injury, illness, incident, medication error, or drug reaction in the resident's medical record.

(c) Medications or therapeutic services shall not be administered or provided to any resident, except on the order of a licensed physician or other health care practitioner as authorized under the practitioner's scope of practice.

~~(d) If medication administration is delegated in accordance with 201 KAR 20:700, the PCH or SPCH shall have a nurse readily available in person, by telephone, or by other means of live, two-way communication to unlicensed staff at the times the staff is performing delegated nursing tasks.~~

~~(e) A PCH or SPCH may allow an unlicensed staff person to administer medication in accordance with KRS 194A.705(2)(c) and 201 KAR 20:700 as follows:~~

~~1. Medication administration is delegated to the unlicensed staff person by an available nurse;~~

~~2. If administration of oral or topical medication is delegated, the unlicensed staff person shall have a:~~

~~a. Certified medication aide (CMA) I credential from a training and skills competency evaluation program approved by the Kentucky Board of Nursing (KBN); or~~

~~b. Kentucky medication aide (KMA) credential from the Kentucky Community and Technical College System (KCTCS); and~~

~~3. If administration of a preloaded insulin injection is delegated, the unlicensed staff person shall have a CMA II credential from a training and skills competency evaluation program approved by KBN.~~

~~(f)~~

~~1. Unlicensed staff who administer oral or topical medications to residents of an SPCH shall comply with the medication aide requirements of paragraph (e) of this subsection no later than upon adoption of increased funding under the Mental Illness or Intellectual Disability (MI/ID) Supplement Program established by 921 KAR 2:015, Section 13.~~

~~2. Unlicensed staff shall not administer a preloaded insulin injection under the delegation of a nurse to a PCH or SPCH resident prior to obtaining the CMA II credential.~~

~~(d)(g)~~ Administration of all medications and delivery of therapeutic services shall be recorded in the resident's medical record.

~~(e)(h)~~ ~~(e)~~ If an order is received by telephone, the order shall be:

1. Recorded in the resident's medical record; and
2. Signed by the physician or other health care practitioner as authorized under the practitioner's scope of practice within fourteen (14) days.

~~(f)(i)~~ ~~(f)~~

1. The administrator or staff person designated by the administrator shall make a written report of any incident or accident involving a:

- a. Resident, including a medication error or drug reaction;
- b. Visitor; or
- c. Staff member.

2. The report shall:

- a. Identify any staff member who might have been witness to the incident; and
- b. Be filed in an incident file.

~~(g)(j)~~ ~~(g)~~

1. Controlled substances and medication administration. A PCH or SPCH shall not keep any controlled substances or other habit forming drugs, hypodermic needles, or syringes except under the specific direction of a prescribing practitioner.

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2. Controlled substances shall be kept under double lock, for example stored in a locked box in a locked cabinet, and keys or access codes to the locked box and locked cabinet shall be accessible to designated staff only.

~~3.] [A nurse may delegate administration of a regularly scheduled or PRN controlled substance to a CMA if the medication has been prescribed and labeled in a container for a specific resident.]~~

~~3.4.]~~ There shall be a controlled substances bound record book with numbered pages that includes:

- a. Name of the resident;
- b. Date, time, kind, dosage, and method of administration of each controlled substance;
- c. Name of the practitioner who prescribed the medications; and
- d. Name of the:

(i) Nurse ~~[or CMA]~~ who administered the controlled substance; or

(ii) Staff member who provided assistance with or supervised self-administration by a resident whose medical record includes a written determination from a health care practitioner that the resident is able to safely self-administer a controlled substance with assistance or under supervision.

~~4.5.]4.]~~ A staff member with access to controlled substances shall be responsible for maintaining a recorded and signed:

- a. Schedule II controlled substances count daily; and
- b. Schedule III, IV, and V controlled substances count at least one (1) time per week.

~~5.6.]5.]~~ All expired or unused controlled substances shall be disposed of, or destroyed in accordance with 21 C.F.R. Part 1317 no later than thirty (30) days:

- a. After expiration of the medication; or
- b. From the date the medication was discontinued.

~~6.7.]6.]~~ If controlled substances are destroyed on-site:

- a. The method of destruction shall render the drug unavailable and unusable;
- b. The administrator or staff person designated by the administrator shall be responsible for destroying the controlled substances with at least one (1) witness present; and
- c. A readily retrievable record of the destroyed controlled substances shall be maintained for a minimum of eighteen (18) months from the date of destruction and contain the:

- (i) Date of destruction;
- (ii) Resident name;
- (iii) Drug name;
- (iv) Drug strength;
- (v) Quantity;
- (vi) Method of destruction;
- (vii) Name of the person responsible for the destruction; and
- (viii) Name of the witness.

~~7.8.]7.]~~ A PCH or SPCH that stores and administers controlled substances in an emergency medication kit (EMK) shall comply with the:

- a. Requirement for licensed personnel established by 201 KAR 2:370, Section 2(4)(i);
- b. Requirements for storage and administration established by 902 KAR 55:070, Section 2(2), (5), and (7) through~~[-(8), and] (9);~~ and
- c. Limitation on the number and quantity of medications established by 902 KAR 55:070, Section 2(6).

~~(h)(k)] [(h)]~~ All resident medications shall be plainly labeled with the:

1. Resident's name;
2. Name of the drug;
3. Strength;
4. Name of the pharmacy;
5. Prescription number;
6. Date;
7. Prescriber's name; and
8. Caution statements and directions for use, unless a modified unit dose drug distribution system is used.

~~(l)(m)] [(l)]~~

1. All medicines kept by the PCH or SPCH shall be kept in a locked place.

2. The nurse or administrator or staff person designated by the administrator~~[CMA]~~~~[administrator or staff person designated by the administrator]~~ shall[:]

[a:] be responsible for administering or supervising the self-administration of ~~[or supervising the self-administration of]~~ medication.[:]

3. The administrator or staff person designated by the administrator shall:

a. Be responsible for supervising the self-administration of medication;

- b. Ensure that all medications requiring refrigeration are kept in a separate locked box in the refrigerator in the medication area; and
- c. Ensure that drugs for external use are stored separately from those administered by mouth and injection.

~~(j)(m)] [(j)]~~

1. A PCH or SPCH that stores and administers non-controlled substances in an EMK shall comply with the:

- a. Requirement for licensed personnel established by 201 KAR 2:370, Section 2(4)(i); and
- b. Limitation on the number and quantity of medications established by 201 KAR 2:370, Section 2(4)(b).

2. A PCH or SPCH that stores and administers non-controlled substances from a long-term care facility (LTCF) drug stock shall comply with the limitation on the number and quantity of medications established by 201 KAR 2:370, Section 2(5)(b).

~~(k)(n)] [(k)]~~

1. If a resident manifests persistent behavior that might require psychiatric treatment, the PCH or SPCH shall notify the resident's physician or health care practitioner acting within the practitioner's scope of practice to evaluate and direct the resident's care.

2. If the resident's condition does not improve, making for continued stay in a PCH or SPCH unfeasible, the physician or health care practitioner shall initiate transfer of the resident to an appropriate facility as soon as possible.

~~(l)(o)] [(l)]~~ Use of restraints.

1. Chemical and physical restraints shall not be used, except as authorized by KRS 216.515(6).

2. Restraints that require a lock and key shall not be used.

3. Emergency use of a manual restraint shall be applied only by appropriately trained personnel if:

- a. A resident poses an imminent risk of physical harm to self or others; and
- b. The emergency manual restraint is the least restrictive intervention to achieve safety.

4. Restraints shall not be used as:

- a. Punishment;
- b. Discipline;
- c. Convenience for staff; or
- d. Retaliation.

~~(m)(p)] [(m)]~~ Each resident shall have an annual medical evaluation by a physician or health care practitioner acting within the practitioner's scope of practice.[:]

~~(n)(q)] [(n)]~~ Communicable diseases. If a resident or prospective resident is suspected or confirmed as having a communicable disease for which a reasonable probability of disease transmission exists in the PCH or SPCH, the administrator or staff person designated by the administrator shall:

1. Contact a physician; and

2. Ensure that appropriate measures are taken to treat the resident with the communicable disease and prevent the disease from spreading.

(2) Residential care services. A PCH or SPCH shall provide residential care services to all residents, including:

- (a) Room accommodations;
- (b) Housekeeping and maintenance services; and
- (c) Dietary services.

(3) A PCH or SPCH shall meet the following requirements relating to the provisions of residential care services:

(a) Room accommodations.

1. A PCH or SPCH shall provide each resident with:

- a. A bed that is at least thirty-six (36) inches wide;
- b. A clean, comfortable mattress with a support mechanism;
- c. A mattress cover;

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- d. Two (2) sheets and a pillow; and
- e. Bed covering to keep the resident comfortable.
2. Each bed shall be placed so that a resident does not experience discomfort because of proximity to a radiator, heat outlet, or exposure to a draft.
3. Except for married couples or domestic partners, there shall be separate sleeping quarters for males and females.
4. A PCH or SPCH shall provide:
 - 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; and
 - e. A night light.
5. A resident shall not be housed in a room, detached building, or other enclosure that has not previously been inspected and approved for residential use by the Office of Inspector General and the Department of Housing, Buildings and Construction.
6. Basement rooms shall not be used for sleeping rooms for residents.
7. Residents may have personal items and furniture, if feasible.
 - (b) Housekeeping and maintenance services.
 1. A PCH or SPCH shall:
 - a. Maintain a clean and safe facility free of unpleasant odors; and
 - b. Ensure that odors are eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans, and other sources.
 2. A PCH or SPCH shall:
 - a. Have available at all times, a quantity of clean linen essential to the proper care and comfort of residents;
 - b. Ensure that soiled clothing and linens receive immediate attention and **shall** not be allowed to accumulate;
 - c. Ensure that clothing or bedding used by one (1) resident shall not be used by another resident unless laundered or dry cleaned;
 - d. Ensure that each resident's personal clothing and bed linens **shall be[are]** laundered as often as is necessary;
 - e. Maintain responsibility for laundering each resident's personal clothing unless the resident or the resident's family accepts this responsibility;
 - f. Provide laundry equipment for each resident who is capable of, and chooses to launder his or her personal clothing; and
 - g. Label or mark each resident's personal clothing if laundered by the facility for return to the correct resident.
 3. Safety. The condition of the overall environment shall be maintained **to ensure[in such a manner that]** the safety and well-being of residents, personnel, and visitors[**is assured**].
 4. Maintenance. The premises shall be well kept and in good repair as established in clauses a. through d. of this subparagraph.[;]-]
 - a. The facility shall **ensure[insure]** that the grounds are well kept and the exterior of the building, including the sidewalk, steps, porches, ramps, and fences, are in good repair.
 - 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. 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. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. Care shall be taken to use the least toxic and least flammable insecticides and rodenticides. The compounds shall be stored under lock if stored by the facility.
 - (c) Dietary services.
 1. Dining area. A dining area shall be available for the residents.
 2. Therapeutic diets. If the facility provides therapeutic diets and the staff member responsible for food services is not a **licensed dietitian**[license]-[**dietician**] or certified nutritionist, the responsible staff person shall consult with a licensed dietitian or certified nutritionist.
 3. Menu planning.
 - a. Menus shall be planned in writing and rotated to avoid

- repetition.
 - b. A PCH or SPCH shall meet the nutrition needs of residents in accordance with physician's orders.
 - c. Except as established in clause e. of this subparagraph, meals shall correspond with the posted menu.
 - d. Menus shall be planned and posted one (1) week in advance.
 - e. If changes in the menu are necessary:
 - (i) Substitutions shall provide equal nutritive value;
 - (ii) The changes shall be recorded on the menu; and
 - (iii) Menus shall be kept on file for at least thirty (30) days.
 4. Food preparation and storage.
 - a. There shall be at least a three (3) day supply of food to prepare well-balanced, palatable meals.
 - b. Food shall be prepared with consideration for any individual dietary requirement.
 - c. Modified diets, nutrient concentrates, and supplements shall be given only on the written order of a physician.
 - d. At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the evening meal and breakfast.
 - e. Between-meal snacks, including an evening snack before bedtime, shall be offered to all residents.
 - f. Adjustments shall be made if medically contraindicated.
 - g. Food shall be:
 - (i) Prepared by methods that conserve nutritive value, flavor, and appearance; and
 - (ii) Served at the proper temperature and in a form to meet 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 refuses food served, substitutes shall be offered.
 - k. All opened containers or leftover food items shall be covered and dated when refrigerated.
 - l. Ice water shall be readily available to the residents at all times.
 - m. Food services shall be provided in accordance with 902 KAR 45:005.
 - (4) Personal care services. All PCHs and SPCHs shall provide services to assist residents with activities of daily living to achieve and maintain good personal hygiene, including assistance as needed with:
 - (a) Bathing. The facility shall provide soap, clean towels, and wash cloths for each resident and ensure that toilet articles such as towels, brushes, and combs are not used in common;
 - (b) Shaving;
 - (c) Cleaning and trimming of fingernails and toenails;
 - (d) Cleaning of the mouth and teeth to maintain good oral hygiene[;] and care of the lips to prevent dryness and cracking. The facility shall provide all residents with tooth brushes, a dentifrice, and denture containers, if applicable; and
 - (e) Washing and grooming.
 - (5) Activity services.
 - (a) All PCHs and SPCHs shall provide social and recreational activities to:
 1. Stimulate physical and mental abilities to the fullest extent;
 2. Encourage and develop a sense of usefulness and self-respect;
 3. Prevent, inhibit, or correct the development of symptoms of physical and mental regression; and
 4. Provide sufficient variety to meet the needs of each resident.
 - (b) All PCHs and SPCHs shall meet the requirements established in subparagraphs 1. through 8. of this paragraph relating to the provision of activity services.
 1. Staff. The administrator:
 - a. Shall designate a staff member to be responsible for the activity program; and
 - b. May accept services from a volunteer group to assist with carrying out the activity program.
 2. There shall be a planned activity period each day.
 3. The schedule shall be current and posted.
 4. The activity program shall be planned for group and individual activities, both within and outside of the facility.

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5. The staff member responsible for the activity program shall maintain a current list of residents in which precautions are documented regarding if a resident's condition might restrict or modify the resident's participation in the program.

6. A living or recreation room and outdoor recreational space shall be provided for residents and their guests.

7. The facility shall provide supplies and equipment for the activity program.

8. Reading materials, radios, games, and TV sets shall be provided for the residents.

(c) An SPCH shall collaborate with the agency or team that is working with residents transitioning to community living pursuant to 908 KAR 2:065 to offer basic instruction in ADLs and IADLs to each resident who is identified as working to transition to independent community living pursuant to 908 KAR 2:065. ADL and IADL skills training shall include instruction that is integrated into the normal rhythms of life.

(6) For purposes of subsection (5)(c) of this section, ~~the following shall apply~~:

(a) "Basic instruction" in ADLs and IADLs shall have the same meaning as "assistance with" ADLs and IADLs;

(b) An SPCH shall not be responsible for selecting which residents receive basic instruction in ADLs and IADLs; and

(c) An SPCH shall not be responsible for ensuring that a resident has mastered each task defined as an ADL or IADL.

Section 6. Mental Illness or Intellectual Disability (MI/ID) Supplement Program Certification.

(1) Office of Inspector General staff shall visit a personal care home to certify eligibility to participate in the MI/ID Supplement Program established by 921 KAR 2:015, Section 13.

(2) A personal care home's initial MI/ID Supplement Program certification inspection:

(a) May be separate from an unannounced inspection conducted in accordance with KRS 216.530; and

(b) Shall be in effect until the next licensure survey conducted in accordance with KRS 216.597(7)(c)2.

(3) During an MI/ID Supplement Program inspection, Office of Inspector General staff shall:

(a) Observe and interview residents and staff; and

(b) Review records to ~~ensure that~~ ~~assure~~ the facility ~~meets the following criteria~~:

1. ~~Facility~~ Maintains documentation of staff completion of the training required by 921 KAR 2:015, Section 14(1) through (4); ~~and~~

2. ~~Complies with clauses a. and b. of this subparagraph.~~ ~~Facility ensures that~~:

a. The staff person who attended the one (1) day MI/ID training workshop ~~shall share~~ ~~shares~~ information obtained from the workshop with all other direct care staff through annual in-service training or orientation pursuant to Section 4(10)(h)3.f. of this administrative regulation.; ~~and~~

b. If medication is administered to residents, administration shall be done by a nurse, ~~administrator, or staff person designated by the administrator.~~ ~~CMA, or KMA in which case the nurse, CMA, or KMA~~ shall demonstrate a knowledge of psychotropic drug side effects.

(4) Office of Inspector General staff shall review the facility's documentation of MI/ID training prior to performing a record review during the MI/ID Supplement Program inspection process.

(5) If at least thirty-five (35) percent of the resident population meets the criteria established by 921 KAR 2:015, Section 13(1)(c)2. on the day of the visit, a personal care home shall be deemed to have an ongoing qualifying percentage in the MI/ID Supplement Program effective with the month of request for certification in the program.

(6) Office of Inspector General staff shall provide the Department for Community Based Services with a completed STS-4, Mental Illness or Intellectual Disability (MI/ID) Supplement Certification Survey, incorporated by reference in 921 KAR 2:015, Section 17(1)(d), within fifteen (15) working days of an:

(a) Initial survey; or

(b) Inspection conducted in accordance with KRS 216.530 and 216.597(7)(c)2.

(7) The Office of Inspector General shall provide the Department

for Community Based Services with a copy of a Type A citation issued to a specialized personal care home that participates in the MI/ID Supplement Program by the fifth working day of month following the month the citation was issued.

Section 7. Denial and Revocation.

(1) In addition to the reasons for denial or revocation of a license in accordance with 902 KAR 20:008, Section 8, the cabinet shall deny or revoke a PCH or SPCH license in accordance with KRS 216.597(7)(a) if:

(a) There has been a substantial failure by the facility to comply with the provisions of:

1. KRS 216.510 through 216.597, or 216.789; or

2. This administrative regulation;

(b) The facility allows, aids, or abets the commission of any illegal act in the provision of services;

(c) The facility performs any act detrimental to the health, safety, or welfare of a resident;

(d) The facility obtains licensure by fraud or misrepresentation, including a false statement of a material fact in:

1. The Application for ~~Licensure~~ ~~License~~ to Operate ~~an Assisted Living Community, incorporated by reference in 902 KAR 20:480~~ ~~a Long Term Care Facility~~; or

2. Any records required by this administrative regulation;

(e) The facility denies a representative of the cabinet access to any part of the facility's books, records, files, employees, or residents;

(f) The facility interferes with or impedes the performance of the duties and responsibilities of the long-term care ombudsman;

(g) The facility interferes with or impedes a representative of the cabinet in the enforcement of this administrative regulation or fails to fully cooperate with a survey or investigation by the cabinet;

(h) The facility destroys or makes unavailable any records or other evidence relating to the facility's compliance with this administrative regulation;

(i) The facility refuses to initiate a background check or otherwise fails to comply with the requirements of KRS 216.789;

(j) The facility fails to timely pay any fines assessed by the cabinet;

(k) The facility violates any applicable building or safety codes as determined by the building code or safety code enforcement authority with jurisdiction;

(l) There have been repeated incidents in the facility of personnel performing services beyond their competency level;

(m) The facility continues to operate beyond the scope of the facility's license after the timeframe established for correction of the violation; or

(n) An individual with a significant financial interest in the facility:

1. Is convicted of a felony or gross misdemeanor that relates to the operation of the facility or directly affects resident safety or care; or

2. Had the application returned in accordance with 902 KAR 20:008, Section 2(4)(b).

(2) The cabinet shall follow the notification requirements of 902 KAR 20:008, Section 8(2) and (3) for denial or revocation.

(3) In accordance with KRS 216B.105(2), the denial or revocation shall become final and conclusive thirty (30) days after notice is given, unless the applicant or licensee files a request in writing for a hearing with the cabinet within thirty (30) days after the date of the notice.

Section 8. ~~Section 5.~~ Material Incorporated by Reference.

(1) The form, "SMI Screening Form", August 2019, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m., or it may be viewed on the Office of Inspector General's ~~Web site~~ ~~website~~ at <https://chfs.ky.gov/agencies/os/oig/dhc/pages/lrc.aspx>.

FILED WITH LRC: June 11, 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; emailCHFSregs@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
 Department for Community Based Services
 Division of Family Support
 (As Amended at ARRS, June 11, 2024)

921 KAR 2:015. Supplemental programs for persons who are aged, blind, or have a disability.

RELATES TO: KRS Chapter 194A, 202A.011(12), 205.245, 209.020(4), [216.530, 216.557(4), 216.765(2), Chapter 216B, Chapter 514, 20 C.F.R. Part 416[416.120, 416.212, 416.2030, 416.2095, 416.2096, 416.2099, 8 U.S.C. 1621, 1641], 42 U.S.C. 415(i), 1381 - 1383

STATUTORY AUTHORITY: KRS 194A.050(1), 205.245, 42 U.S.C. 1382e-g

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the citizens of the ~~Commonwealth~~[Commonwealth] and to operate the programs and fulfill the responsibilities of the cabinet. 42 U.S.C. 1382 authorizes the cabinet to administer a state funded program of supplementation to all former recipients of the Aid to the Aged, Blind, and Disabled Program as of December 13, 1973, and who were disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 ~~requires~~[establishes] the mandatory supplementation program and the supplementation to other needy persons who are aged, blind, or have a disability. In addition, any state that makes supplementary payments on or after June 30, 1977, and does not have a pass-along agreement in effect with the Commissioner of the Social Security Administration, formerly a part of the U.S. Department of Health, Education, and Welfare, shall be determined by the commissioner to be ineligible for payments under Title XIX of the Social Security Act in accordance with 20 C.F.R. 416.2099. This administrative regulation establishes the provisions of the supplementation program.

Section 1. Definitions.

- (1) "Activities of daily living" is defined by KRS 194A.700(1).
- (2) "Adult" is defined by KRS 209.020(4).
- (3) "Aid to the Aged, Blind and Disabled Program" means the former state-funded program for an individual who was aged, blind, or had a disability.
- (4) "Care coordinator" means an individual designated by a community integration supplementation applicant or recipient to fulfill responsibilities ~~established~~[specified] in Section 6(2) of this administrative regulation.
- (5) "Department" means the Department for Community Based Services or its designee.
- (6) "Full-time living arrangement" means a residential living status that is seven (7) days a week, not part time.
- (7) "Instrumental activities of daily living" is defined by KRS 194A.700 ~~(15)~~[(9)].
- (8) "Private residence" means a dwelling that meets requirements of Section 4(2)(d) of this administrative regulation.
- (9) "Qualified immigrant" means an immigrant who, at the time the person applies for, receives, or attempts to receive state supplementation, meets the U.S. citizenship requirements ~~for "valid immigrant status", as defined by~~ [of] 907 KAR 20:001, ~~Section 1(118)~~.
- (10) "Qualified mental health professional" is defined by KRS 202A.011(12).
- (11) "Serious mental illness" or "SMI" means a mental illness or disorder in accordance with Section 6(1) of this administrative regulation.
- (12) "Supplemental security income" or "SSI" means a monthly cash payment made pursuant to 42 U.S.C. 1381 ~~through~~[to] 1383f to the aged, blind, or disabled.

Section 2. Mandatory State Supplementation.

(1) A recipient for mandatory state supplementation shall include a former Aid to the Aged, Blind and Disabled Program recipient who became ineligible for SSI due to income but whose special needs entitled the recipient to an Aid to the Aged, Blind and Disabled Program payment as of December 1973.

(2) A mandatory state supplementation recipient shall ~~comply with be subject to~~ the same payment requirements as ~~established~~[specified] in Section 4 of this administrative regulation.

(3) A mandatory state supplementation payment shall be equal to the difference between:

(a) The Aid to the Aged, Blind and Disabled Program payment for the month of December 1973; and

- (b)
 1. The total of the SSI payment; or
 2. The total of the SSI payment and other income for the current month.

(4) A mandatory payment shall discontinue if:

(a) The needs of the recipient as recognized in December 1973 have decreased; or

(b) Income has increased to the December 1973 level.

(5) The mandatory payment shall not be increased unless:

- (a) Income as recognized in December 1973 decreases;
- (b) The SSI payment is reduced, but the recipient's circumstances are unchanged; or

(c) The standard of need as ~~established~~[specified] in Section 9 of this administrative regulation for a class of recipients is increased.

(6) If a husband and wife are living together, an income change after September 1974 shall not result in an increased mandatory payment unless total income of the couple is less than December 1973 total income.

Section 3. Optional State Supplementation Program.

(1) Except as established in Sections 7, 8, and 9 of this administrative regulation, optional state supplementation shall be available to a person who meets technical requirements and resource limitations of the medically needy program for a person who is aged, blind, or has a disability in accordance with:

- (a) 907 KAR 20:001;
- (b) 907 KAR 20:005, Sections 5(2), (3), (4), (7), 10, and 12;
- (c) 907 KAR 20:020, Section 2(4)(a);
- (d) 907 KAR 20:025; or
- (e) 907 KAR 20:040, Section 1.

(2) A person shall apply or reapply for the state supplementation program in accordance with 921 KAR 2:035 and shall be required to:

- (a) ~~Submit~~[Furnish] a Social Security number; or
- (b) Apply for a Social Security number, if a Social Security number has not been issued.

(3) If potential eligibility exists for SSI, an application for SSI shall be mandatory.

(4) The effective date for state supplementation program approval shall be in accordance with 921 KAR 2:050.

Section 4. Optional State Supplementation Payment.

(1) An optional supplementation payment shall be issued in accordance with 921 KAR 2:050 for an eligible individual who:

- (a) Requires a full-time living arrangement;
- (b) Has insufficient income to meet the payment standards ~~established~~[specified] in Section 9 of this administrative regulation; and

- (c)
 1. Resides in a personal care home and is eighteen (18) years of age or older in accordance with KRS 216.765(2);
 2. Resides in a family care home and is at least eighteen (18) years of age in accordance with 902 KAR 20:041, Section 3(14);
 3. Receives caretaker services and is at least eighteen (18) years of age; or
 4.
 - a. Resides in a private residence;
 - b. Is at least eighteen (18) years of age; and
 - c. Has SMI.

(2) A full-time living arrangement shall include:

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- (a) Residence in a personal care home that:
 - 1. Meets the requirements and provides services established in 902 KAR 20:036; and
 - 2. Is licensed under KRS 216B.010 ~~through~~ 216B.131;
 - (b) Residence in a family care home that:
 - 1. Meets the requirements and provides services established in 902 KAR 20:041; and
 - 2. Is licensed under KRS 216B.010 ~~through~~ 216B.131;
 - (c) A situation in which a caretaker is required to be hired to provide care other than room and board; or
 - (d) A private residence, which shall:
 - 1. Be permanent housing with:
 - a. Tenancy rights; and
 - b. Preference given to single occupancy; and
 - 2. Afford an individual with SMI choice in activities of daily living, social interaction, and access to the community.
- (3) A guardian or other payee who receives a state supplementation check for a state supplementation recipient shall:
- (a) Return the check to the Kentucky State Treasurer, the month after the month of:
 - 1. Discharge to a:
 - a. Nursing facility, unless the admission is for temporary medical care as specified in Section 10 of this administrative regulation; or
 - b. Residence other than a private residence pursuant to subsection (2)(d) of this section; or
 - 2. Death of the state supplementation recipient; and
 - (b) Notify a local county department within five (5) working days of the death or discharge of the state supplementation recipient.
- (4) Failure to comply with subsection (3)(a) of this section may result in prosecution. **Prosecution shall be** in accordance with KRS Chapter 514.
- (5) If there is no guardian or other payee, a personal care or family care home that receives a state supplementation check for a state supplementation recipient shall:
- (a) Return the check to the Kentucky State Treasurer, the month after the month of:
 - 1. Discharge to a:
 - a. Nursing facility, unless the admission is for temporary medical care as ~~established~~ **specified** in Section 10 of this administrative regulation;
 - b. Another personal care or family care home; or
 - c. Residence other than a private residence pursuant to subsection (2)(d) of this section; or
 - 2. Death of the state supplementation recipient; and
 - (b) Notify a local county department within five (5) working days of the:
 - 1. Death or discharge of the state supplementation recipient; or
 - 2. Voluntary relinquishment of a license to the Office of the Inspector General.
 - (6) If a personal care or family care home receives a state supplementation check after voluntary relinquishment of a license, as ~~established~~ **specified** in subsection (5)(b)2. of this section, the personal care or family care home shall return the check to the Kentucky State Treasurer.
 - (7) Failure to comply with subsections (5)(a) or (6) of this section may result in prosecution. **Prosecution shall be** in accordance with KRS Chapter 514.

Section 5. Eligibility for Caretaker Services.

- (1) Service by a caretaker shall be provided to enable an adult to:
 - (a) Remain safely and adequately:
 - 1. At home;
 - 2. In another family setting; or
 - 3. In a room and board situation; and
 - (b) Prevent institutionalization.
- (2) Service by a caretaker shall be provided at regular intervals by:
 - (a) A live-in attendant; or
 - (b) One (1) or more persons hired to come to the home.
- (3) Eligibility for caretaker supplementation shall be verified annually by the cabinet with the caretaker to establish how:
 - (a) Often the service is provided;

- (b) The service prevents institutionalization; and
- (c) Payment is made for the service.
- (4) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if the:
 - (a) Client is taken daily or periodically to the home of the caretaker; or
 - (b) Caretaker service is provided by the following persons living with the applicant:
 - 1. The spouse;
 - 2. Parent of an adult or minor child who has a disability; or
 - 3. Adult child of a parent who is aged, blind, or has a disability.

Section 6. Eligibility for Community Integration Supplementation.

- (1) Eligibility for the community integration supplementation shall be based upon a diagnosis of SMI by a qualified mental health professional. SMI shall:
 - (a) Not include a primary diagnosis of Alzheimer's disease or dementia;
 - (b) Be described in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM);
 - (c) Impair or impede the individual's functioning in at least one (1) major area of living, such as inability to care for or support self, communicate, or make and maintain interpersonal relationships; and
 - (d) Be unlikely to improve without treatment, services, or supports.
- (2) Eligibility for the community integration supplementation shall be verified annually by the cabinet with the applicant, recipient, or care coordinator to establish how:
 - (a) Often services, including those that address subsection (1)(c) of this section, are provided;
 - (b) The services prevent institutionalization and support private residence in accordance with Section 4(2)(d) of this administrative regulation; and
 - (c) Payment is made for the services.
- (3) Unless criteria in Section 10 of this administrative regulation are met by the applicant or recipient, SMI supplementation shall not be available to a resident of a home, facility, institution, lodging, or other establishment:
 - (a) Licensed or registered in accordance with KRS Chapter 216B; or
 - (b) Certified in accordance with KRS Chapter 194A.

Section 7. Resource Consideration.

- (1) Except as ~~established~~ **provided** in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy in accordance with:
 - (a) 907 KAR 20:001;
 - (b) 907 KAR 20:020, Section 2(4)(a);
 - (c) 907 KAR 20:025; and
 - (d) 907 KAR 20:040, Section 1.
- (2) An individual or couple shall not be eligible if countable resources exceed the limit of:
 - (a) \$2,000 for an individual; or
 - (b) \$3,000 for a couple.

Section 8. Income Considerations.

- (1) Except as ~~established~~ **provided** in subsections (2) through (8) of this section, income and earned income deductions shall be considered according to the policy for the medically needy in accordance with:
 - (a) 907 KAR 20:001;
 - (b) 907 KAR 20:020, Section 2(4)(a);
 - (c) 907 KAR 20:025; and
 - (d) 907 KAR 20:040, Section 1.
- (2) The optional supplementation payment shall be determined by:
 - (a) Adding:
 - 1. Total countable income of the applicant or recipient, or applicant or recipient and spouse; and
 - 2. A payment made to a third party on behalf of an applicant or

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recipient; and

(b) Subtracting the total of paragraph (a)1. and 2. of this subsection from the standard of need in Section 9 of this administrative regulation.

(3) Income of an ineligible spouse shall be:

(a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and

(b) Conserved in the amount of one-half (1/2) of the SSI standard for an individual for:

1. The applicant or recipient; and
2. Each minor dependent child.

(4) Income of an eligible individual shall not be conserved for the needs of the ineligible spouse or minor dependent child.

(5) Income of a child shall be considered if conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.

(6) The earnings of the eligible individual and ineligible spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(7) If treating a husband and wife who reside in the same personal care or family care home as living apart prevents them from receiving state supplementation, the husband and wife may be considered to be living with each other.

(8) The SSI twenty (20) dollar general exclusion shall not be an allowable deduction from income.

Section 9. Standard of Need.

(1) To the extent funds are available, the standard of need shall be the amount listed in this subsection in addition to all cost of living adjustments determined by the Social Security Administration that have taken place since 2021 pursuant to 42 U.S.C. 415(i) and published at <https://www.ssa.gov/cola/>:

(a) For a resident of a personal care home, \$1,409;

(b) For a resident of a family care home, \$965;

(c) For an individual who receives caretaker services:

1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability, \$855;

2. An eligible couple, both aged, blind, or having a disability and one (1) requiring care, \$1,251; or

3. An eligible couple, both aged, blind, or having a disability and both requiring care, \$1,305; or

(d) For an individual who resides in a private residence and has SMI, \$1,313.

(2)

(a) In a couple case, if both are eligible, the couple's income shall be combined prior to comparison with the standard of need.

(b) One-half (1/2) of the deficit shall be payable to each.

(3) A personal care home shall accept as full payment for cost of care, the amount of the standard, based on the living arrangement, minus a sixty (60) dollar personal needs allowance that shall be retained by the client.

(4) A family care home shall accept as full payment for cost of care, the amount of the standard, based on the living arrangement, minus a forty (40) dollar personal needs allowance that shall be retained by the client.

Section 10. Temporary Stay in a Medical Facility.

(1) An SSI recipient who receives optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if the:

(a) SSI recipient meets eligibility for medical confinement established by 20 C.F.R. 416.212;

(b) Social Security Administration notifies the department that the admission shall be temporary; and

(c) Purpose shall be to maintain the recipient's home or other living arrangement during a temporary admission to a health care facility.

(2) A non-SSI recipient who receives mandatory or optional state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if:

(a) The non-SSI recipient meets the requirements of subsection

(1)(c) of this section;

(b) A physician certifies, in writing, that the non-SSI recipient is not likely to be confined for longer than ninety (90) full consecutive days; and

(c) A guardian or other payee, personal care home, or family care home, receiving a state supplementation check for the state supplementation recipient, provides a local county department office with:

1. Notification of the temporary admission; and

2. The physician statement **established**~~[specified]~~ in paragraph (b) of this subsection.

(3) A temporary admission shall be limited to the following health care facilities:

(a) Hospital;

(b) Psychiatric hospital; or

(c) Nursing facility.

(4) If a state supplementation recipient is discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

Section 11. Citizenship requirements. An applicant or recipient shall be a:

(1) Citizen of the United States; or

(2) Qualified immigrant.

Section 12. Requirement for Residency. An applicant or recipient shall reside in Kentucky.

Section 13. Mental Illness or Intellectual Disability (MI/ID) Supplement Program.

(1) A personal care home:

(a) May qualify, to the extent funds are available, for a quarterly supplement payment of **one (1) dollar per diem for a state supplementation recipient in the personal care home's care as of the first calendar day of a qualifying month**~~[\$25.000][fifty (50) cents per diem for a state supplementation recipient in the personal care home's care as of the first calendar day of a qualifying month];~~

(b) Shall not be eligible for a payment for a Type A Citation that is not abated; and

(c) Shall meet the following certification criteria for eligibility to participate in the MI/ID Supplement Program:

1. Be licensed in accordance with KRS 216B.010 ~~through~~~~to~~ 216B.131;

2. Care for a population that is at least thirty-five (35) percent mental illness or intellectual disability clients in all of its occupied licensed personal care home beds and who have a:

a. Primary or secondary diagnosis of intellectual disability including mild or moderate, or other ranges of intellectual disability whose needs can be met in a personal care home;

b. Primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alzheimer's, and similar diagnoses; or

c. Medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis;

3. Have a licensed nurse or an individual who has received and successfully completed certified medication technician or Kentucky medication aide training on duty for at least four (4) hours during the first or second shift each day;

4. Not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of this minimum requirement;

5. Be verified by the Office of the Inspector General in accordance with ~~[Section]~~~~[6 of]~~ 902 KAR 20:036, ~~Section 6~~ 45(2) ~~through (4) of this administrative regulation];~~ and

6. File an STS-1, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Application for Benefits, with the department by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.

a. Quarters shall begin in January, April, July, and October.

b. Unless mental illness or intellectual disability supplement eligibility is discontinued, a new application for the purpose of

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program certification shall not be required.

(2) A personal care home shall provide the department with its tax identification number, ~~and~~ address, and staff information as part of the application process.

(3) The department shall provide an STS-2, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Notice of Decision to Personal Care Home, to a personal care home following:

(a) Receipt of verification from the Office of the Inspector General as ~~established in specified in Section 6 of 902 KAR 20:036, Section 6~~ 15(6) of this administrative regulation; and

(b) Approval or denial of an application.

(4) A personal care home shall:

(a) Provide the department with an STS-3, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Monthly Report Form, that:

1. Lists every resident of the personal care home who was a resident on the first day of the month;

2. Lists the last four (4) digits only of the resident's Social Security Number;

3. Lists the resident's date of birth; and

4. Is marked appropriately for each resident to indicate the resident:

a. Has a mental illness diagnosis;

b. Has an intellectual disability diagnosis; or

c. Receives state supplementation; and

(b) Submit the STS-3 to the department on or postmarked by the fifth working day of the month by:

1. Mail;

2. Fax; or

3. Electronically.

(5) The monthly report shall be used by the department for:

(a) Verification as ~~established~~ specified in subsection (4)(a) of this section;

(b) Payment; and

(c) Audit purposes.

(6)

(a) A personal care home shall notify the department within ten (10) working days if its mental illness or intellectual disability percentage goes below thirty-five (35) percent for all personal care residents.

(b) A personal care home may be randomly audited by the department to verify percentages and payment accuracy.

(7) If a Type A Citation is received, the personal care home shall receive a reduced payment for the number of days the Type A Citation occurred on the first administratively feasible quarter following notification by the Office of the Inspector General, in accordance with 921 KAR 2:050.

(8) If a criterion for certification is not met, the department shall issue an STS-2 to a personal care home following receipt of the survey by the Office of the Inspector General as established specified in 902 KAR 20:036, Section 6(6) subsection (6) of this section.

(9) The personal care home shall provide the department with the information requested on the STS-2:

(a) Relevant to unmet certification criteria included specified on the STS-4, Mental Illness or Intellectual Disability (MI/ID) Supplement Certification Survey; and

(b) Within ten (10) working days after the STS-2 is issued.

(10) If a personal care home fails to provide the department with the requested information established specified in subsection (9)(10) of this section, assistance shall be discontinued or decreased, pursuant to 921 KAR 2:046.

(11) If a personal care home is discontinued from the MI/ID Supplement Program, the personal care home may reapply for certification, by filing an STS-1 in accordance with subsection (1)(c)6. of this section, for the next following quarter.

Section 14. Mental Illness or Intellectual Disability (MI/ID) Training.

(1)

(a) A personal care home's licensed nurse or individual who has successfully completed certified medication technician or Kentucky medication aide training shall complete the personal care home

mental illness or intellectual disability training workshop provided through the Department for Behavioral Health, Developmental and Intellectual Disabilities, once every two (2) years.

(b) Other staff may complete the training workshop in order to ~~ensure~~ assure the personal care home always has at least one (1) certified staff employed for certification purposes.

(2) The personal care home mental illness or intellectual disability training shall be provided through a one (1) day workshop. The following topics shall be covered:

(a) Importance of proper medication administration;

(b) Side effects and adverse medication reactions with special attention to psychotropics;

(c) Signs and symptoms of an acute onset of a psychiatric episode;

(d) SMI;

(e) SMI recovery;

(f) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bipolar disorder, or intellectual disability;

(g) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or intellectual disability;

(h) Instruction in providing a necessary activity to meet the needs of a resident who has a diagnosis of mental illness or intellectual disability;

(i) Activities of daily living and instrumental activities of daily living;

(j) Adult learning principles; and

(k) Information about 908 KAR 2:065 and the process for community transition for individuals with SMI.

(3) Initial training shall:

(a) Include the licensed nurse or the individual who has successfully completed certified medication technician or Kentucky medication aide training, as established in 201 KAR 20:700, and may include the owner or operator; and

(b) Be in the quarter during which the STS-1 is filed with the department.

(4)

(a) A personal care home shall have at least one (1) direct care staff member who has received training.

(b) A personal care home shall have on staff a licensed nurse or individual who:

1. Has successfully completed certified medication technician or Kentucky medication aide training; and

2.

a. Has received mental illness or intellectual disability training;

or

b. Is enrolled in the next scheduled mental illness or intellectual disability training workshop.

(5) The Department for Behavioral Health, Developmental and Intellectual Disabilities shall provide within five (5) working days a:

(a) Certificate to direct care staff who complete the training workshop; and

(b) Listing to the department of staff who completed the training workshop.

(6) The department shall pay twenty-five (25) dollars, to the extent funds are available, to a personal care home:

(a) That has applied for the MI/ID Supplement Program; and

(b) For each staff member receiving training up to a maximum of five (5) staff per year.

Section 15. ~~[MI/ID Supplement Program Certification.]~~

~~[(1)] [The Office of the Inspector General shall visit a personal care home to certify eligibility to participate in the MI/ID Supplement Program.]~~

~~[(a)] [The personal care home's initial MI/ID Supplement Program Certification Survey:]~~

~~[1.] [May be separate from an inspection conducted in accordance with KRS 216.530; and]~~

~~[2.] [Shall be in effect until the next licensure survey.]~~

~~[(b)] [After a personal care home's initial MI/ID Supplement Program Certification Survey is completed, the personal care home may complete any subsequent certification survey during the~~

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licensure survey as specified in paragraph (a)2. of this subsection.]

~~[(c)] [The department shall notify the Office of the Inspector General that the personal care home is ready for an inspection for eligibility.]~~

~~[(2)] [During the eligibility inspection, the Office of the Inspector General shall:]~~

~~[(a)] [Observe and interview residents and staff; and]~~

~~[(b)] [Review records to assure the following criteria are met:]~~

~~[1.] [Certification is on file at the personal care home to verify staff's completion of training, as specified in Section 14(1) through (4) of this administrative regulation;]~~

~~[2.] [The personal care home:]~~

~~[a.] [Has certified staff training all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or intellectual disability training workshop; and]~~

~~[b.] [Maintains documentation of completion at the in-service training for all direct care staff;]~~

~~[3.] [Medication administration meets licensure requirements and a licensed nurse or individual who has successfully completed certified medication technician or Kentucky medication aide training;]~~

~~[a.] [Demonstrates a knowledge of psychotropic drug side effects; and]~~

~~[b.] [Is on duty as specified in Section 13(1)(c)3. of this administrative regulation; and]~~

~~[4.] [An activity is being regularly provided that meets the needs of a resident.]~~

~~[a.] [If a resident does not attend a group activity, an activity shall be designed to meet the needs of the individual resident, for example, reading or other activity that may be provided on an individual basis.]~~

~~[b.] [An individualized care plan shall not be required for the criteria in clause a. of this subparagraph.]~~

~~[(3)] [The Office of the Inspector General shall review the personal care home copy of the training certification prior to performing a record review during the MI/ID Supplement Program Certification Survey process.]~~

~~[(4)] [If at least thirty-five (35) percent of the population is mental illness or intellectual disability clients, as specified in Section 13(1)(c)2. of this administrative regulation, on the day of the visit, a personal care home shall be deemed to have an ongoing qualifying percentage effective with the month of request for certification as specified in subsection (1)(c) of this section.]~~

~~[(5)] [If the mental illness or intellectual disability population goes below thirty-five (35) percent of all occupied personal care beds in the facility, the personal care home shall notify the department as specified in Section 13(6)(a) of this administrative regulation.]~~

~~[(6)] [The Office of the Inspector General shall provide the department with a completed STS-4, Mental Illness or Intellectual Disability (MI/ID) Supplement Certification Survey, within fifteen (15) working days of an:]~~

~~[(a)] [Initial survey; or]~~

~~[(b)] [Inspection in accordance with KRS 216.530.]~~

~~[(7)] [The Office of the Inspector General shall provide a copy of a Type A Citation issued to a personal care home to the department by the fifth working day of each month for the prior month.]~~

~~[(8)] [The personal care home shall receive a reduced payment for the number of days the Type A Citation occurred on the first administratively feasible quarter following notification by the Office of the Inspector General, in accordance with 921 KAR 2:050.]~~

~~[(9)] [If a criterion for certification is not met, the department shall issue an STS-2 to a personal care home following receipt of the survey by the Office of the Inspector General as specified in subsection (6) of this section.]~~

~~[(10)] [The personal care home shall provide the department with the information requested on the STS-2:]~~

~~[(a)] [Relevant to unmet certification criteria specified on the STS-4; and]~~

~~[(b)] [Within ten (10) working days after the STS-2 is issued.]~~

~~[(11)] [If a personal care home fails to provide the department with the requested information specified in subsection (10) of this section, assistance shall be discontinued or decreased, pursuant to 921 KAR 2:046.]~~

~~[(12)] [If a personal care home is discontinued from the MI/ID Supplement Program, the personal care home may reapply for certification, by filing an STS-1 in accordance with Section 13(1)(c)6. of this administrative regulation, for the next following quarter.]~~

~~[Section 16.]~~ Hearings and Appeals. An applicant or recipient of benefits under a program ~~established~~ **described** in this administrative regulation who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing under 921 KAR 2:055.

~~Section 16.~~ **Section 16.** [Section 17.] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "STS-1, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Application for Benefits", ~~12/23~~ **01/15**;

(b) "STS-2, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Notice of Decision to Personal Care Home", 01/15;

(c) "STS-3, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Monthly Report Form", 01/19; and

(d) "STS-4, Mental Illness or Intellectual Disability (MI/ID) Supplement Certification Survey", 01/19.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at: <https://chfs.ky.gov/agencies/dcbp/Pages/default.aspx>.

FILED WITH LRC: June 11, 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; CHFSregs@ky.gov.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Quality Living
(Amended After Comments)

910 KAR 1:270. Hart-Supported Living grant program.

RELATES TO: KRS 17.165, 194A.060, 209.030, 210.770-210.795, 45 C.F.R. 164.502-164.514, 164.530

STATUTORY AUTHORITY: KRS 210.780(3), 210.795(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.780(3) authorizes the Hart-Supported Living Council to recommend necessary administrative regulations to carry out the purposes of KRS 210.770 to 210.795. KRS 210.795(3) requires the cabinet in concert with the Hart-Supported Living Council to promulgate administrative regulations to establish the methods of awarding Hart-Supported Living grants, monitoring the quality of service delivery, and providing for administrative appeals of decisions. This administrative regulation establishes the Hart-Supported Living grant program application and award procedures, the standards to monitor the quality of service delivery, and the appellate procedure.

Section 1. Definitions.

(1) "Adaptive and therapeutic equipment" means an item recommended by a physician, physician assistant, advanced practice registered nurse, or licensed therapist that is necessary for the recipient's independent functioning and communication.

(2) "Applicant" means a person who may be eligible for a Hart-Supported Living grant and submits a completed DAIL-HSL-01 Application to the regional Hart-Supported Living grant program coordinator by the deadline established by Section 3 of this administrative regulation.

(3) "Application" means a DAIL-HSL-01 Application that is completed and submitted in accordance with Section 3 of this administrative regulation to the regional Hart-Supported Living grant program coordinator.

(4) "Budget narrative" means a justification and explanation of the amount requested in each budget category.

(5) "Community resource developer" means an employee of a recipient who coordinates and assists a recipient to:

(a) Participate in the community with persons who are members of the general citizenry; and

(b) Learn and enhance skills and competencies in living in the community.

(6) "Council" means the Hart-Supported Living Council that oversees the Hart-Supported Living grant program as described by KRS 210.775 and 210.780.

(7) "Department" or "DAIL" means the Department for Aging and Independent Living.

(8) "Designated Representative" means an uncompensated individual designated by the consumer to assist in managing the consumer's Hart Supported Living plan and needed services and be chosen by the recipient, family, or legal guardian.

(9) "~~(8)~~" "Duplicative service" means a support or service received through the Hart-Supported Living grant program which an individual is eligible to receive from another agency or program and is offered or available at the same time.

(10) "~~(9)~~" "Eligibility" means meeting the financial eligibility criteria established in:

(a) Section 2 of this administrative regulation; and

(b) KRS 210.790.

(11) "~~(10)~~" "Extraordinary out of pocket expenses" means medical expenses of the recipient or applicant not covered by insurance including:

(a) Co-pays;

(b) Deductibles;

(c) Prescriptions;

(d) Premiums for medical insurance;

(e) Other medical, dental, or vision cost incurred as a result of medically necessary treatments or procedures; or

(f) Other services or supports related to the person's disability.

(12) "~~(11)~~" "Family" means the recipient's parent, stepparent, adoptive parent, foster parent, grandparent, siblings, spouse, or legal guardian.

(13) "~~(12)~~" "Family responsibility" means:

(a) Activities or provisions that a family or legal guardian performs naturally until the recipient reaches eighteen (18) years of age including:

1. Educational activities;

2. Housing;

3. Food;

4. Clothing;

5. Child care; and

6. Medical care; and

(b) Personal care activities or provisions that a family performs naturally until the recipient reaches twelve (12) years of age.

(14) "~~(13)~~" "Federal poverty guidelines" means the poverty guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

(15) "~~(14)~~" "Hart-Supported Living grant" means an award of funds for a fiscal year to a recipient and is defined by KRS 210.770(5) and (6).

(16) "~~(15)~~" "Hart-Supported Living grant program" or "HSL" is defined by KRS 210.770(5) and (6).

(17) "~~(16)~~" "Hart-Supported Living plan" means the DAIL-HSL-02 Plan document developed with the recipient to account for the services to be provided and the costs as outlined in DAIL-HSL-01 and DAIL-HSL-04.

(18) "~~(17)~~" "Hart-Supported Living plan amendment" means the DAIL-HSL-03 Plan Amendment document that is a written request for any change in the currently approved a Hart-supported living plan in the same fiscal year.

(19) "~~(18)~~" "Hart-Supported Living services" means services that are:

(a) Provided to a person with a disability; and

(b) Directed to the recipient toward integrated community living and include:

1. ~~[A community resource developer;]~~

~~[a.] [As authorized by KRS 210.770(8)(a);]~~

~~[b.] [Who coordinates and assists a recipient to meet requirements pursuant to KRS 210.770(5)(a)-(e); and]~~

~~[c.] [Who ensures compliance with KRS 210.770(6);]~~

~~[2.] Homemaker services:~~

a. As authorized by KRS 210.770(8)(b); and

b. That include:

(i) Cooking;

(ii) Cleaning;

(iii) Shopping;

(iv) Laundry; or

(v) Housekeeping;

~~2.~~ ~~[3.]~~ Personal care services:

a. As authorized by KRS 205.900(3); or

b. For recipients twelve (12) years of age or older, as authorized by KRS 210.770(8)(c);

~~3.~~ ~~[4.]~~ In-home training and home management assistance:

a. As authorized by KRS 210.770(8)(d); and

b. That include services to individuals over the age of ~~twelve~~ **(12)** ~~(eighteen (18))~~ ~~(twelve (12))~~ to assist with one-on-one instruction in the home, including:

(i) Property maintenance;

(ii) Financial planning;

(iii) Housekeeping such as laundering, meal preparation, vacuuming, storing purchased items, washing dishes, and changing bed linens; and

(iv) Shopping;

~~4.~~ ~~[5.]~~ Start-up grants:

a. As authorized by KRS 210.770(8)(e); ~~and]~~

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b. That include a grant for one (1) time expenses if the expenses support the recipient's independent living and are for:

(i) A security deposit, not to exceed one month's rent;

(ii) Utility deposits, submitted with documentation and shall not include past due amounts owed by consumer; or

(iii) Purchases of furniture, and appliances[-, and equipment] up to \$2,500[\$2,000]; and

c. Limited to one start up grant per lifetime, per applicant.

5.[6.] Transportation:

a. As authorized by KRS 210.770(8)(f); and

b. That includes mileage reimbursement if it:

(i) Is for a person or provider who transports the recipient to work,[-or] community activities, medical appointments, or other destinations in the community as specified in the recipients Hart Supported Living plan[that are not customarily a family responsibility]; and

(ii) Does not exceed the state reimbursement rate for individual provider and as specified in DAIL-HSL-01 or DAIL-HSL-04;

(iii) Does not exceed the vendor specified budget amount in DAIL-HSL-02.

6.[7.] Home modifications that:

a. Are authorized by KRS 210.770(8)(g);

b. Include:

(i) An architectural change;

(ii) A ramp;

(iii) A widening of doors; or

(iv) Other adaptation if it is requested for the recipient's primary residence to directly accommodate the recipient's disability; and

c. Do not exceed the \$45,000 per recipient lifetime limit;

7.[8.] Adaptive and therapeutic equipment:

a. As authorized by KRS 210.770(8)(h); and

b. That includes an item which promotes the recipient's independent functioning and is recommended by a:

(i) Physician;

(ii) Physician assistant;

(iii) Advanced practice registered nurse; or

(iv) Licensed therapist; and

8.[9.] Individualized life planning authorized by KRS 210.770(8)(i).

9. Respite care.

a. Skilled or unskilled service provided to a recipient on a short-term basis if there is an absence or need for relief of a recipient's caregiver; and

b. [Be provided by someone who does not reside in the same household as the recipient; and]

[c.] As defined in DAIL-HSL-02 Plan

(20)[(19)] "Operating agency" means the department or its designee that administers Hart-Supported Living.

(21)[(20)] "Person with a disability" is defined by KRS 210.770(2).

(22)[(21)] "Primary residence" means a dwelling where the recipient permanently resides and is owned or leased by the recipient or recipient's family as documented on the deed or lease agreement.

(23)[(22)] "Recipient" means a person who has applied,[-and] been approved for a Hart-Supported Living grant, and signed a DAIL-HSL-02 Plan.

(24)[(23)] "Recoupment" means a return of funds for any payment that was made in an incorrect amount including overpayments and underpayments under statutory, contractual, administrative, or other legally applicable requirements.

(25)[(24)] "Regional Hart-Supported Living grant program coordinator" means a person or entity designated by the DAIL who is responsible for fiscal and programmatic oversight of Hart-Supported Living grants and plans.

(26)[(25)] "Request for informal dispute resolution" means the process to be followed if a recipient disagrees with a decision made by the department[regional supported living coordinator], review team, or council.

(27)[(26)] "Review team" means a team designated by the department to perform the functions established in Section 5 of this administrative regulation.

Section 2. Eligibility.

~~(1) [Eligibility shall be determined in accordance with KRS 210.790(1)-.]~~

~~[(2)] [Upon the effective date of this administrative regulation,][An applicant who is eligible for services through Medicaid or a Medicaid Waiver shall not be eligible for on-going services through a Hart-Supported Living grant unless the applicant is:~~

~~(a) Considered inappropriate for participant directed services due to:~~

~~1. An inability to manage his own services; and~~

~~2. A lack of availability of a person to act as his representative;~~

~~or~~

~~(b) Unable to access the Medicaid program through a traditional provider.~~

~~[(3)] [(3)] Medicaid eligible individuals requesting services that are not available or exceed program limits through Medicaid may apply for a Hart-Supported Living grant for those services not covered through Medicaid.~~

~~[(4)] [(4)] Applicants shall submit a copy of the following for each member of the applicant's household:~~

~~(a) The most recent year's income tax returns disclosing the adjusted gross income;~~

~~(b) The past three (3) months' pay stubs; or~~

~~(c) Other verification of income for the past year.~~

~~[(5)] [(5)] An individual receiving Social Security Insurance shall be considered a household of one (1).~~

~~[(6)] [(6)] Applicants with an annual household adjusted gross income at or below 300 percent of the federal poverty guidelines shall be considered an eligible applicant.~~

~~[(7)] [(7)] Applicants with a household adjusted gross income above 300 percent of the federal poverty guidelines shall not be considered an eligible applicant unless the deduction of allowable extraordinary out of pocket expenses adjusts the household income to 300 percent of the federal poverty guidelines or lower.~~

~~[(8)] [Recipients of a Hart-Supported Living grant prior to the effective date of this administrative regulation shall meet the requirements of this section by July 1, 2018.]~~

~~[(9)] [An individual shall be limited to one (1) startup grant.]~~

Section 3. Applicant Responsibilities.

(1) To be considered for a Hart-Supported Living grant, the applicant shall submit a completed DAIL-HSL-01 or DAIL-HSL-04 Application ~~on or before the annual deadline~~ to the regional Hart-Supported Living grant program coordinator where the applicant resides on or before[by] the annual deadline of:

(a) February 1 for all on-going recipients submitting a DAIL-HSL-04 Request For Renewal; or

(b) April 1 for new applications or on-going recipients requesting a new item or service submitting a DAIL-HSL-01 Application.

(2) The DAIL-HSL-01 or DAIL-HSL-04 Application shall be submitted:

(a) With all sections and attachments completed; and

(b) Via:

1. The US postal service postmarked by annual deadline;

2. Hand delivered to the HSL staff[-office];[-or]

3. Electronically through email or Web site submission; or[-]

4. By facsimile to program staff.

(3) An applicant shall disclose any relationship with:

(a) ~~[A person employed by the contract agency;]~~

~~[(b)] The regional Hart Supported-Living coordinator;~~

~~[(c)] [(c)] A council member; or~~

~~[(d)] [(d)] A department staff member.~~

(4) A Hart-Supported Living grant program application shall not be used or approved to pay for the following:

(a) Rent or mortgage payments;

(b) Payment of a recipient's or employee's insurance premium regardless of insurance type or medical bills;

(c) Supplementation of wages or employer related expenses for staff in other publicly-funded programs;

(d) Modifications costing over \$2,500 to rental property;

(e) Modifications of rental property without written permission from the property owner;

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(f) A home improvement not related to a person's disability, including roofing, foundation, and regular home maintenance;

(g) Rental of a vehicle ~~for more than thirty (30) days in a fiscal year~~;

(h) Purchase of a vehicle;

(i) Supports or services for individuals in accordance with KRS 210.770(6)(a)-(e);

(j) Equipment or service that is duplicative or obtainable from another program or funding source for which the applicant qualifies;

(k) Tuition and associated costs to any educational institution;

(l) Transportation, costs, or fees for a program or activity in which the majority of participants are persons with a disability;

(m) Furniture not related to a start-up grant;

~~[(l)] [Transportation, costs, or fees for a program or activity in which the majority of participants are persons with a disability;]~~

~~[(m)] [Furniture not related to a start-up grant;]~~

~~[(n)] [(m)] [(n)] Household items;~~

~~[(o)] [(n)] [(o)] Utility bills including:~~

1. Mobile phones;

2. Land line phones;

3. Internet access;

4. Cable;

5. Satellite dish;

6. Gas;

7. Electric;

8. Water;

9. Sewer; or

10. Other home related costs that may be considered utility and ongoing;

~~[(p)] [(o)] [(p)] Vacations;~~

~~[(q)] [(p)] [(q)] Camps that are segregated;~~

~~[(r)] [(q)] [(r)] Payment of medical treatments including:~~

1. Medical costs;

2. Prescriptions;

3. Vitamins and supplements;

4. Nutritional supplements; or

5. Medical supplies;

~~[(s)] [(r)] [(s)] Groceries, meals, or dining out;~~

~~[(t)] [(s)] [(t)] Fees and expenses for anyone other than the recipient and one (1) attendant; or~~

~~[(u)] [(t)] [(u)] Studies or research projects.~~

(5) Community activity fees shall:

(a) Be limited to pay for the recipient and one (1) attendant to accompany the recipient to an activity that promotes participation in the community with members of the general citizenry;

(b) Not be provided for activities that are a family responsibility; and

(c) Not exceed ~~\$1,000~~[\$750] per grant year per recipient.

(6) Community activity fees, membership fees, and services funded through a Hart-Supported Living grant shall be provided and purchased in Kentucky unless they are not available in Kentucky.

Section 4. Application Evaluation and Funding Criteria.

(1) The review team shall recommend funding for a Hart-Supported Living grant based on the DAIL-HSL-01 Application which shall:

(a) Be received or postmarked on or before the due date;

(b) Be filled out in its entirety;

(c) Clearly identify the applicant's need for services requested;

(d) Clearly identify and justify the cost for requested services;

(e) Clearly identify how the services will be provided;

(f) Clearly identify who will provide the services;

(g) Include a budget sheet and budget narrative for the funding requested for each service and provider;

(h) Identify personal resources that will be utilized to provide identified services; and

(i) Adhere to the core principles and definitions of the Hart-Supported Living grant program in accordance with KRS 210.770(5) and (6) and 210.795.

(2) Funding for the application shall be dependent upon:

(a) Meeting the eligibility criteria established in Section 2 of this administrative regulation;

(b) Completeness;

(c) Submission on or before the deadline;

(d) Evaluation by the review team; and

(e) Availability of funding.

(3) Once the allocation of funds have been obligated to applications based on the review criteria, other applications shall not be approved for funding unless additional funding becomes available.

Section 5. Review Teams.

(1) A review team shall:

(a) Evaluate applications in accordance with the criteria in Section 4 of this administrative regulation;

(b) Make recommendations for applications to be funded in accordance with subsection (2) of this section;

(c) Review requests for plan amendments utilizing the DAIL-HSL-03 Plan Amendment;

(d) Not authorize a plan amendment to increase the grant award; and

(e) Reallocate grant awards that are underspent to fund individuals in the following priority order:

1. Applicants approved through the informal dispute or appeals process for the current fiscal year or, if no funding is available, these individuals shall be the first funded in the next fiscal year; and

2. Applicants in the current fiscal year based on priority order according to subsection (1)(a-d) and (2)(a-b) of this section that funding was not available prior to the reallocation of grant awards.

(2) Funding recommendations shall be made in the following order:

(a) Current recipients requesting the same amount or less for on-going supports;

(b) Current recipients requesting additional funding in order to ensure the continuation of their current plan. Additional funding may be granted for the following:

1. An increase in the pay rate of a provider, agency, or vendor for services currently in the plan;

2. An increase in employer taxes for services currently in the plan;

3. An increase in worker's compensation rates; or

4. Payment to a provider to compute required employer taxes and withholdings;

(c) Applicants denied funding from the previous fiscal year and approved for funding by the informal dispute resolution or administrative hearing process as outlined in Section 14 of this administrative regulation; and

(d) New applicants and current recipients requesting additions to their plans.

(3) Multiple review teams may be established based upon the number of applications received annually and shall be designated by the department and made up of a minimum of three (3) individuals consisting of:

(a) One (1) employee of the department;

(b) One (1) council member; and

(c) One (1) representative of a community or advocacy organization that serves those with disabilities.

(4) If needed and available, technical assistance may be provided for educational purposes to the review team by a subject matter expert.

Section 6. Recipient Responsibilities.

(1) A recipient of a Hart-Supported Living grant shall:

(a) Meet the eligibility requirements established in Section 2 of this administrative regulation;

(b) Participate in the development of a DAIL-HSL-02 Plan with the regional Hart-Supported Living grant program coordinator;

(c) Adhere to the Hart-Supported Living plan and request a plan amendment for a necessary change;

(d) Negotiate the grant funded services to be provided by:

1. A service providing agency; or

2. An individual who provides services, as an employee or independent contractor; and

(e) Be responsible for the recoupment of funds when used for any purpose other than the approved plan or approved amended plan.

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(2) A recipient of a Hart-Supported Living grant who is an employer shall:

(a) Be responsible for the computation, payment, and reporting of employee payroll, withholdings, workers' compensation, unemployment, and taxes;

(b) Establish terms of employment for an employee to:

- 1. Include time, duties, and responsibilities; ~~and~~
- 2. Be in the form of a signed agreement; and

3. Retain a copy of the valid driver's license and car insurance for any employee providing transportation.

(c) Establish terms for an independent contractor to include:

- 1. Proof of licensure or certification and insurance;
- 2. Services to be provided and compensation; and
- 3. A signed agreement.

(3) A recipient shall not sell or donate equipment or another item purchased with Hart-Supported Living grant funds without the written consent of the council.

(4) A recipient of a Hart-Supported Living grant shall comply with standards as set forth in KRS 210.795.

(5) A recipient shall immediately notify the regional Hart-Supported Living coordinator upon the receipt of additional supports or services.

(6) A recipient shall submit:

(a) Documentation with a request for payment that shows a support or service approved on a DAIL-HSL-02 Plan has been provided; and

(b) A timesheet that shall be signed and dated by an employee and employer.

(7) A recipient of grant funds shall submit an application to request an increase of services or funding by April 1 to be considered with all applicants for a Hart-Supported Living grant for the fiscal year beginning July 1.

(8) Recipients of grant funding ~~[prior to the effective date of this administrative regulation]~~ shall:

(a) Receive priority for funding of existing services listed on the individuals Hart-Supported Living plan, if the application is complete and submitted in compliance with Section 3 of this administrative regulation; and

(b) Not receive priority funding for:

- 1. New services;
- 2. Expanded services; or
- 3. Requesting additional funding for existing services.

Section 7. Recipient's Employee Responsibilities.

(1) An employee shall:

- (a) Be selected by the recipient;
- (b) Be eighteen (18) years of age or older;

(c) Enter into and comply with the written agreement for terms of work required by the recipient's DAIL-HSL-02 Plan or DAIL-HSL-03 Plan Amendment;

(d) Be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a U.S. citizen;

(e) Be able to communicate effectively with the recipient, recipient's representative, or family;

(f) Be able to understand and carry out instructions;

(g) Keep records as required by the recipient;

(h) Report to work as scheduled;

(i) Maintain the privacy and confidentiality of the recipient;

(j) Complete training on the reporting of abuse, neglect, or exploitation in accordance with KRS 209.030 and on the needs of the recipient;

(k) Maintain and submit timesheets documenting hours worked and services provided;

(l) Provide proof of the following background checks, completed no more than sixty (60) days prior to hire and submitted prior to the first day of employment:

1. A criminal background check from the Administrative Office of the Courts or Justice and Public Safety Cabinet that shows the employee has not plead guilty to or been convicted of:

- a. Committing a sex crime or violent crime as defined in KRS 17.165(1)-(3); and
 - b. A felony offense related to theft, abuse of a person, or drugs;
2. A check of the nurse aid abuse registry maintained in

accordance with 906 KAR 1:100 that shows the employee was not found on the registry;

3. A check of the central registry maintained in accordance with 922 KAR 1:470 that shows the employee was not found on the registry; and

4. A check of the Adult Protective Services Caregiver Misconduct Registry maintained in accordance with 922 KAR 5:120 that shows the employee was not found on the registry; and

(m) Notify the regional Hart Supported-Living coordinator of conditions which seriously threaten the health or safety of the recipient or employee.

(n) Provide employer with proof of valid driver's license and insurance if providing transportation.

(2) An individual shall not be hired as an employee if the individual:

(a) Has not submitted proof of the background checks specified in subsection (1)(l)1.-4. of this section;

(b) Is on the Central Registry, Nurse Aid Abuse Registry, or Adult Protective Services Caregiver Misconduct Registry;

(c) Has pled guilty to or been convicted of committing a crime as specified in subsection (1)(l)1.a. or b. of this section; or

(d) Is not able to understand or carry out a recipient's instructions or services as listed on the DAIL-HSL-02 Plan or DAIL-HSL-03 Plan Amendment.

(3) An employee shall not work more than forty (40) hours in a calendar week (Sunday through Saturday). [An employee(s) are restricted from working over forty (40) hours in a Sunday to Saturday work week through all publicly funded programs.] [An employee shall not work more than forty (40) hours in a calendar week (Sunday through Saturday)][-]

Section 8. Operating Agency Responsibilities. The operating agency for Hart-Supported Living grant program funds shall:

(1) Implement the Hart-Supported Living grant program in accordance with KRS 210.770, 210.790, and 210.795;

(2) Assume fiscal accountability for the state funds designated for the program;

(3) Provide necessary personnel within the operating agency office that shall:

(a) Meet qualifications for the position held that include at a minimum:

- 1. A bachelor's degree in human services or a related field;
- 2. One (1) year of experience working in a social service field; and

3. Documentation of completion of six (6) hours of annual training related to the position or population;

(b) Not have a conflict of interest; and

(c) Disclose any relationship with any applicant or recipient of a Hart-Supported Living grant to the department;

(4) Establish a cost center and record staff costs for administering the Hart-Supported Living grant Program;

(5) Maintain files and records for cabinet audit, including participant records, and statistical reports in accordance with 725 KAR 1:061, ~~[ten (10) years after the last date funding is no longer received as required by the DAIL records retention schedule that include:]~~

~~[(a)] [Applications funded;]~~

~~[(b)] [Applications that were not funded;]~~

~~[(c)] [Names of recipients whose funding was terminated;]~~

~~[(d)] [Names of currently-funded recipients;]~~

~~[(e)] [Recipient plans;]~~

~~[(f)] [Amendments to plans;]~~

~~[(g)] [Financial records; and]~~

~~[(h)] [Recipient monitoring reports.]~~

(6) Issue payment of recoupment to DAIL if:

(a) The ~~department's~~ ~~operating agency's~~ documentation is not sufficient to determine that HSL funds were used according to this administrative regulation; or

(b) The recipient used his or her plan inappropriately; and

(7) Not request the recouped funds back from the recipient unless:

(a) The ~~department~~ ~~[agency]~~ demonstrates ~~[to the department]~~ by compelling evidence that the recipient used his or her plan

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inappropriately; and

(b) The department provides written approval to recoup the funds from the recipient.

Section 9. Council Responsibilities.

(1) A council member shall:

(a) Adhere to the:

1. Cabinet's confidentiality of records and reports requirements in accordance with KRS 194A.060; and

2. Confidentiality requirements for an applicant's or recipient's health information pursuant to 45 C.F.R. 164.502 - 164.514;

(b) Disclose any relationship with any person receiving a Hart-Supported Living grant, including themselves; and

(c) Adhere to the council's bylaws, KRS 210.770 through 210.795, and this administrative regulation.

(2) If a council member fails to act in accordance with this section, the chair or any council member may:

(a) Call for a vote of the council to recommend the dismissal of the council member; and

(b) Upon a majority vote for dismissal, recommend to the governor that the member be dismissed.

(3) A council member shall not:

(a) Influence, discuss, deliberate, or vote on a decision if the member has a conflict of interest that is:

- 1. Personal;
- 2. Professional; or
- 3. Financial;

(b) Be physically present in a meeting or portion of a meeting during which the subject matter of the conflict of interest is discussed or voted on; or

(c) Assist another individual, regardless of where the person resides, to complete an application for Hart-Supported Living grant funds or services except as provided in subsection (4) of this section.

(4) A council member may assist in the completion of an application for himself, if eligible, or an eligible family member.

(5) A council member shall assist in the review of applications in accordance with Section 5 of this administrative regulation.

Section 10. Department Responsibilities. The Department shall:

(1) In cooperation with the council, establish deadlines, budgets, and priorities for Hart-Supported Living grant program funds;

(2) Maintain aggregate financial and programmatic data;

(3) Provide staff support, technical assistance, and training for the Hart-Supported Living grant Program;

(4) Provide monitoring of the Hart-Supported Living grant Program[;]

~~[(5)] [Issue recoupment notices to the provider agency if Hart-Supported Living grant program funds were not used in accordance with this administrative regulation; and]~~

~~[(6)] [Not allow the provider agency to request the recouped funds back from the recipient unless the agency can demonstrate by compelling evidence that the recipient purposely used plan funding inappropriately].~~

Section 11. Regional Hart-Supported Living Grant Program Coordinator Responsibilities. The regional Hart-Supported Living grant program coordinator shall:

(1) Disseminate applications for the Hart-Supported Living grant program[that include the evaluation criteria];

(2) Provide assistance in the completion of the DAIL-HSL-01 Application upon request by an eligible applicant or individual on the applicant's behalf;

(3) Receive the DAIL-HSL-01 Application, document the date received, and send notice of receipt of application to the applicant;

(4) Prescreen applications to determine completeness, compliance with the instructions, and conformity with KRS 210.770(5) and (6);

(5) Maintain a database by fiscal year of applicants and recipients that shall include the individual's:

- (a) Name;
- (b) Address;

- (c) Phone Number;
 - (d) Birth date;
 - (e) County of residence;
 - (f) Services or supports requested;
 - (g) Cost of each service or support;
 - (h) Contact person phone number; and
 - (i) Amount of allocated funding;
- (6) Notify all applicants of the status of their applications:
- (a) By June 15 for the fiscal year beginning July 1; or
 - (b) Within fifteen (15) days of the state budget allocation being received;
 - (7) Within thirty (30) days of the recommendation for funding of an applicant, conduct a face-to-face visit to finalize the Hart-Supported Living grant program plan and budget;
 - (8) Conduct a home visit to verify the need for home modifications;
 - (9) Educate a recipient on the recipient's responsibilities as outlined in Section 6 of this administrative regulation;
 - (10) Approve payments for funded Hart-Supported Living plans by:
 - (a) Receiving bills or other documentation that a service has been provided;
 - (b) Verifying the service as a part of the established plan; and
 - (c) Keeping a record of each payment;
 - (11) Arrange for the billing and payment directly to a vendor for one (1) time expenditures or to an agency as requested by a grant recipient;
 - (12) Ensure compliance with this administrative regulation and the successful implementation of the Hart-Supported Living plans through monitoring which shall include:
 - (a) Conducting a home visit or site visit at the location where the services are received;
 - (b) Visiting the home when home modifications are requested and completed;
 - (c) Completing a monitoring report that shall be completed for each recipient as follows:
 - 1. Within six (6)~~three (3)~~ months of completion of the service for one (1) time services received by a recipient; and
 - 2. Within the first three (3) months of the initiation of the Hart-Supported Living plan and for services received by a recipient; and
 - (d) Maintaining monitoring reports as a permanent part of the recipient's record;
 - (13) Attend trainings and meetings as required by the council;
 - (14) Submit database information as outlined in this section to the department; and
 - (15) Disclose any relationship with an applicant or recipient of a Hart-Supported Living grant including:
 - (a) Family member;
 - (b) Friend;
 - (c) Co-worker;
 - (d) Co-worker family member; or
 - (e) Co-worker friend.

Section 12. Reduction of a Hart-Supported Living Grant.

(1) The regional Hart-Supported Living grant program coordinator shall recommend a reduction in Hart-Supported Living grant funding by the amount that duplicates a support or service on the Hart-Supported Living plan to the Hart-Supported Living council.

(2) The Hart-Supported Living grant shall be reduced if:

(a) The support does not comply with the principles and definition of the Hart-Supported Living grant program in KRS 210.770 through 210.795;

(b) The recipient no longer needs a support or service in whole or in part; or

(c) The recipient does not utilize funds in accordance with the approved DAIL-HSL-02 Plan.

Section 13. Termination of a Hart-Supported Living Plan.

(1) The regional Hart-Supported Living grant program coordinator shall recommend to the council that a recipient's grant be terminated if the recipient:

(a) Does not use the funds in accordance with the principles and definition of Hart-Supported Living found in KRS 210.770, 210.795,

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and this administrative regulation;

- (b) Does not comply with employer responsibilities, if applicable;
- (c) Takes up residence outside of Kentucky;
- (d) Requests termination of the Hart-Supported Living grant;
- (e) Does not utilize funds in accordance with the approved DAIL-HSL-02 Plan;

(f) Does not notify the Hart-Supported Living grant program coordinator upon receipt of additional supports or services as required in Section 6(5) of this administrative regulation; or

- (g) Passes away.

(2) The regional Hart-Supported Living grant program coordinator shall recommend termination of the program if a council member or program staff is threatened, harassed, or intimidated by a recipient's:

- (a) Caregiver;
- (b) Family member;[- or]
- (c) Employee; or
- (d) Designated representative.

(3) A termination shall be appealable in accordance with Section 14 of this administrative regulation.

Section 14. Request for Informal Dispute Resolution or Administrative Hearing.

(1) A recipient may request an informal dispute resolution.

(2) A dispute resolution shall be limited to:

(a) The denial, reduction, or termination of a:

1. Hart-Supported Living plan; or

2. Hart-Supported Living plan amendment;

(b) The reduction of Hart-Supported Living grant program funding as requested in the plan; or

(c) The reduction or termination of Hart-Supported Living grant program funding, unless due to state budget cuts.

(3) A request for an informal dispute resolution shall:

(a) Be submitted to the department's HSL program coordinator within thirty (30) days following the notification by the Hart-Supported Living grant program coordinator of a decision in subsection (2) of this section; and

(b) Contain the following information:

1. Name, address, and telephone number of the recipient;

2. Decision being disputed;

3. Justification for the dispute;

4. Documentation supporting the dispute; and

5. Signature of person requesting the dispute resolution.

(4) The dispute resolution shall be heard by:

(a) Three (3) members of the council, one (1) of whom shall be the chairman or the chairman's designee;

(b) One (1) member of a[the] review team; and

(c) The Hart-Supported Living grant program coordinator.

(5) The recipient shall be provided an opportunity to appear before the dispute resolution team to present facts or concerns about the denial, reduction, or termination of the grant.

(6) The dispute resolution team shall inform a recipient, in writing, of the decision resulting from the dispute resolution within ten (10) business days of the review.

(7) A recipient dissatisfied with the result of the dispute resolution may appeal to the Division of Administrative Hearings of the Office of Communications and Administrative Review.

(8) The appeal shall be submitted:

(a) Within fifteen (15) business days from the date on the letter providing the decision of the dispute resolution team;

(b) In writing; and

(c) To the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(9) The department shall request the Division of Administrative Hearings of the Office of Communications and Administrative Review to conduct a hearing pursuant to KRS Chapter 13B.

Section 15. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "DAIL-HSL-01 Application", January 2024[April 2015];

(b) "DAIL-HSL-02 Plan", January 2024[April 2015];

(c) "DAIL-HSL-03 Plan Amendment", January 2024[August 2015]; and

(d) "DAIL-HSL-04 Request for Renewal", January 2024[April 2015].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. through 4:30 p.m., or at <https://www.chfs.ky.gov/agencies/dail/Pages/hslp.aspx>.

VICTORIA ELRIDGE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 7, 2024

FILED WITH LRC: June 12, 2024 at 12:15 p.m.

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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles and Phyllis Sosa

(1) Provide a brief summary of:

(a) What this administrative regulation does: This amended administrative regulation provides the guidelines and operations of the Hart-Supported Living grant program. Based on the comments received, the amended after comments administrative regulation reverts language to the original language to not allow funding for segregated programs and to limit the number of hours for employees to 40 per week in the Hart Supported Living grant program only.

(b) The necessity of this administrative regulation: The necessity of this amended administrative regulation is to allow the Hart-Supported Living Council to establish the methods of awarding Hart-Supported Living grants, monitoring the quality of service delivery, and providing for administrative appeals of decisions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amended administrative regulation conforms to KRS 210.770 to 210.795 by establishing the Hart-Supported Living program service requirements. This amended administrative regulation sets out the eligibility services and responsibilities of the participants, support and service providers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended administrative regulation assists in the effective administration of the statutes KRS 210.780(3) authorizes the Hart-Supported Living Council to recommend necessary administrative regulations to carry out the purposes of KRS 210.770 to 210.795. KRS 210.795(3) by establishing the method of award, monitoring the quality of service delivery, and providing administrative appeals of decisions. This amended administrative regulation provides updates to the materials incorporated, terminology, applicant and provider responsibilities, some award amounts, retention requirements, department responsibilities, and monitoring requirements.

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

(a) How the amendment will change this existing administrative regulation: This amendment updated terminology to include Designated Representative to provide guidance for participants. Throughout this amended regulation the term therapist is updated to be licensed therapist, and the term regional supported living coordinator and contract agency has been updated to department because the coordinators are now department staff and the program is administered by the department. Section 1: This amendment will update the definition for Hart Supported Living services to remove community resource developer because it has a standalone definition, update the in-home training for participants to over eighteen, several updates to the startup grants including the increase the amount from \$2,000 to \$2,500, updates the transportation guidelines to ensure the reimbursements are accurate, and added a definition for respite care. The proof of disability requirements was added to the definition of person with a disability. Section 2: The term eligibility is previously defined so the definition is removed from this section. There is a cleanup that was no longer relevant after 2018, removed language as clean up measure. The startup grant definition was mentioned in Section 1, so it was removed from the eligibility section. Section 3: The

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applicant responsibilities section the postmarked date is now the deadline, and added fax as a form of submission. There were items added to what the program shall not approve, employer related expenses for staff in other publicly funded programs, roofing, foundation, regular home maintenance, and rental of a vehicle. The transportation specifications were removed because the restriction did not allow person centered decision making. The activity fees limit was raised from \$750 to \$1000/year. Section 6 & 7: The recipient responsibilities added to retain a copy of a valid license and car insurance for any employee providing transportation. The employee responsibilities updated to provide a valid drivers license and car insurance if providing transportation. The employee responsibilities regulations were updated to An employee(s) are restricted from working over forty (40) hours in a Sunday to Saturday work week through all publicly funded programs. Section 8: The detail for retention records were removed because they are outlined in 725 KAR 1:061 Section 10: The recoupment process was removed because it was only valid when the program was contracted. The timeline for monitoring was updated from three to six months following the initial service plan completion. This was extended to allow regional coordinators to provide a more in depth monitoring. Section 13: The termination section added the term harassed to protect the coordinators. The term designated representative was also added to the list.

(b) The necessity of the amendment to this administrative regulation: The Hart Supported living has had several changes since the previous amendment. The necessity of these changes is to ensure the department shall administer the grant program efficiently and equal. The regulation amendments are all suggestions of the council and direct program workers.

(c) How the amendment conforms to the content of the authorizing statutes: This amended administrative regulation conforms to KRS 210.770 to 210.795 by establishing the Hart-Supported Living program service provisions and requirements for eligibility. KRS 210.780(3) authorizes the Hart- Supported Living Council to recommend necessary administrative regulations. The council has approved and voted to submit the amended regulation for public comment and administrative review.

(d) How the amendment will assist in the effective administration of the statutes: The amended regulation is necessary for effective administration by updating terminology to ensure the Hart Supported Living program is administered using all of the original principles of the grant.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The number of individuals served each fiscal year is 300-500 depending on the type and amount of the funding requested. This amendment will not affect any businesses, organizations or government.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In accordance with this administrative regulation, this action should not have any effect on regulated entities outside of the Hart Supported Living program and the participants.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amended administrative regulation has no cost to any entity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amended regulation will ensure the efficiency, equity and accountability of the Hart Supported Living program. This grant program is very broad based on what services and supports are funded. The amendments are to confirm that all applicants and participants are utilizing the program properly.

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

(a) Initially: There are no anticipated costs to implement this

administrative regulation.

(b) On a continuing basis: There are no anticipated continuing costs to this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for the Hart Supported Living program is a state funded grant program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation as amended does not increase fees or funding necessary to administer the Hart Supported Living program. The number of services and supports provided annually is based on the amount of state funds received.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation as amended does not increase fees to administer the Hart Supported Living program.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all entities regulated.

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 210.780(3) authorizes the Hart-Supported Living Council to recommend necessary administrative regulations to carry out the purposes of KRS 210.770 to 210.795. KRS 210.795(3) requires the cabinet in concert with the Hart-Supported Living Council to promulgate administrative regulations.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: This administrative regulation does impact the Cabinet for Health and Family Services, Department for Aging and Independent Living

(a) Estimate the following for the first year:

Expenditures: The department's budget for Hart Supported Living is \$6.28 million. All of the allocated funds are expended annually. There are no additional costs for the Department for Aging and Independent Living for implementation of this amended regulation.

Revenues: This amended after comment administrative regulation does not generate any revenue, there is no increase in revenue.

Cost Savings: This amended after comment administrative regulation does not generate any cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There are no additional or different expenditures, revenues, or cost savings for the Department for Aging and Independent Living for this amended after comments regulation in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This amended after comment administrative regulation does not impact local entities.

(a) Estimate the following for the first year:

Expenditures: This amended after comment administrative regulation does not have an impact to local entities.

Revenues: This amended after comment administrative regulation does not have additional revenues and does not impact local entities.

Cost Savings: This amended after comment administrative regulation does not have any cost savings, and there is no impact to local entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This amended after comment administrative regulation does not have any additional expenditures, revenues, or cost savings in subsequent years and does not impact local entities.

(4) Identify additional regulated entities not listed in questions (2) or (3): This amended after comment administrative regulation does not effect or impact any other regulated entity.

(a) Estimate the following for the first year:

Expenditures: This amended after comment administrative regulation does not have an impact to local entities

Revenues: This amended after comment administrative regulation does not have additional revenues and does not impact local entities

Cost Savings: This amended after comment administrative regulation does not have any cost savings, and there is no impact to local entities

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This amended after comment administrative regulation does not have different expenditures, revenues, or cost savings in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This amended after comment administrative regulation does not have a fiscal impact on any regulated entity. There are no fees or revenues collected in the operation of the Hart Supported Living Program. The expenditures fund needed services and supports for disabled individuals that are eligible, approved and the funding is available within the departments allocated budget for the program.

(b) Methodology and resources used to determine the fiscal impact: The requirements for program funding and the departments line item budget for the program are utilized to allocate program grants for services. When the departments funding has been exhausted no additional grants are approved.

(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 amended after comment administrative regulation will not have a negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion: The Hart Supported Living grant program has a set budget for the program to fund needed services and supports for disabled individuals. Individuals submit application for funding based on their individualized needs and costs. All applications are reviewed and scored, and funding is appropriated to those meeting the scoring minimum, with priority to the highest rated applications. Funding of applications is approved until the department's budgeted allocation has been exhausted. There is no economic impact to other regulated entities.

**CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary
(Amended After Comments)**

915 KAR 2:010. Procedures for registry identification cards.

RELATES TO: KRS Chapter 13B, Chapter 218B, Chapter 387
STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing procedures for the issuance, renewal, suspension, and revocation of registry identification cards, including the creation of an application form. This administrative regulation establishes those procedures.

Section 1. Patient and Caregiver Registry.

(1) Except for persons who possess valid out-of-state registry identification cards and documentation of having been diagnosed with a qualifying medical condition as defined by KRS 218B.010(26), no person shall possess, purchase, acquire, or otherwise engage in the use of medicinal cannabis in Kentucky without first applying for and receiving a registry identification card issued by the cabinet.

(2) The eligibility requirements for qualified patients, designated caregivers, and visiting qualified patients to receive a registry identification card from the cabinet are contained in KRS 218B.055, including not being convicted of a disqualifying felony offense. The qualifications that a patient or caregiver shall meet to receive a registry identification card are continuing qualifications.

(3) The cabinet shall maintain a patient and caregiver registry for the Kentucky Medical Cannabis Program as part of the state's designated electronic monitoring system. To receive a registry

identification card, qualified patients, visiting qualified patients, and designated caregivers shall complete an application in accordance with written instructions provided by the cabinet.

(4) The cabinet shall adhere to the confidentiality requirements for cardholders and information provided by qualified patients, visiting qualified patients, and designated caregivers contained in KRS 218B.135.

(5) Except as provided in KRS 218B.060(3)(b), the expiration date for registry identification cards shall be one (1) year after the date of issuance. A registry identification card shall not be valid beyond the expiration date.

Section 2. Application for a Registry Identification Card.

(1) An applicant shall only use the applicable registry identification card application form prescribed by the cabinet and made available through the Web site for the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>.

(2) An applicant shall submit a registry identification card application to the cabinet in the manner prescribed by the application instructions.

(3) Pursuant to KRS 218B.055(6), a registry identification card application submitted by or on behalf of qualified patients shall include:

(a) The full name, address, telephone number, email address, date of birth, Social Security number, and driver's license number of the qualified patient, except that if the applicant is homeless an address where the applicant may be reached shall be provided to the cabinet;

(b) A written certification issued to the qualified patient by a medicinal cannabis practitioner;

(c) The name, address, and telephone number of the qualified patient's medicinal cannabis practitioner;

(d) The full name, address, telephone number, email address, and date of birth of not more than two (2) individuals chosen by the qualified patient to be designated as a caregiver if the qualified patient chooses to designate a caregiver, except that if an individual has been appointed as a guardian, limited guardian, conservator, or limited conservator under KRS Chapter 387, the qualified patient shall choose that individual as a designated caregiver;

(e) The application fee for a qualified patient;

(f) A question asking whether the qualified patient wants to receive notifications from the cabinet of any clinical studies needing human subjects for research on the use of medicinal cannabis in accordance with KRS 218B.055(9);

(g) An attestation that:

1. The qualified patient authorizes the cabinet to share cardholder information with licensed dispensaries for the purpose of sales and validating registry identification cards; and

2. The qualified patient authorizes the cabinet to share cardholder information with law enforcement for the purpose of validating registry identification cards; and

(h) A notarized signature page signed by the qualified patient attesting that:

1. The qualified patient verifies and affirms that all of the information provided in and with his or her application is true and accurate;

2. The qualified patient understands that if the cabinet later determines any of the information provided in his or her application to be false, misleading, or inaccurate, the cabinet may suspend or revoke any registry identification card issued to the qualified patient and any caregiver designated by the qualified patient; and

3. The qualified patient shall not divert medicinal cannabis to anyone who is not permitted to possess medicinal cannabis pursuant to KRS Chapter 218B and understands the potential penalties for doing so, including criminal prosecution and revocation of any registry identification card issued to the qualified patient by the cabinet.

(4) Pursuant to KRS 218B.055(7), a registry identification card application submitted by or on behalf of qualified patients under the age of eighteen (18) shall, in addition to the information required under subsection (3) of this section, submit:

(a) Documentation of diagnosis of a qualifying medical condition by a practitioner other than the medicinal cannabis practitioner who

provided the written certification for the use of medicinal cannabis; and

(b) A statement signed by the custodial parent or legal guardian with responsibility for health care decisions for the minor qualified patient stating that the custodial parent or legal guardian agrees to:

1. Allow the minor qualified patient to use medicinal cannabis;
2. Serve as the minor qualified patient's designated caregiver;

and

3. Control the acquisition, possession, dosage, and frequency of use of medicinal cannabis by the minor qualified patient.

(5) Except as provided in Section 5(4) of this administrative regulation, a caregiver may submit a registry identification card application following issuance of a registry identification card to the qualified patient who designated the caregiver in his or her registry identification card application. A caregiver shall submit a registry identification card application for each registered qualified patient that designated the caregiver in his or her application. Except as provided in KRS 218B.055(3)(b), a caregiver shall assist no more than three (3) registered qualified patients with the use of medicinal cannabis at any given time.

(6) A registry identification card application submitted by a caregiver shall include:

(a) The full name, address, telephone number, email address, date of birth, Social Security number, and driver's license number of the caregiver;

(b) The full name and registry identification card number of the qualified patient who designated the applicant to be his or her caregiver;

(c) The application fee for a designated caregiver;

(d) An attestation that:

1. The caregiver authorizes the cabinet to share cardholder information with licensed dispensaries for the purpose of sales and validating registry identification cards; and

2. The caregiver authorizes the cabinet to share cardholder information with law enforcement for the purpose of validating registry identification cards; and

(e) A notarized signature page signed by the caregiver attesting that:

1. The caregiver verifies and affirms that all of the information provided in and with his or her application is true and accurate;

2. The caregiver understands that if the cabinet later determines any of the information provided in his or her application to be false, misleading, or inaccurate, the cabinet may suspend or revoke any registry identification card issued to the caregiver by the cabinet;

3. The caregiver agrees to be designated as the caregiver for the registered qualified patient identified in his or her application; and

4. The caregiver shall not divert medicinal cannabis to anyone other than the registered qualified patient to whom he or she is connected through the cabinet's registration process and understands the potential penalties for unlawfully diverting medicinal cannabis, including criminal prosecution and revocation of any registry identification card issued to the caregiver by the cabinet.

(7) Pursuant to KRS 218B.055(8), a registry identification card application submitted by or on behalf of visiting qualified patients shall include:

(a) The full name, address, telephone number, email address, date of birth, Social Security number, and driver's license number of the applicant, except that if the applicant is homeless an address where the applicant may be reached shall be provided to the cabinet;

(b) A copy of his or her valid out-of-state registry identification card;

(c) Documentation that he or she has been diagnosed with a qualifying medical condition as defined by KRS 218B.010(26), which shall consist of one (1) or more medical records containing an express statement of diagnosis from a physician or advanced practice registered nurse;

(d) The application fee for a visiting qualified patient;

(e) An attestation that:

1. The visiting qualified patient authorizes the cabinet to share cardholder information with licensed dispensaries for the purpose of sales and validating registry identification cards; and

2. The visiting qualified patient authorizes the cabinet to share cardholder information with law enforcement for the purpose of

validating registry identification cards; and

(f) A notarized signature page signed by the visiting qualified patient attesting that:

1. The visiting qualified patient verifies and affirms that all of the information provided in and with his or her application is true and accurate;

2. The visiting qualified patient understands that if the cabinet later determines any of the information provided in his or her application to be false, misleading, or inaccurate, the cabinet may suspend or revoke any registry identification card issued to the visiting qualified patient; and

3. The visiting qualified patient shall not divert medicinal cannabis to anyone who is not permitted to possess medicinal cannabis pursuant to KRS Chapter 218B and understands the potential penalties for doing so, including criminal prosecution and revocation of any registry identification card issued to the visiting qualified patient by the cabinet.

Section 3. Renewing Registry Identification Cards.

(1) To renew a registry identification card, an applicant shall use the registry identification card renewal application form prescribed by the cabinet that contains the items required by Section 2 of this administrative regulation. The renewal application shall be made available through the Web site for the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>. An applicant shall submit a registry identification card renewal application to the cabinet in the manner prescribed by the application instructions.

(2) A registered qualified patient applying to renew a registry identification card shall submit to the cabinet a written certification issued by a medicinal cannabis practitioner to the patient within ~~sixty (60)~~**[ninety (90)]** calendar days immediately preceding the date of the renewal application submission.

(3) A registered qualified patient shall submit a registry identification card renewal application to the cabinet no later than thirty (30) calendar days prior to the expiration date on the card.

(4) Except as provided in Section 5(4) of this administrative regulation, a designated caregiver may submit a registry identification card renewal application following issuance of a registry identification card to the registered qualified patient who designated the caregiver in his or her renewal application. A designated caregiver shall submit a registry identification card renewal application for each registered qualified patient that designated the caregiver in his or her renewal application.

Section 4. Fees.

(1) To apply for or renew a registry identification card, the application fees are:

(a) Twenty-five (25) dollars for qualified patients;

(b) Twenty-five (25) dollars for visiting qualified patients; and

(c) Twenty-five (25) dollars for designated caregivers.

(2) The fees established by this section shall be paid by credit card or automated clearing house (ACH) transfer at the time of application submission to the cabinet. **If the applicant is submitting a paper application to the cabinet instead of an electronic application, the fees established by this section shall be paid by inclusion of a check with the application submission or another form of payment as determined by the cabinet and stated in the paper application instructions.** All fees to apply for a registry identification card are nonrefundable.

Section 5. Cabinet Action on Applications; Application Denial.

(1) The cabinet shall acknowledge receipt of an initial or renewal application for a registry identification card within fifteen (15) calendar days of receipt. The cabinet shall review each application to determine whether the application is complete.

(2) The cabinet shall provide notification to applicants as to whether an initial or renewal application for a registry identification card has been approved or denied within thirty (30) calendar days of receiving an application and determining it is complete. Any application denials shall be done in accordance with KRS 218B.065(2), (3), (4), (5), (7), and (8), including:

(a) Providing written notice of the denial and the reason(s) to the

applicant; and

(b) Providing written notice that the applicant may, within thirty (30) calendar days after the date of the mailing of the cabinet's notice, file a written request for an administrative hearing on the application. Any hearing resulting from the applicant's written request shall be conducted in accordance with KRS Chapter 13B.

(3) Except as provided in subsection (4) of this section, the cabinet shall issue registry identification cards to qualified patients, designated caregivers, or visiting qualified patients within five (5) calendar days of approving their initial or renewal applications. An individual designated as a caregiver shall be issued a registry identification card for each registered qualified patient to whom he or she is connected through the cabinet's registration process.

(4) Pursuant to KRS 218B.065(2)(b), the cabinet shall not issue a valid registry identification card to a qualified patient who is younger than eighteen (18) years of age unless the designated caregiver application for the custodial parent or legal guardian with responsibility for health care decisions for the qualified patient is approved.

(5) Registry identification cards issued by the cabinet shall include the items required by KRS 218B.060(2).

Section 6. Cardholder Responsibilities.

(1) A cardholder shall adhere to and comply with the notification requirements to the cabinet contained in KRS 218B.070(1)(a) through (e) and comply with the requirements for returning or disposing of medicinal cannabis contained in KRS 218B.070(2) and (5). A cardholder shall provide any required notifications to the cabinet via electronic mail to kymedcancards@ky.gov or through the patient and caregiver registry portal.

(2) During the application process, an applicant for a registry identification card shall, upon discovery of any change in facts or circumstances reflected in the application submitted to the cabinet, notify the cabinet in writing of the change or any newly discovered fact or circumstance that would have been included in the application if known at the time the application was submitted. The notification required under this section shall be sent via electronic mail to kymedcancards@ky.gov within twenty-four (24) hours of discovery. Failure to timely notify the cabinet of a change or newly discovered facts or circumstances may result in denial of the application.

(3) A cardholder shall obtain medicinal cannabis and medicinal cannabis products in the commonwealth from a dispensary licensed by the cabinet.

(4) The cabinet shall conduct cardholder surveys to request information regarding their ability to obtain timely affordable access to medicinal cannabis in their area and other items relevant to the Kentucky Medical Cannabis Program.

Section 7. Revocation or Suspension of a Registry Identification Card.

(1) Pursuant to KRS 218B.075(1), any cardholder who sells, distributes, or dispenses medicinal cannabis to a person who is not permitted to possess or use medicinal cannabis under KRS Chapter 218B shall have his or her registry identification card revoked and shall be subject to other penalties including criminal prosecution.

(2) The cabinet may revoke or suspend a cardholder's registry identification card if the cardholder knowingly commits multiple violations or a serious violation of KRS Chapter 218B or 915 KAR Chapter 2.

(3) The cabinet shall provide written notice via certified mail to the cardholder of any suspension or revocation of his or her registry identification card. The cardholder may, within thirty (30) days after the date of the mailing of the cabinet's notice, file a written request with the cabinet for an administrative hearing regarding the revocation or suspension. The hearing shall be conducted in compliance with the requirements of KRS Chapter 13B.

[Section 8.] [Provisional Registration Receipt System.]

~~[(1)] [Pursuant to KRS 218B.060(5), the cabinet shall operate a provisional registration receipt system for registered qualified patients, designated caregivers, and visiting qualified~~

~~patients. A valid provisional registration receipt shall be accepted by licensed dispensaries in place of a registry identification card.]~~

~~[(2)] [A provisional registration receipt provided by the cabinet shall include the items required by KRS 218B.060(5)(a).]~~

~~[(3)] [A provisional registration receipt shall be provided by the cabinet via electronic mail to the applicant upon submission of an apparently complete application that contains all of the applicable information and documentation required by Section 2 of this administrative regulation. A provisional registration receipt shall be valid for forty-five (45) days from the date of issuance, or until:]~~

~~[(a)] [The cabinet issues a permanent registry identification card to the applicant; or]~~

~~[(b)] [The cabinet denies the applicant's application.]~~

~~[(4)] [If an applicant for a registry identification card is ultimately denied, the applicant shall immediately destroy the provisional registration receipt provided to him or her and return any unused medicinal cannabis products to a licensed dispensary for destruction.]~~

~~[(5)] [A registered qualified patient or designated caregiver shall only use a provisional registration receipt issued under this section to purchase medicinal cannabis in accordance with any recommendation or limitation as to the form and dosage contained in the written certification provided to the registered qualified patient by a medicinal cannabis practitioner.]~~

SAM FLYNN, Executive Director

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 3, 2024

FILED WITH LRC: June 10, 2024 at noon

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 Oran S. McFarlan, III

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the issuance, renewal, suspension, and revocation of registry identification cards, including the creation of an application form. The Amended After Comments version of the administrative regulation amends the language of Section 3(2), Section 4(2), Section 6(1), and Section 8 to reflect the changes necessitated by 2024 House Bill 829 and otherwise provide clarification.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out the requirements of KRS Chapter 218B, specifically KRS 218B.140(1)(c)(1).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations establishing procedures for the issuance, renewal, suspension, and revocation of registry identification cards, including the creation of an application form. This administrative regulation establishes those procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the procedures for the issuance, renewal, suspension, and revocation of registry identification cards.

(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: Not applicable. This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable. This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable. This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable. 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 affects individuals that desire to apply for and subsequently renew registry identification cards for the Kentucky Medical Cannabis program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals that desire to obtain registry identification cards to participate in the Kentucky Medical Cannabis Program must follow the initial and renewal application procedures and requirements identified in this administrative regulation in order to be eligible to receive a registry identification card.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The annual fee to apply for a registry identification card for a qualified patient, visiting qualified patient, or designated caregiver is \$25.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The individuals that receive registry identification cards from the Cabinet for Health and Family Services are authorized to participate in the Kentucky Medical Cannabis Program through the expiration date of their cards.

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

(a) Initially: The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward approving cardholders as well implementation and continued operation of the electronic monitoring system required by KRS 218B.140, including the patient and caregiver registry.

(b) On a continuing basis: The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward approving cardholders as well implementation and continued operation of the electronic monitoring system required by KRS 218B.140, including the patient and caregiver registry.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds provided by the commonwealth.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It is anticipated that an increase in funding will be necessary to implement this regulation as additional staff and resources are necessary to administer the patient and caregiver registry.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes, this administrative regulation establishes initial application fees and renewal fees for registry identification cards (\$25 per application submitted by a qualified patient, visiting qualified patient, or designated caregiver).

(9) TIERING: Is tiering applied? Tiering is not applied. All individuals applying for or seeking to renew registry identification cards will be treated equally.

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 Chapter 218B, specifically KRS 218B.140(1)(c)(1).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: This administrative regulation is promulgated by the Kentucky Medical Cannabis Program within the Cabinet for Health and Family Services.

(a) Estimate the following for the first year:

Expenditures: The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398.

A significant portion of those funds will go toward approving cardholders as well implementation and continued operation of the electronic monitoring system required by KRS 218B.140, including the patient and caregiver registry.

Revenues: The commonwealth will receive initial application fees paid by individuals seeking registry identification cards during the first year (\$25 per applicant). At this time, it is not known how many individuals will apply for registry identification cards and pay the attendant fee.

Cost Savings: The cabinet does not anticipate any cost savings in the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. The commonwealth will receive annual renewal application fees from cardholders that desire to continue participating in the program. The commonwealth will also continue to receive additional initial application fees for registry identification cards. The annual renewal application fee for a registry identification card is \$25. The cabinet does not anticipate any cost savings in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Except for visiting qualified patients, cardholders will reside within a city or county in the commonwealth.

(a) Estimate the following for the first year:

Expenditures: It is not anticipated that affected local entities will have significant expenditures arising out of cardholders residing in their respective county or city.

Revenues: Unknown at this time. This response will depend on the number of licensed cannabis businesses located in a respective city or county, any ordinances and fees established by local authorities regulating licensed cannabis businesses in their jurisdiction as allowed by KRS 218B.130, and the number of cardholders in their area.

Cost Savings: The cabinet does not anticipate any cost savings in the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? It is not anticipated that affected local entities will have significant expenditures arising out of cardholders residing in their respective county or city. Regarding revenues, this response will depend on the number of licensed cannabis businesses located in a respective city or county, any ordinances and fees established by local authorities regulating licensed cannabis businesses in their jurisdiction as allowed by KRS 218B.130, and the number of cardholders in their area. The cabinet does not anticipate any cost savings in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): Registered cardholders.

(a) Estimate the following for the first year:

Expenditures: An individual applying for a registry identification card is required to pay an initial application fee at the time of initial application submission (\$25). Individuals seeking to renew their registry identification cards are required to pay an annual renewal fee at the time of renewal application submission (\$25).

Revenues: No revenues are expected.

Cost Savings: The cabinet does not anticipate any cost savings in the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The commonwealth will receive annual renewal application fees from cardholders that desire to continue participating in the program. The commonwealth will also continue to receive additional initial application fees for registry identification cards. The initial and renewal application fee for a registry identification card is \$25. The cabinet does not anticipate any cost savings in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward approving cardholders as well implementation and continued operation of the electronic monitoring system required by KRS 218B.140, including the patient and caregiver registry. It is anticipated that an increase in funding will be necessary

to administer all of the administrative regulations contained in 915 KAR Chapter 2.

(b) Methodology and resources used to determine the fiscal impact: As part of its Biennial Budget Request, the Cabinet for Health and Family Services analyzed the cost to administer all aspects of the Kentucky Medical Cannabis Program, including estimated costs for staffing and implementation and ongoing maintenance and operations costs for the electronic monitoring system and seed to sale tracking system required by KRS 218B.140.

(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 annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward approving cardholders as well implementation and continued operation of the electronic monitoring system required by KRS 218B.140, including the patient and caregiver registry. The Kentucky Medical Cannabis Program will have a major economic impact on the Cabinet for Health and Family Services, and it is anticipated that an increase in funding will be necessary to administer all of the administrative regulations contained in 915 KAR Chapter 2.

(b) The methodology and resources used to reach this conclusion: As part of its Biennial Budget Request, the Cabinet for Health and Family Services analyzed the cost to administer all aspects of the Kentucky Medical Cannabis Program, including estimated costs for staffing and implementation and ongoing maintenance and operations costs for the electronic monitoring system required by KRS 218B.140

CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary
(Amended After Comments)

915 KAR 2:030. Written certifications.

RELATES TO: KRS 218A.202, Chapter 218B

STATUTORY AUTHORITY: KRS 218B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations creating a standardized written certification form for use by medicinal cannabis practitioners. This administrative regulation establishes the written certification form for the Kentucky Medical Cannabis Program.

Section 1. Medicinal Cannabis Practitioners.

(1) The cabinet shall maintain a medicinal cannabis practitioner registry for the Kentucky Medical Cannabis Program as part of the state's designated electronic monitoring system.

(2) Medicinal cannabis practitioners shall register with the state's medicinal cannabis practitioner registry in accordance with written instructions provided by the cabinet and properly enter written certifications and dosage recommendations for qualified patients into the registry.

(3) Prior to providing a patient with a written certification, a medicinal cannabis practitioner shall comply with KRS 218B.050(4), including establishing a bona fide practitioner-patient relationship with the patient. A medicinal cannabis practitioner shall also comply with the respective administrative regulation promulgated by his or her state licensing board establishing professional standards for medicinal cannabis practitioners, 201 KAR 9:067 or 201 KAR 20:067, and be authorized to provide written certifications for use of medicinal cannabis to qualified patients by his or her state licensing board.

Section 2. Written Certification Form.

(1) When issuing a written certification for the use of medicinal cannabis to a patient, the medicinal cannabis practitioner shall use the form prescribed by the cabinet and available in the medicinal cannabis practitioner registry. The written certification form shall

include:

(a) The medicinal cannabis practitioner's full name, license type (such as MD or APRN), license number, office address, telephone number, and email address;

(b) The date of the medicinal cannabis practitioner's examination of the qualified patient;

(c) The qualified patient's full name, date of birth, Social Security number, and email address;

(d) If the qualified patient is a minor, the custodial parent or legal guardian's full name, date of birth, Social Security number, email address, and phone number;

(e) Identification of the diagnosed qualifying medical condition(s);

(f) Attestations that the medicinal cannabis practitioner has:

1. Established a bona fide practitioner-patient relationship with the patient;

2. Diagnosed the patient, or confirmed a diagnosis provided by another healthcare provider, with a qualifying medical condition for which the medicinal cannabis practitioner believes that the patient **is less likely to** may receive **safe and effective** therapeutic or palliative benefit from the use of medicinal cannabis;

3. Reviewed a report of information from the electronic monitoring system established pursuant to KRS 218A.202 related to the patient for a period of time that covers at least the twelve (12) months immediately preceding the date of the report;

4. Consulted with the patient, or the patient's custodial parent or legal guardian responsible for providing consent to treatment if the patient is a minor, with respect to the possible risks and side effects associated with medicinal cannabis, including possible interactions between medicinal cannabis and any other drug or medication that the patient is taking at that time; and

5. Obtained the consent of the patient's custodial parent or legal guardian responsible for providing consent to treatment if the patient is a minor;

(g) The medicinal cannabis practitioner's signature and the date signed.

(2) An initial written certification shall be provided by the medicinal cannabis practitioner to the qualified patient during the course of an in-person examination. Subsequent written certifications for the purpose of renewing a registry identification card may be provided electronically or during the course of a telehealth consultation.

(3) Pursuant to KRS 218B.050(6)(d), within twenty-four (24) hours of providing a patient with a written certification for the use of medicinal cannabis, a medicinal cannabis practitioner shall record the issuance of the written certification in the state's designated medicinal cannabis practitioner registry.

(4) Pursuant to KRS 218B.050(6)(c), for the purpose of initially applying for a registry identification card, a written certification shall be valid for a period of not more than sixty (60) days. A medicinal cannabis practitioner may renew a written certification for not more than three (3) additional periods of not more than sixty (60) days each. Thereafter, the medicinal cannabis practitioner may issue another written certification to the patient for use in the registry identification card application process only after an in-person examination or an examination conducted via telehealth of the patient by the medicinal cannabis practitioner.

(5) Pursuant to KRS 218B.055(10), for the purpose of renewing a registry identification card, a written certification issued by a medicinal cannabis practitioner shall be valid if issued within **sixty (60) [ninety (90)]** days immediately preceding the date of a renewal application.

(6) When entering a written certification into the state's designated medicinal cannabis practitioner registry, a medicinal cannabis practitioner shall enter any recommendation or limitation as to the form and dosage of medicinal cannabis that can be dispensed to the registered qualified patient.

SAM FLYNN, Executive Director

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 3, 2024

FILED WITH LRC: June 10, 2024 at noon

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of

VOLUME 51, NUMBER 1– July 1, 2024

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 Oran S. McFarlan, III

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates a standardized written certification form for use by medicinal cannabis practitioners. The Amended After Comments version of the administrative regulation amends the language of Section 2(1)(f)(2) and Section 2(5) to reflect the changes necessitated by the passage of 2024 House Bill 829.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out the requirements of KRS Chapter 218B, specifically KRS 218B.140.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 218B.140 requires the Cabinet for Health and Family Services to promulgate administrative regulations for the medicinal cannabis program. This administrative regulation creates a standardized written certification form for use by medicinal cannabis practitioners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation creates a standardized written certification form for use by medicinal cannabis practitioners.

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

(a) How the amendment will change this existing administrative regulation: Not applicable. This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable. This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable. This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable. 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 affects medicinal cannabis practitioners, patients, designated caregivers, and the Kentucky Medical Cannabis Program within the Cabinet for Health and Family Services.

(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: Medicinal cannabis practitioners shall use the written certification form prescribed by the cabinet.

(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 anticipated cost to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Medicinal cannabis practitioners can provide patients with written certifications required to become cardholders in the Kentucky Medical Cannabis Program.

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

(a) Initially: This administrative regulation creates a standardized written certification form for use by medicinal cannabis practitioners. There is no anticipated cost to implement this administrative regulation.

(b) On a continuing basis: This administrative regulation creates a standardized written certification form for use by medicinal cannabis practitioners. There is no anticipated cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

State general funds provided by the commonwealth

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All medicinal cannabis practitioners will be treated equally.

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 218B.140(1)(c).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: This administrative regulation is promulgated by the Kentucky Medical Cannabis Program within the Cabinet for Health and Family Services.

(a) Estimate the following for the first year:

Expenditures: The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward implementation and continued operation of the electronic monitoring system required by KRS 218B.140, including the patient and caregiver registry and the medicinal cannabis practitioner registry, which houses the written certifications.

Revenues: This administrative regulation is not expected to generate revenue for the state in the first year.

Cost Savings: The cabinet does not anticipate any cost savings in the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward implementation and continued operation of the electronic monitoring system required by KRS 218B.140, including the patient and caregiver registry and the medicinal cannabis practitioner registry, which houses the written certifications. This administrative regulation is not expected to generate revenue for the state in subsequent years. The cabinet does not anticipate any cost savings in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Medicinal cannabis practitioners that issue written certifications will reside within a city or county in the commonwealth.

(a) Estimate the following for the first year:

Expenditures: It is not anticipated that affected local entities will have significant expenditures arising out of medicinal cannabis practitioners residing in their respective county or city.

Revenues: Unknown at this time. This response will depend on the number of licensed cannabis businesses located in a respective city or county, any ordinances and fees established by local authorities regulating licensed cannabis businesses in their jurisdiction as allowed by KRS 218B.130, and the number of cardholders and medicinal cannabis practitioners in their area.

Cost Savings: The cabinet does not anticipate any cost savings in the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? It is not anticipated that affected local entities will have significant expenditures arising out of medicinal cannabis practitioners residing in their respective county or city. Regarding revenues, this response will depend on the number of licensed cannabis businesses located in a respective city or county, any ordinances and fees established by local authorities regulating licensed cannabis businesses in their jurisdiction as allowed by KRS 218B.130, and the number of cardholders and medicinal cannabis practitioners in their area. The cabinet does not anticipate any cost savings in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): Medicinal cannabis practitioners.

(a) Estimate the following for the first year:

Expenditures: There is no fee for medicinal cannabis practitioners to register with the state's medicinal cannabis practitioner registry and enter written certifications and dosage recommendations for qualified patients into the registry.

Revenues: This response will depend on the fees established by medicinal cannabis practitioners for appointments with patients.

Cost Savings: The cabinet does not anticipate any cost savings in the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There is no fee for medicinal cannabis practitioners to register with the state's medicinal cannabis practitioner registry and enter written certifications and dosage recommendations for qualified patients into the registry. Revenues will continue to depend on the fees established by medicinal cannabis practitioners for appointments with patients. The cabinet does not anticipate any cost savings in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward implementation and continued operation of the electronic monitoring system required by KRS 218B.140, including the patient and caregiver registry and the medicinal cannabis practitioner registry, which houses the written certifications. It is anticipated that an increase in funding will be necessary to administer all of the administrative regulations contained in 915 KAR Chapter 2.

(b) Methodology and resources used to determine the fiscal impact: As part of its Biennial Budget Request, the Cabinet for Health and Family Services analyzed the cost to administer all aspects of the Kentucky Medical Cannabis Program, including estimated costs for staffing and implementation and ongoing maintenance and operations costs for the electronic monitoring system and seed to sale tracking system required by KRS 218B.140.

(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 annual cost estimate to administer all aspects of the Kentucky Medical Cannabis Program is \$9,135,398. A significant portion of those funds will go toward approving implementation and continued operation of the electronic monitoring system required by KRS 218B.140, including the patient and caregiver registry and the medicinal cannabis practitioner registry, which houses the written certifications. The Kentucky Medical Cannabis Program will have a major economic impact on the Cabinet for Health and Family Services, and it is anticipated that an increase in funding will be necessary to administer all of the administrative regulations contained in 915 KAR Chapter 2.

(b) The methodology and resources used to reach this conclusion: As part of its Biennial Budget Request, the Cabinet for Health and Family Services analyzed the cost to administer all aspects of the Kentucky Medical Cannabis Program, including estimated costs for staffing and implementation and ongoing maintenance and operations costs for the electronic monitoring system required by KRS 218B.140.

PROPOSED AMENDMENTS

Public comment periods for ordinary, non-emergency regulations are at least two months long. For other regulations with open comment periods, please also see last month's *Administrative Register of Kentucky*.

EDUCATION AND LABOR CABINET
Education Professional Standards Board
(Amendment)

16 KAR 9:030. Professional and provisional certificate for college faculty.

RELATES TO: KRS ~~[160.380(5)(c)]~~161.020, 161.028, 161.030, 161.048

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.048

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048 authorizes the eligibility requirements for a candidate seeking to participate in an alternative teacher preparation program. This administrative regulation establishes the requirements for ~~[and renewal of]~~the professional and provisional certificate for college faculty.

Section 1. Prerequisites.

~~(1) A two (2) year provisional certificate for college faculty may be issued to an eligible candidate who meets the requirements of KRS 161.048(4).~~

~~(2) Application for a provisional certificate shall be submitted to the EPSB and shall:~~

~~(a) Contain proof of a master's degree or doctoral degree in the academic content area for which certification is sought;~~

~~(b) Contain verification of qualifying teaching experience from a regionally or nationally accredited institution of higher education; and~~

~~(c) Be in compliance with 16 KAR 2:010, Section 3(1).~~

~~(3) The provisional certificate for college faculty shall be issued for the content area and grade range corresponding to the candidate's degree and teaching experience.~~

~~(4) The provisional certificate for college faculty shall be valid for teaching the content area and grade range indicated on the face of the certificate.~~

~~[(a)] [An eligible candidate who meets the requirements of KRS 161.048(4)(a) and (b) shall be issued a statement of eligibility for the professional certificate for college faculty valid for five (5) years.]~~

~~[(b)] [Application for the statement of eligibility for the professional certificate for college faculty shall be made on Form CA-194.]~~

~~[(2)] [Upon confirmation of employment in an assignment for the grade level and specialization identified on the statement of eligibility, a provisional teaching certificate shall be issued.]~~

~~[(3)] [Upon successful completion of the Kentucky Teacher Internship Program as provided in KRS 161.030 and 16 KAR 7:010, the professional certificate for college faculty shall be issued for an additional four (4) years.]~~

Section 2. Renewal.

~~(1) If a candidate does not complete one (1) year of successful teaching experience during the initial provisional certificate, the candidate may apply to renew the provisional certificate.~~

~~(2) Application for renewal of the two (2) year provisional certificate for college faculty shall be submitted to the EPSB and be in compliance with 16 KAR 2:010, Section 3(1). [Each five (5) year renewal of the professional certificate for college faculty shall require:]~~

~~[(1)] [Three (3) years of successful classroom teaching experience; or]~~

~~[(2)] [Six (6) semester hours of additional graduate credit.]~~

Section 3. Equivalent College Teaching Experience.

(1) Ninety (90) semester credit hours taught at the postsecondary level at a regionally- or nationally-accredited

institution of higher education shall be accepted as the equivalent of five (5) years of full-time teaching experience.

(2) The ninety (90) hours of college teaching experience may:

(a) Be accumulated at more than one (1) institution of higher education; and

(b) Include part-time teaching or adjunct teaching positions.

(3)

(a) A full-time faculty member's experience at a regionally- or nationally-accredited institution of higher education may include the following activities in lieu of regular full-time teaching experience as established in subsection (1) of this section:

1. Action research;

2. Service to the P-12 schools; or

3. Other activities undertaken as part of a full-time faculty member's assigned responsibilities at the institution of higher education.

(b) The head of the faculty member's unit shall verify the validity of the experiences or responsibilities in this subsection in lieu of regular full-time teaching load on a per semester basis.

Section 4.

~~(1) Upon completion of one (1) year of successful teaching experience on the provisional certificate for college faculty, the candidate may apply for the professional certificate.~~

~~(2) Application for the professional certificate shall be submitted to the EPSB and shall:~~

~~(a) Contain proof of successful completion of one (1) year of teaching experience;~~

~~(b) Contain a recommendation from the employing school district; and~~

~~(c) Be in compliance with 16 KAR 2:010, Section 3(1). [An applicant for a professional certificate for college faculty who is not currently certified as an educator in Kentucky shall submit a national and state criminal background check performed in accordance with KRS 160.380(5)(c) within twelve (12) months prior to the date of application.]~~

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

~~[(1)] ["Form CA-194", 08/15, is incorporated by reference.]~~

~~[(2)] [This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

JUSTIN MITCHELL, Board Chair

APPROVED BY AGENCY: May 31, 2024

FILED WITH LRC: May 31, 2024 at 1:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on August 27, 2024, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor,

VOLUME 51, NUMBER 1– July 1, 2024

Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the professional and provisional certificate for college faculty.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the certification requirements for Option 3, College Faculty Route to Teacher Certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020, 161.028 and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation approved by the Education Professional Standards Board. KRS 161.048 authorizes the Education Professional Standards Board to promulgate administrative regulations establishing the standards and procedures for the Option 3 College Faculty Route Teacher Certification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the certification requirements for the Option 3 College Faculty Route to Teacher Certification.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment to 16 KAR 9:030 allows a candidate for the Option 3, College Faculty Alternative Route to Certification to be issued a two (2) year provisional certificate upon application to the EPSB, proof of a master's degree or doctoral degree in the academic content area, qualifying teaching experience from a regionally or nationally accredited institution of higher education, and completion of the character and fitness review. Applicants are no longer required to have an offer of employment before issuance of the initial certificate but must successfully complete one (1) year of teaching experience and have a recommendation from the employing school district prior to issuance of the professional certificate.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with the changes to KRS 161.030 and KRS 161.048(4) from Senate Bill 265 of the 2024 Legislative Session.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment sets the requirements for issuance of certification under the Option 3 College Faculty Route to Teacher Certification. The amendment removes the requirement that candidates have a job offer prior to issuance and adds the requirement that candidates complete one (1) year of teaching experience and have a recommendation from the employing district prior to issuance of the professional certificate. The amendment also removes the reference to the Kentucky Teacher Internship Program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in establishing the requirements for the provisional and professional certificate for the Option 3 College Faculty Route to Teacher Certification.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 171 Kentucky school districts and those pursuing the Option 3 College Faculty Route to Teacher Certification.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for the Option 3 route will have

to meet the requirements for issuance of the provisional certificate, then obtain one (1) year of teaching experience before applying for the professional certificates. Districts will no longer have to verify that candidates have an offer of employment but will have to provide a recommendation for those candidates that complete one (1) year of teaching experience.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no fee established by the Education Professional Standards Board in this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance will result in issuance of the provisional and professional certificate to eligible candidates.

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

(a) Initially: There are no costs expected to implement this amendment.

(b) On a continuing basis: There are no expected continuing costs with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding will not be necessary for the Education Professional Standards Board to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation because the standards apply to all teachers seeking certification through the Option 3 College Faculty Route to Teacher Certification.

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 161.020, KRS 161.028, KRS 161.030, KRS 161.048.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Education Professional Standards Board.

(a) Estimate the following for the first year:

Expenditures: No additional expenditures are expected to be needed since the systems and staff are already in place for processing applications and issuing certificates under the Option 3 route.

Revenues: The amendment to this administrative regulation is not expected to generate any revenue during the first year as this regulation does not create fees.

Cost Savings: No cost savings are expected with this amendment.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures, revenues and cost savings are not expected to differ in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Public-school districts.

(a) Estimate the following for the first year:

Expenditures: There are no expected expenditures for districts as there are no fees established in this regulation.

Revenues: This regulation sets the standards for certification under the Option 3 route to certification. It will not generate revenues for districts.

Cost Savings: There are no cost savings expected with this amendment.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures, revenues and cost savings are not expected to differ in subsequent years.

(4) Identify additional regulated entities not listed in questions

(2) or (3): Applicants for certification under the Option 3 College Faculty Route to Teacher Certification.

(a) Estimate the following for the first year:

Expenditures: There are no expected expenditures for applicants to comply with this amendment.

Revenues: This regulation sets the standards for certification under the Option 3 route. It will not generate revenue for applicants.

Cost Savings: There is no expected cost savings since there are no fees created or reduced by this regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures, revenues and cost savings are not expected to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no fiscal impact as a result of the proposed amendments to this regulation. No fees are established or increased in this regulation, and there are no fees for two (2) year provisional certificates. While processing applications and issuing certificates does require staff time and resources from the Education Professional Standards Board, the amendments can be carried out by the existing staff and systems.

(b) Methodology and resources used to determine the fiscal impact: The methodology and resources used to determine that there is no fiscal impact, is looking to current systems and processes to see if additional expenditures or resources are needed to carry out the amendments. Since no additional expenditures or resources are needed to carry out the amendments, and there are no fees established or increased by this regulation, it was determined there is no 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 not an expected major economic impact from this regulation as it does not create additional costs for the Education Professional Standards Board or the regulated entities.

(b) The methodology and resources used to reach this conclusion: The methodology and resources used to determine this is looking to current systems and processes to see if additional expenditures or resources are needed to carry out the amendments. Since no additional expenditures or resources are needed to carry out the amendments, and there are no fees established or increased by this regulation, there will not be a negative or adverse major economic impact.

**OFFICE OF THE GOVERNOR
Department of Veterans Affairs
Office of Kentucky Veterans' Services
(Amendment)**

17 KAR 4:030. Veterans' Service Organization Burial Honor Guard Program.

RELATES TO: KRS 40.360, 40.362, 40.364, 40.366, 10 U.S.C. 1491

STATUTORY AUTHORITY: KRS 40.360(3), 40.364(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.360(3) and 40.364(1) require the Kentucky Department of Veterans' Affairs to promulgate administrative regulations to implement and administer the Veterans' Service Organization Burial Honor Guard Program. This administrative regulation establishes the requirements for the Veterans' Service Organization Burial Honor Guard Program.

Section 1. Definitions.

(1) "Authorized provider" means a veterans' service organization or any other military or civilian organization that has been trained in rendering military funeral honors according to requirements established in 10 U.S.C. 1491.

(2) "Eligible veteran" means a person who:

(a) Has served the state and nation on active duty in the U.S.

Armed Forces; received a discharge under other than dishonorable conditions (that is with an honorable or general under honorable conditions service characterization); and has never been convicted of a federal or state capital offense; or

(b) At the time of death, was honorably serving in the U.S. Reserves or the Air or Army National Guard without being previously convicted of a federal or state capital offense; or

(c) Was previously interred or cremated, notwithstanding the date of death.

[1.]

[a.] [Has served the state and nation in the armed forces; and]

[b.] [Was discharged under other than dishonorable conditions, that is with an honorable or general under honorable conditions service characterization; or]

[2.] [At the time of death, was a member of the Selective Reserve or Kentucky National Guard;]

[b.] [Was recently deceased, or cremated remains are being interred, or, if not recently deceased, the burial honors are being rendered for historical reasons; and]

[c.] [Was never convicted of a federal or state capital offense.]

(3) "Veterans' service organization" or "VSO" means an organization serving American veterans such as Veterans of Foreign Wars, American Veterans[AMVETS], Disabled American Veterans, Vietnam Veterans of America, and American Legion.

Section 2. Program Responsibilities.

(1) The Kentucky Department of Veterans Affairs shall:

(a) Pay a stipend in the amount provided by subsection (2) of this section to the military burial honor guard detail supplied by the authorized provider for the military honors rendered by that detail; and

(b) Maintain a central repository for recording all data required by KDVA Form Veterans' Service Organization Request for Honors Stipend.

(2) The maximum amount of the stipend shall be \$100[sixty (60) dollars] for each ceremony provided by the VSO. The stipend amount shall be determined as follows:

(a) For playing "Taps" on CD or other recording device, zero dollars;

(b) For having a live bugler or ceremonial bugler play the song "Taps", instead of using a CD or other recording device, fifteen (15) dollars[ten (10) dollars];

(c) For folding and presenting the United States Flag with the song "Taps":

1. Played on CD, thirty (30) dollars[twenty-five (25) dollars]; or

2. Performed by a live bugler or ceremonial bugler, fifty (50) dollars[thirty-five (35)]; or

(d) For folding and presenting the United States Flag with a rifle team, with a minimum of three (3) firers, with the song "Taps":

1. Played on CD or other pre-recorded device, eighty (80) dollars[fifty (50) dollars]; or

2. Performed by a live bugler or ceremonial bugler, \$100[sixty (60) dollars].

(3) Authorized providers shall:

(a) Render military burial honors in accordance with the requirements established in 10 U.S.C. 1491;

(b) Require a flag folding ceremony as part of the military burial honors in which the United States flag is folded by the military burial honor guard;

(c) Ensure that the folded flag is presented during the ceremony to the deceased's next of kin or family representative by a member of the eligible veteran's own military service (USMC, USA, USAF, USSF, USN, U.S.C.G[U.S.-C.-G]); and

(d) After each rendering of military burial honors, provide the Kentucky Department of Veterans Affairs a completed KDVA Form 07/24[04/04].

Section 3. To be eligible to receive a stipend, a veterans' service organization shall:

(1) Register as a state vendor and receive a state vendor number. Registration shall be completed online at www.eprocurement.ky.gov;

(2) Verify the veteran's service from the veteran's DD Form 214, Certificate of Release or Discharge from Active Duty or NGB Form 22, National Guard Report of Separation and Record of Service; and [DD-214 form; and]

(3) Not receive an honorarium, donation, or other payment from the funeral home or the veteran's family for the military burial honors provided for the veteran.

Section 4. Incorporation by Reference.

(1) KDVA Form, "Veterans' Service Organization Request for Honors Stipend", 07/24[11/06], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Veterans' Affairs, 1111[B] Louisville Road, Suite B, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or at <https://veterans.ky.gov/Pages/index.aspx>.

This is to certify that the Assistant Director of the Office of Kentucky Veterans' Cemeteries and the Commissioner of the Kentucky Department of Veterans' Affairs have approved the contents of this regulatory filing.

ALVIN DUNCAN, Director

SILAS SESSION, Executive Director

WHITNEY ALLEN, Commissioner

APPROVED BY AGENCY: June 13, 2024

FILED WITH LRC: June 13, 2024 at 2:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, August 21, 2024, at 11:00 a.m. Eastern Time at KDVA Headquarters Office, 1111 Louisville Rd., Suite B, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 August 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: Juan Renaud, Deputy Commissioner, Office of the Commissioner; or Alvin Duncan, State Cemeteries Director; 1111 Louisville Rd., Suite B, Frankfort, Kentucky 40601; phone (502) 782.5721; fax (502) 564.9240; email juan.renaud@ky.gov or alvin.duncan@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Juan Renaud or Alvin Duncan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This Administrative Regulation will increase the stipends paid to the military burial honor guard detail for military honors in support of providing Kentucky's veterans with an honorable and dignified burial.

(b) The necessity of this administrative regulation: As the costs are memorialized in Section 2 of 17 KAR 4:030, the Administrative Regulation is necessary to provide stipends to be paid.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes require KDVA to promulgate administrative regulations to implement and administer the VSO Burial Honor Guard Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This Administrative Regulation will assist the effective administration of the enabling statutes by ensuring stipends are properly paid to the military burial honor guard detail for military honors in support of providing Kentucky's veterans with an honorable and dignified burial.

(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 Administrative Regulation will undergo renumbering for clarity and increase the stipends paid to the military burial honor guard detail for military honors.

(b) The necessity of the amendment to this administrative regulation: As the costs are memorialized in Section 2 of 17 KAR 4:030, it is necessary to amend the Administrative Regulation in order to increase the stipends to be paid.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments continue to promulgate administrative regulations to implement and administer the VSO Burial Honor Guard Program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will continue to follow the enabling statutes by ensuring that stipends are properly paid to the military burial honor guard detail for military honors in support of providing Kentucky's veterans with an honorable and dignified burial.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All veterans who are buried in Kentucky's state cemeteries, their families, and those organizations that provide honor guard services will be directly or indirectly impacted by the 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: No actions will be necessary.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost to those affected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Veterans and their families will experience an honorable and dignified burial, while the honor guard will be better compensated for their services.

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

(a) Initially: Pursuant to 24 RS HB 6, Part I, Section A, Part 4, Section (9), the implementation of the regulation shall cost an additional \$76,000 (approximate).

(b) On a continuing basis: Pursuant to 24 RS HB 6, Part I, Section A, Part 4, Section (9), the changes to the regulation will cost an additional \$152,000 (approximate) on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 24 RS HB 6, Part I, Section A, Part 4, Section (9), general funds have been appropriated for implementation and 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: The amendment to the administrative regulation will necessitate an increase in funding as outlined in 24 RS HB 6, Part I, Section A, Part 4, Section (9).

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation increases fees paid to the honor guard details.

(9) TIERING: Is tiering applied? Pursuant to KRS 13A.210, tiering is used by administrative bodies to reduce disproportionate impacts on certain classes of regulated entities, including government or small business, or both, and to avoid regulating entities that do not contribute significantly to the problem the administrative regulation was designed to address. In this instance, the new regulation is not expected to result in disproportionate impacts on certain classes of regulated entities. Therefore, tiering has not been applied.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. 10 U.S.C. 1491 prescribes a daily stipend to be provided to individuals who volunteer, when requested to assist the active-duty military in providing funeral honors. -- KRS 40.360 charges KDVA oversight of the Commonwealth's Veterans' Service Organization Burial Honor Guard Program. -- KRS 40.362 mandates a trust fund to support the costs incurred by the Commonwealth's Veterans' Service Organizations in providing and supporting a well-equipped, properly trained, and certified burial honor guard. -- KRS 40.364 mandates the promulgation of administrative regulations to implement the Veterans' Service Organization Burial Honor Guard Program and coordinate with the Commonwealth's Veterans' Service Organization Burial Honor Guard Program with veterans' service organizations, Kentucky veterans and their dependents, the Kentucky Funeral Directors' Association, the Department of Military Affairs, the United States Army Reserve, and the Casualty Assistance Commands of Fort Campbell and Fort Knox.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Department of Veterans Affairs is the promulgating agency, while the Kentucky Department of Military Affairs, the Kentucky Air and Army National Guard, the Kentucky Commission on Military Affairs may be affected by the administration—as beneficiaries of the services provided.

(a) Estimate the following for the first year:

Expenditures: \$76,000 (approximate).

Revenues: NA

Cost Savings: There are no cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The changes to the regulation will cost an additional \$152,000 (approximate).

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): NA

(a) Estimate the following for the first year:

Expenditures: NA

Revenues: NA

Cost Savings: NA

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

(4) Identify additional regulated entities not listed in questions (2) or (3): NA

(a) Estimate the following for the first year:

Expenditures: NA

Revenues: NA

Cost Savings: NA

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

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: House Bill 6 of the 24 Regular Session provides funding beginning January 1, 2025, for Fiscal Years 2025 and 2026 for this purpose.

(b) Methodology and resources used to determine the fiscal impact: The increase was based on the average funds reimbursed to VSO's, and the increase per service provided was based on historical calculations.

(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) Since the increase was funded in full by General Funds in House Bill 6 for Fiscal Years 2025 & 2026, there is no impact to the entities in question 2 and 3-4 are not applicable.

(b) The methodology and resources used to reach this conclusion: As is detailed in KDVA's 2024-2026 ABR: "This budget request for additional funding is described below and is for continual funding in future biennia. KDVA is requesting that the Veterans' Service Organization Burial Honor Guard Program receive an additional budget request to raise the amount of maximum payout and fully cover the program as designed by the KRS and KAR. We will request to make the change in January of FY2025. Upon approval of this additional budget request, KDVA will need to request a change to 17

KAR 4:030, which could take up to six (6) months to accomplish. Since the inception of this program, KDVA has paid \$2,431,871.00 to ninety-five (95) VSOs that are registered in the Burial Honor Guard Program, a total of 46,475 burial honors ceremonies for Kentucky Veterans. During these past nineteen (19) years the Burial Honor Guard Program has received \$1,731,000 in General Funds. The remainder has come from the Veterans Program Trust Fund. The past five (5) years have seen the biggest increase in requests for military honors and payouts as KDVA has been able to help provide 13,163 Veterans with Honorable and Dignified Burial Honors at the cost of \$757,420. This averages to \$57.54 per Veteran Ceremony, in accordance with KRS 4:010. Veterans Service Organization Burial Honor Guard Program. FY2019 - Total services 2,657, Amount Paid Out \$148,195; FY2020 - Total services 2,006, Amount paid out \$135,380; FY2021 - Total services 2,974, Amount paid out \$164,270; FY2022 - Total services 3,051, Amount paid out \$170,700; FY2023 - Total services 2,475, Amount paid out \$138,875. Each one of these 13,163 Veterans received full military honors and have been interred in one of our State Veterans Cemeteries, National Cemetery and or a Private Cemetery here in the State of Kentucky. After 9/11 all five (5) branches of the U.S. Military stopped providing full military honors for most all Veterans' honors request. This means that only a 2-person detail was provided by the branch of service to play taps, fold, and present flag to the next of kin. The twenty-one (21) gun salute now falls on the VSOs, in return the VSOs have taken on more of the military honors across the Commonwealth of Kentucky. The data shows that it will only increase as our Veterans pass away and families request full military honors. Since the inception of this program the stipend that KDVA provides under this program has not been raised or modified as the cost of living has risen over time (maximum payout is \$60). This is starting to turn VSO's away from traveling 60-80 miles one way to conduct military honors. The VSOs are requesting that KDVA raise the maximum stipend payment from \$60 to \$100 and stagger the other four levels of conducted services for ceremonies. These seven to ten (7-10) person honor guard teams only average about \$56.81 per interment since the inception of this program. The money that each VSO receives helps the burial honor guard team pay for gas to the service and to maintain their honor guard uniforms and equipment. The VSOs normally travel in multiple vehicles to and from the service."

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. The federal statute constituting the federal mandate is 10 U.S.C. 1491.

(2) State compliance standards. KRS 40.360(3) and 40.364(1) require the Kentucky Department of Veterans Affairs (KDVA) to promulgate administrative regulations to implement and administer the Veterans' Service Organization Burial Honor Guard Program

(3) Minimum or uniform standards contained in the federal mandate. 10 U.S.C. 1491 allows for a daily stipend to be provided to individuals who volunteer, when requested to assist the active-duty military in providing funeral honors. -- A funeral honors detail must, at a minimum, perform at the funeral a ceremony that includes the folding of a United States flag; presentation of the flag to the veteran's family; and the playing of Taps. Unless a bugler is a member of the detail, the funeral honors detail shall play a recorded version of Taps using audio equipment which the detail shall provide if adequate audio equipment is not otherwise available for use at the funeral. -- An annual flat rate daily stipend shall be prescribed for purposes of funeral honors. Such stipend shall be set at a rate so as to encompass typical costs for transportation and other miscellaneous expenses for persons participating in funeral honors details who are members of the armed forces in a retired status and other persons who are not members of the armed forces or employees of the United States.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? 17 KAR 4:030 will 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. Not applicable to this regulation.

**FINANCE AND ADMINISTRATION CABINET
(Amendment)**

200 KAR 5:021. Manual of policies and procedures.

RELATES TO: KRS 45A.045(2)[Chapter 45A]

STATUTORY AUTHORITY: KRS 45A.045(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.045(2) requires the Finance and Administration Cabinet to publish a manual of policies and procedures, which is to be incorporated by reference as an administrative regulation pursuant to KRS Chapter 13A. This administrative regulation incorporates the Finance and Administration Cabinet Manual of Policies and Procedures.

~~Section 1. [A state agency shall follow the procurement requirements in the Finance and Administration Cabinet Manual of Policies and Procedures.]~~

~~[Section 2.]~~ Incorporation by Reference.

(1) "Finance and Administration Cabinet Manual of Policies and Procedures", revised May 2024~~[February 2016]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Finance and Administration Cabinet, Office of General Counsel, 200 Mero Street, 5th Floor~~[Office of Policy and Audit, Policy Branch, Room 493, Capitol Annex]~~, Frankfort, Kentucky 40622~~[40604]~~, Monday through Friday, 8 a.m. to 4:00~~[4:30]~~ p.m. This material may also be obtained at the Finance and Administration Cabinet's Web site, <https://finance.ky.gov/office-of-the-secretary/office-of-policy-and-audit/Pages/Finance-Policies.aspx>~~[www.finance.ky.gov/services/policies/Pages/default.aspx]~~.

HOLLY M. JOHNSON, Secretary

APPROVED BY AGENCY: May 16, 2024

FILED WITH LRC: May 16, 2024 at 4:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2024, at 10:00 a.m. at the Kentucky Finance and Administration Cabinet, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing 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 until 11:59 p.m. on August 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: Cary Bishop, Assistant General Counsel, Office of General Counsel, 200 Mero Street, 5th Floor, Frankfort, Kentucky 40622, phone (502) 564-6660, fax (502) 564-9875, email cary.bishop@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cary Bishop

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation publishes a manual of procedures that clarify and explain detailed processes necessary for daily administration of purchase-related activities.

(b) The necessity of this administrative regulation: This regulation fulfills the requirement of KRS 45A.045(2) for the Secretary to publish a manual of procedures which shall be incorporated by reference as

an administrative regulation pursuant to KRS Chapter 13A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation incorporates by reference the policies and procedures manual required by KRS 45A.045(2).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides guidance to vendors, prospective bidders, Finance and Administration Cabinet ("FAC") staff and other state employees in the administration of Kentucky's Model Procurement Code (KRS Chapter 45A).

(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 regulation contains minimal changes to the regulation and manual, mostly limited to those necessary to conform with recently effective statutory changes.

(b) The necessity of the amendment to this administrative regulation: This amendment will reflect changes in statutes and related policies.

(c) How the amendment conforms to the content of the authorizing statutes: The manual is required by KRS 45A.045(2).

(d) How the amendment will assist in the effective administration of the statutes: The updated manual will assist state employees and vendors in procurement matters.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All current and prospective state vendors.

(4) Provide an assessment 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:

(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: Amendment of administrative regulation is required to comply with recently passed legislation which contained an emergency clause.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): (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 additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is necessary for implementation of this regulation.

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

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

(9) TIERING: Is tiering applied? While the regulation itself is limited in scope and does not utilize tiering, the incorporated Manual of Policies and Procedures, consistent with KRS 13A.210, uses tiering when possible to avoid disproportionate impacts by using reasonable criteria. For example, the manual had reduced administrative requirements for small purchase amounts, as opposed to larger purchases where greater oversight is necessary. Additionally, per 13A.210(2), the manual generally aims to provide clarification and eliminate ambiguity regarding provisions of the model procurement code which might otherwise cause confusion and administrative inefficiency for agencies and vendors.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative

regulation. No federal statute or regulation at issue. While the Commonwealth's Model Procurement Code is modeled on the federal model, the statute authorizing this regulation is a state statute, KRS 45A.045.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: This regulation is promulgated by the Finance and Administration as a whole and will impact all state agencies.

(a) Estimate the following for the first year:

Expenditures: \$0

Revenues: \$0

Cost Savings: \$0

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No change expected.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): No local entities will be affected.

(a) Estimate the following for the first year:

Expenditures: \$0

Revenues: \$0

Cost Savings: \$0

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No change expected.

(4) Identify additional regulated entities not listed in questions (2) or (3): None.

(a) Estimate the following for the first year:

Expenditures: \$0

Revenues: \$0

Cost Savings: \$0

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No change expected.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: No fiscal impact expected.

(b) Methodology and resources used to determine the fiscal impact: Legal office review of changes included with regulatory amendment. Changes are limited to procedural thresholds that will not have a direct 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 major economic impact is expected.

(b) The methodology and resources used to reach this conclusion: Legal office review of changes included with regulatory amendment. Changes are limited to procedural thresholds that will not have a direct fiscal impact.

BOARDS AND COMMISSIONS
Board of Pharmacy
(Amendment)

201 KAR 2:210. Patient records, drug regimen review, patient counseling, and final product verification [and patient counseling].

RELATES TO: KRS 217.015(9), 218A.010(11), 315.010(7), (9), (24), 315.020(5)(e), 315.191(1), [(5), (6),]42 C.F.R. [Part] 456

STATUTORY AUTHORITY: KRS 217.215(2), 315.191(1), [(5),]42 C.F.R. [Part] 456

NECESSITY, FUNCTION, AND CONFORMITY: [KRS 315.191(1), (56),]42 C.F.R. [CFR Part] 456 mandates that pharmacists implement drug regimen [utilization] reviews and provide patient counseling to those recipients of health-care benefits for which federal funds are allocated. [This administrative regulation provides for this mechanism and broadens its magnitude by rendering this valuable service available to all Kentucky's citizenry, equitably.] This administrative regulation establishes rules for the dispensing of a prescription drug or medical order by a pharmacist and ensures comprehensive patient records are maintained and remain confidential.

Section 1. Definitions.

(1) "Automated filling system" means an automated system used by a pharmacy to assist in filling a prescription drug order or medical order by selecting, labeling, filling, or sealing medication for dispensing. An "automated filling system" is not an automated device used solely to count medication, vacuum tube drug delivery systems, automated pharmacy systems as defined in KRS 218A.185, or automated dispensing systems as defined in 201 KAR 2:370.

(2) "Confidential information" is defined by KRS 315.010(7).

(3) "Dispense" or "dispensing" is defined by KRS 315.010(9), KRS 217.015(9) and KRS 218A.010(11).

(4) "Electronic verification" means the non-physical visual verification a pharmacist utilizes to verify the accuracy of the final contents of the prepared prescription product and affixed label prior to dispensing.

(5) "Electronic verification system" means an electronic verification, bar code verification, weight verification, radio frequency identification, or similar electronic process or system that accurately verifies medication has been properly prepared and labeled by, or loaded into, an automated filling system.

(6) "Final product verification" means the process a pharmacist utilizes to verify the accuracy of the final contents of any prepared prescription product and affixed label prior to dispensing.

(7) "Manufacturer unit of use package" means a drug dispensed in the manufacturer's original and sealed packaging, or in the original and sealed packaging of a re-packager, without additional manipulation or preparation by the pharmacy, except for application of the pharmacy label.

(8) "Medical Order" is defined by KRS 315.010(14).

(9) "Prepared prescription product" is a prescription drug or medical order prepared for dispensing by a pharmacist.

(10) "Prescription drug order" is defined by KRS 315.010(25).

(11) "Re-packager" means a re-packager registered with the United States Food and Drug Administration.

(12) "Repacked" means any drug that has been removed from the original packaging of the manufacturer or a re-packager's packaging and is placed in a container for use in an automated filling system.

Section 2. Patient Records.

(1)

~~[(a)]~~ A patient record system shall, with the exercise of professional judgment, be maintained by a pharmacy for patients for whom prescription drug or medical orders~~[prescriptive drug orders]~~ are dispensed at that pharmacy location.

~~[(b)]~~ A pharmacist, with the exercise of professional judgment, shall establish a procedure for obtaining, recording, and maintaining information required for a patient record.

~~[(c)]~~~~[(e)]~~ A pharmacist, or ~~a pharmacy technician or a pharmacist intern~~~~[his designee]~~, shall obtain, record, and maintain the information for a patient record.

~~[(d)]~~~~[(d)]~~ A patient record shall:

~~[(a)]~~~~[(4-)]~~ Be readily retrievable by manual or electronic means;

~~[(b)]~~~~[(2-)]~~ Enable the pharmacist to identify previously dispensed drugs and known disease conditions;

~~[(c)]~~~~[(3-)]~~ Enable the pharmacist to determine the impact of previously dispensed drugs and known disease conditions upon the newly submitted prescription drug or medical order~~[prescriptive drug order]~~; and

~~[(d)]~~~~[(4-)]~~ Be maintained for not less than 180 days from the date of the last entry.

~~[(5)]~~~~[(2)]~~ A patient record shall include:

(a) Full name of patient or animal for whom the drug is intended;

(b) Address and telephone number of the patient;

(c) Patient's age or date of birth;

(d) Patient's gender;

(e) A list of all prescriptions received by the pharmacy or dispensed to~~[obtained by]~~ the patient at that pharmacy location for the past twelve (12) months by:

1. Prescription number;

2. Name and strength of medication;

3. Quantity;

4. Date received;

5. Identity of prescriber; and
 6. Comments or other information as may be relevant to the specific patient or drug; and

(f) Individual medical history if significant, including known disease states, known allergies, idiosyncrasies, reactions or conditions relating to prospective drug use and drug regimen reviews.

Section 3.[Section 2.] Prospective Drug Regimen Review.

(1) A prospective drug regimen review shall be conducted by a pharmacist prior to dispensing.

(2) It shall include an assessment of a patient's drug therapy and the prescription order.

(3) A prospective drug regimen review shall include a review by the pharmacist of the following:

- (a) Known allergies;
- (b) Rationale for use;
- (c) Proper dose, route of administration, and directions;
- (d) Synergism with currently employed modalities;
- (e) Interaction or adverse reaction with applicable:
 - 1. Drugs;
 - 2. Foods; or
 - 3. Known disease states;
- (f) Proper utilization for optimum therapeutic outcomes; and
- (g) Clinical misuse or abuse.

Section 4. Automated Filling Systems.

(1) Automated filling systems shall be stocked or loaded by a pharmacist or by a pharmacist intern or certified pharmacy technician under the supervision of a pharmacist. A registered pharmacy technician may stock or load an automated filling system under the immediate supervision of a pharmacist.

(2) A licensed pharmacist shall inspect and verify the accuracy of the final contents of any prepared prescription product filled or packaged by an automated filling system and the label affixed thereto prior to dispensing. A pharmacist shall be deemed to have verified the prepared prescription product and the label affixed thereto if:

(a) The filling process is fully automated from the time the filling process is initiated until a completed, labeled, and sealed prepared prescription product is produced by the automated filling system that is ready for dispensing to the patient. No manual intervention with the medication or prepared prescription product may occur after the medication is loaded into the automated filling system. Manual intervention shall not include preparing a finished prepared prescription product for mailing, delivery, or storage;

(b) A pharmacist verifies the accuracy of the prescription information used by or entered into the automated filling system for a specific patient prior to initiation of the automatic fill process. The name, initials, or identification code of the verifying pharmacist shall be recorded in the pharmacy's records and maintained for five (5) years after dispensing;

(c) The pharmacy establishes and follows a policy and procedure manual that complies with this administrative regulation;

(d) A pharmacist verifies the correct medication, repackaged container, or manufacturer unit of use package was properly stocked, filled, and loaded in the automated filling system prior to initiating the fill process. Alternatively, an electronic verification system may be used for verification of manufacturer unit of use packages or repacked medication previously verified by a pharmacist. The name, initials, or identification code of the verifying pharmacist shall be recorded in the pharmacy's records and maintained for five (5) years after dispensing;

(e) The medication to be dispensed is filled, labeled, and sealed in the prescription container by the automated filling system or dispensed by the system in a manufacturer's unit of use package or a repacked pharmacy container;

(f) An electronic verification system is used to verify the proper prescription label has been affixed to the correct medication, repackaged container, or manufacturer unit of use package for the correct patient; and

(g) Daily random quality testing is conducted by a pharmacist on a sample size of prescriptions filled by an automated filling system. The required sample size shall not be less than two (2) percent of the prescriptions filled by the automated system on the date tested or two (2) percent of the prescriptions filled by the automated system on the last day of system operation, as designated in writing by the pharmacist in charge. Proof of compliance, including date and results, of daily random quality testing shall be maintained and documented in the pharmacy's records.

(3) Pharmacies verifying prescriptions utilizing the method in subsection (2) of this section shall establish and follow written policies and procedures to ensure the proper, safe, and secure functioning of the system. Policies and procedures shall be reviewed annually by the pharmacist in charge and shall be maintained in the pharmacy's records for a minimum of five (5) years. The required annual review shall be documented in the pharmacy's records and made available upon request.

(4) At a minimum, the pharmacy shall establish and follow policies and procedures for:

- (a) Maintaining the automated filling system and any accompanying electronic verification system in good working order;
- (b) Ensuring accurate filling, loading, and stocking of the system
- (c) Ensuring sanitary operations of the system and preventing cross-contamination of cells, cartridges, containers, cassettes, or packages;
- (d) Reporting, investigating, and addressing filling errors and system malfunctions;

(e) Testing the accuracy of the automated filling system and any accompanying electronic verification system. At a minimum, the automated filling system and electronic verification system shall be tested before the first use of the system or restarting the system and upon any modification to the automated filling system or electronic verification system that changes or alters the filling or electronic verification process;

(f) Training persons authorized to access, stock, restock, or load the automated filling system in equipment use and operations;

(g) Tracking and documenting prescription errors related to the automated filling system that are not corrected prior to dispensing to the patient. Such documentation shall be maintained for five (5) years and produced to the board upon request;

(h) Conducting routine and preventative maintenance, and, if applicable, calibration;

(i) Removing expired, adulterated, misbranded, or recalled drugs;

(j) Preventing unauthorized access to the system, including assigning, discontinuing, or changing security access;

(k) Identifying and recording persons responsible for stocking, loading, and filling the system;

(l) Ensuring compliance with state and federal law, including, all applicable labeling, storage and security requirements; and

(m) Maintaining an ongoing quality assurance program that monitors performance of the automatic fill system and any electronic verification system to ensure proper and accurate functioning.

(5) Records required by this administrative regulation shall be maintained by the pharmacy's records electronically or in writing for a minimum of five (5) years. When the verification requirements of subsection (2) of this section are completed by a pharmacist, the name, initials or identification code of the verifying pharmacist shall be recorded in the pharmacy's records and maintained for five (5) years after dispensing. Records shall be made available for inspection and produced to the board upon request.

Section 5. Final Product Verification.

(1) Final product verification of a prepared prescription product shall be conducted by a pharmacist prior to delivery of the prepared prescription product to the patient.

(2) No further manipulation of a prepared prescription product shall occur after the pharmacist's verification is complete other than applying the required container lid or seal and preparing the prepared prescription product for mailing, delivery or storage.

(3) The identity of the pharmacist responsible for verifying the prepared prescription product shall be documented in the pharmacy's records.

(4) A mechanism shall be in place to record and communicate the pharmacist's verification.

(5) A licensed pharmacist may use an electronic verification system to verify the accuracy of a final prepared prescription product if:

(a) The electronic verification system allows the pharmacist to see an exact, clear, and unobstructed visual image or images of the prepared prescription product contents and the label affixed to the container. If multiple units are being dispensed, the pharmacist shall be able to see and verify an image or images of each unit and each individual affixed label;

(b) Pharmacy technicians and pharmacist interns preparing a prescription to be verified with electronic verification shall be trained and competent to perform the duties assigned and have a documented initial and annual assessment of competency using the pharmacy's approved electronic verification system;

(c) The pharmacy maintains an ongoing quality assurance program that monitors performance of the electronic verification system to ensure proper and accurate functioning and must include procedures for system outages; and

(d) The pharmacy maintains records required by this rule electronically or in writing for a minimum of five (5) years. Records shall be made available for inspection and produced to the board upon request.

(6) Compounded preparations shall not be verified electronically. Compounded preparations shall be physically verified by a pharmacist.

(7) Final product verification of a prescription shall only occur on the premises of the originating pharmacy notwithstanding any final product verification occurring under 201 KAR 2:230.

(8) The board may, upon a petition by a permit holder and upon a showing of good cause and in the balancing the best interest of the public health, safety, and welfare, waive a specific portion of this section.

Section 6. Patient Counseling.

(1) The pharmacist shall offer to counsel a patient on matters which the pharmacist[he] believes will optimize drug therapy with each patient or caregiver:

- (a) Upon the presentation of an original prescription order; and
- (b) On refill prescriptions, as professional discretion dictates.

(2)

{a} The offer shall be made by the pharmacist in a face-to-face communication with the patient or caregiver, unless, in the professional judgment of the pharmacist, it is deemed impractical or inappropriate.

{b} If deemed impractical or inappropriate, the offer to counsel may be made:

{1-} By the pharmacy technician or pharmacist intern[pharmacist designee];

{2-} In written communication;

{3-} By telephone[through access to a telephone service that is toll-free for long distance calls, unless the primary patient population is accessible through a local, measured, or toll-free exchange]; or

{4-} In another manner determined by the pharmacist to be appropriate.

{3} Patient counseling shall be:

- (a) In person if[when] practical; or
- (b) With reasonable effort, by telephone or real-time video.

{4} The pharmacist shall include the following elements of patient counseling that the pharmacist[he] has determined are appropriate:

- (a) The name and description of the drug;
- (b) The dosage form, dose, route of administration, and duration of therapy;
- (c) Special directions and precautions;
- (d) Common and clinically significant adverse effects, interactions, or contraindications that may be encountered, including their avoidance and the action required should they occur;

- (e) Techniques for self-monitoring of drug therapy;
- (f) Proper storage;
- (g) Refill information;
- (h) Action to be taken in event of a missed dose;
- (i) The pharmacist[s]His] comments relevant to the individual's therapy; and
- (j) Any other information peculiar to the specific patient or drug.

{5} If a pharmacist determines that it is appropriate, the pharmacist[he] may supplement patient counseling with additional forms of patient information, such as:

- (a) Written, electronic, or printed information leaflets;
- (b) Pictogram labels; and
- (c) Video programs.

{6} Mail-order pharmacies shall be subject to the same counseling requirements as any other pharmacy.

Section 7. Documentation of Counseling.

(1) A record that the patient refused the pharmacist's offer to counsel shall be maintained for one (1) year.

(2) If there is no record that the patient refused the pharmacist's offer to counsel, there shall be a presumption that:

- (a) The offer to counsel, as required in Section 4 of this administrative regulation, was made and accepted; and
- (b) The counseling was provided.

Section 8.[Section 3.] Confidentiality.

- (1) A patient record shall be held in confidence.
- (2) It shall be communicated or released:
 - (a) To the patient;
 - (b) As the patient directs; or
 - (c) As prudent, professional discretion dictates.

[Section 4.] [Prospective Drug Use Review.]

{1} [A prospective drug use review shall be conducted by a pharmacist prior to dispensing.]

{2} [It shall include an assessment of a patient's drug therapy and the prescription order.]

{3} [A prospective drug use review shall include a review by the pharmacist of the following:]

- {a} [Known allergies;]
- {b} [Rationale for use;]
- {c} [Proper dose, route of administration, and directions;]
- {d} [Synergism with currently employed modalities;]
- {e} [Interaction or adverse reaction with applicable:]
 - 1- [Drugs;]
 - 2- [Foods; or]
 - 3- [Known disease states;]
- {f} [Proper utilization for optimum therapeutic outcomes; and]
- {g} [Clinical misuse or abuse.]

[Section 5.] [Documentation of Counseling.]

{1} [A record that the patient refused the pharmacist's offer to counsel shall be maintained for one (1) year.]

{2} [If there is no record that the patient refused the pharmacist's offer to counsel, there shall be a presumption that:]

- {a} [The offer to counsel, as required in Section 2 of this administrative regulation, was made and accepted; and]
- {b} [The counseling was provided.]

Section 9.[Section 6.] The provisions of this administrative regulation shall not apply:

(1) To [inpatients of] a hospital or institution[,] if other licensed health-care professionals are authorized to administer the drugs; and[or]

(2) Compliance with 902 KAR 20:0116, 201 KAR 2:074 and 201 KAR 2:076 is maintained.[If there is documentation that the patient or caregiver refused consultation.]

CHRISTOPHER HARLOW, Pharm.D., Executive Director
 APPROVED BY AGENCY: June 13, 2024
 FILED WITH LRC: June 10, 2024 at 11:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 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 August 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: 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 regulation provides rules around the dispensing process of prescription drugs.

(b) The necessity of this administrative regulation: This regulation is essential to provide the framework for what is authorized and what is prohibited as part of the dispensing process to ensure safety to the patient.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes rules for the dispensing process. KRS 315.191(1)(a) authorizes the Board of Pharmacy to make rules to govern any matter related to pharmacies or pharmacists.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: 315.191(1) authorizes the board to promulgate administrative regulations to regulate pharmacists, pharmacies, wholesalers and manufacturers. This regulation ensures that pharmacies, pharmacists, technicians and interns are fully aware of what is authorized and what is not as part of the dispensing process.

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

(a) How the amendment will change this existing administrative regulation: This amendment cleans up the language removing the gender terms from the regulation. Moreover, this amendment re-orders the existing sections and add sections on automated filling systems and final product verification.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure safety to the patient. This amendment ensures that a pharmacist verifies the prepared product before the product is provided to the patient. This amendment also creates rules for automated filling systems to ensure safety to the patient.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute, KRS 315.191(1)(a) authorizes the Board to regulate any matters pertaining to pharmacies, pharmacists, technicians and interns.

(d) How the amendment will assist in the effective administration of the statutes: This amendment ensures that the regulated parties are aware of the Board's expectations regarding the dispensing process, and it ensures safety to patients.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Pharmacies, pharmacists, technicians and interns are affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated parties will need to ensure that their internal systems are aligned with the amendment. This could mean modifying the procedures they utilize.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): In most situations it will not cost the regulated entity anything. However, if the regulated entity has implemented a dispensing system that does not align with this regulation, the regulated entity will need to modify their procedures to ensure compliance. There could be a cost to this.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will have greater clarity about what is required as part of the dispensing process and the patients the regulated entities serve will be protected. This could promote business. (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.

(b) On a continuing basis: There is no cost.

(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 fee increase will be needed.

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

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all pharmacists and pharmacies equally.

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

(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 2:370. Pharmacy services in long-term care facility (LTCF).

RELATES TO: KRS 315.010, 315.020, 315.030, 315.121
 STATUTORY AUTHORITY: KRS 315.002, 315.005, 315.191
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1) authorizes the Kentucky Board of Pharmacy to establish requirements to regulate and control pharmacies. KRS 315.002 and 315.005 require standards of practice in all settings where drugs are handled and require the board to ensure safety of all drug products provided to the citizens of Kentucky. This administrative regulation establishes requirements for pharmacy services in long-term care facilities.

Section 1. Definitions.

(1) "Automated Dispensing System" or "ADS" means a mechanical system that performs operations or activities, other than compounding or administration, relative to the storage, packaging, counting, labeling, and dispensing of medications, and which collects, controls, and maintains all transaction information.

(2) "Emergency Drug" means drugs required to meet the immediate therapeutic needs of patients that are not available from any other authorized source in sufficient time to prevent risk of harm to patients because of delay.

(3) "Emergency Medication Kit" or "EMK" means an onsite manual or automated mechanism for delivering emergency medications.

(4) "Immediate supervision" is defined by KRS 315.010(12).

(5) "Individual dose" means smallest unit that is commercially available.

(6) "Long-term care facility" or "LTCF" is defined by KRS 216.510(1), excluding family-care homes and assisted living communities.

(7) "Long Term Care Facility Drug Stock" or "LTCF drug stock" means a dose or doses generated from a prescription order sufficient until the next pharmacy business day or IV fluids that are used for replenishment, which contain no additive drugs, or irrigation solutions.

(8) "Pharmacist-in-charge" or "PIC" means a pharmacist mandated as in charge under KRS 315.020 and who meets the requirements of 201 KAR 2:205.

(9) "Supervision" is defined by KRS 315.010(27).

(10) "Tamper-resistant secure container" means an enclosed container used in a tamper-resistant ADS and designed to prevent the opening of the container and manipulation of medications prior to loading the ADS and after the contents of the container have been enclosed and verified by a pharmacist.

Section 2. General Requirements.

(1) The pharmacist-in-charge of the dispensing pharmacy shall:

(a) Be responsible for policies and procedures governing the procurement, distribution, storage, security, access, administration, and control of all drugs that are provided to a LTCF;

(b) Review all policies and procedures at least once every twelve (12) months;

(c) Provide LTCF drug stock or an EMK only to facilities that

authorize entry by a board agent for the purposes of inspection or investigation of the LTCF drug stock or EMK at the facility;

(d)

1. Maintain written authorization for entry; and

2. Immediately provide written authorization for entry to the board upon request of a board agent; and

(e) Maintain a current list of all locations where LTCF drug stock or an EMK are stored, which shall be made immediately available upon request by a board agent.

(2) Dispensing.

(a) Controlled substance medications shall be dispensed only by prescription drug order of a licensed practitioner.

(b) Non-controlled substance medications shall be dispensed only on a medical order or prescription drug order of a licensed practitioner.

(c) A medical order entered on the medical record of a patient at a LTCF shall contain:

1. Name of patient;

2. Date of issuance;

3. Name, strength, and dosage form of drug prescribed;

4. Directions for use; and

5. Practitioner's name.

(d) Each licensee shall comply with United States Pharmacopeia (USP) Chapter 7 Labeling regarding labeling and packaging.

(3) The services of a pharmacist shall be readily available at all times.

(4) Emergency drugs.

(a) Emergency drugs for controlled substances in a LTCF EMK shall be stocked pursuant to 902 KAR 55:070.

(b) Emergency drugs for non-controlled substances in an EMK shall not exceed six (6) individual doses of thirty (30) different non-controlled substances, per LTCF.

(c) The pharmacist-in-charge may request a waiver from the board to increase the number of doses or numbers of non-controlled substances in the EMK based on evidence of use.

(d) An EMK shall be assessed for outdated, damaged or adulterated drugs, and stock adequacy by:

1. A pharmacist or any lawful person as stated in 902 KAR 55:070 on a monthly basis for controlled substances; or

2. A pharmacist, a PIC authorized pharmacist intern, or certified pharmacy technician on a monthly basis for non-controlled substances.

(e) EMK drugs shall be supplied in unit dose packaging unless precluded by manufacturer packaging.

(f) An EMK shall be conspicuously labeled.

(g) An EMK drug shall be accessed only upon a lawful prescription order.

(h) All prescription orders shall be reviewed by a pharmacist within one (1) pharmacy business day.

(i) An EMK shall not be stocked in a personal care home without personnel lawfully licensed to administer medications.

(5) Initial dose of LTCF drug stock in a LTCF.

(a) Excluding personal care homes, LTCF drug stock of drugs shall not exceed fifteen (15) individual doses each of 150 non-controlled substances.

(b) LTCF drug stock in a personal care home shall not exceed five (5) individual doses each of thirty (30) non-controlled substances.

(c) The pharmacist-in-charge may request from the board a waiver to increase the number of non-controlled substance items to be placed in LTCF drug stock based upon evidence of use.

(d) The pharmacist-in-charge shall be responsible for authenticating the need for LTCF drug stock.

(e) A pharmacist shall review the prescription drug or medical order before the release of medication.

(f) LTCF drug stock shall be inspected by pharmacy personnel at least monthly and documentation shall be maintained to determine if:

1. Medications are outdated; and

2. Stocks are maintained at adequate levels.

(g) Except for LTCF drug stock of intravenous fluids with no additive drugs or irrigation solutions, the LTCF drug stock shall be

replenished by:

1. A tamper-resistant secure container delivered from the pharmacy;
2. A tamper-resistant secure container for the stocking of an ADS;
3. A pharmacist, pharmacist intern, or a certified pharmacy technician who shall be under the immediate supervision of a pharmacist on-site, if there is no pharmacy on-site; or
4. A pharmacist, pharmacist intern, or a certified pharmacy technician who shall be under the supervision of a pharmacist, if there is a pharmacy on-site.

Section 3. The pharmacist-in-charge of an ADS in a LTCF shall be responsible for the following:

- (1) Initial validation of the ADS accuracy prior to use for distribution to patients assuring that the ADS:
 - (a) Is in good order and accurately dispenses the correct strength, dosage form, and quantity of drug prescribed; and
 - (b) Complies with the recordkeeping and security safeguards pursuant to Section 4 of this administrative regulation.
- (2) Assuring that non-controlled substance prescription drug orders and medical orders are reviewed and approved by a pharmacist prior to access, except for emergency drugs;
- (3) Assuring that controlled substance prescription drug orders are reviewed and approved by a pharmacist prior to accessing the controlled substance emergency drugs;
- (4) Implementing an ongoing quality assurance program that monitors performance of the ADS, pursuant to the written policies and procedures;
- (5) Assigning, discontinuing, or changing personnel access to the system; and
- (6) Assuring appropriate access to medications.

Section 4. Standards. A permit holder utilizing an ADS shall comply with the following provisions:

- (1) A pharmacy shall maintain the following documentation:
 - (a) Name and address of the LTCF where the system is being used;
 - (b) The ADS manufacturer's name, model, and serial number;
 - (c) An operations manual;
 - (d) Description of how the system is used;
 - (e) Written quality assurance procedures to determine continued appropriate use of the system; and
 - (f) Written policies and procedures for system operation, safety, security, accuracy, access, and malfunction.
- (2) All written policies and procedures shall be maintained in the pharmacy responsible for the ADS.
- (3) An ADS shall maintain adequate security systems and procedures, pursuant to written policies and procedures that prevent unauthorized access to patient records and maintain patient confidentiality.
 - (4) ADS records and data shall meet the following requirements:
 - (a) All events involving the contents of the ADS shall be recorded electronically; and
 - (b) Records shall be maintained by the pharmacy for five (5) years, be available to the board, and shall include the following:
 1. The time and location of each system access;
 2. Identification of the individual accessing the system;
 3. Name of the patient for whom the drug was ordered;
 4. Name, strength, dosage form, and quantity of drug accessed;
 5. Type of transaction;
 6. The prescription or transaction number if assigned; and
 7. The name of the prescriber.
 - (c) All events involving user database modifications shall be recorded electronically and maintained.
 - (d) A twenty-four (24) hour emergency call center shall be available for any ADS malfunction.
 - (5) The stocking of all medications in an ADS shall be performed by a:
 - (a) Pharmacist;
 - (b) Pharmacist intern; or
 - (c) Certified pharmacy technician who shall be under the

supervision of a pharmacist on-site.

(6) If the pharmacy utilizes a tamper resistant barcoding technology, microchip, or other equivalent tamper-resistant ADS, a pharmacist-verified drug may then be loaded by a pharmacist-in-charge trained pharmacist, pharmacist intern, or certified pharmacy technician.

(7) A record of medications stocked in an ADS shall be maintained for five (5) years and shall include identification of the person stocking the ADS and the pharmacist checking for accuracy.

(8) The pharmacist-in-charge shall provide a policy for accounting for medications removed from an ADS and subsequently wasted.

(9) The pharmacist-in-charge shall provide a policy for accounting for medications returned to an ADS.

Section 5. Incorporation by Reference.

(1) "USP Chapter 7 Labeling", (September 1, 2023)[~~(December 1, 2017)~~], is incorporated by reference.

(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. through 4:30 p.m. or on the board's Web site at <https://pharmacy.ky.gov/statutesandregulations/Pages/default.aspx>.

CHRISTOPHER HARLOW, Pharm.D., Executive Director

APPROVED BY AGENCY: June 4, 2024

FILED WITH LRC: June 4, 2024 at 11:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 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 August 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: 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 regulates pharmacy services in long-term care facilities.

(b) The necessity of this administrative regulation: KRS 315.191 requires the board to regulate and control all matters set forth relating to pharmacists, pharmacies and the dispensing of drugs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes rules for pharmacy services, as authorized in KRS 315.191(1)(a).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Pharmacists and pharmacies will have a clear understanding of what is authorized and what is not authorized regarding pharmacy services in long-term care facilities.

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

(a) How the amendment will change this existing administrative regulation: The amendment ensures that the automated dispensing systems utilized in long-term care facilities are loaded in a tamper-proof manner where drugs cannot be diverted by technicians loading

the systems.

(b) The necessity of the amendment to this administrative regulation: To ensure that the risk of drug diversion is mitigated.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.191(1)(a) authorizes the board to regulate all matters relating to pharmacists and pharmacies. Pharmacies service long-term care facilities ensuring drug stocks are maintained for dispensing.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will ensure pharmacists and technician duties are clearly articulated and that automated dispensing systems are loaded in such a way that diversion is not a possibility.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Pharmacies serving long-term care facilities, pharmacists and technicians.

(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 and pharmacies that serve long-term care facilities will need to ensure that they familiarize themselves with the new rule regarding tamper-resistant containers for automated dispensing systems.

(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): There will be a reduced risk of diversion and tampering with prescription drugs. (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 and pharmacies equally.

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

(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 Interpreters for the Deaf and Hard of Hearing (Amendment)

201 KAR 39:001. Definitions for 201 KAR Chapter 39.

RELATES TO: KRS 309.300(4), 309.301(2)(a), 309.304

STATUTORY AUTHORITY: KRS 309.304(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.304(3) requires the Kentucky Board of Interpreters for the Deaf and Hard of Hearing to promulgate administrative regulations pertaining to the practice and licensure of a deaf or hearing[an] interpreter, a deaf or hearing[an] interpreter intern, or a deaf or hearing student in training. This administrative regulation establishes definitions for 201 KAR Chapter 39.

Section 1. Definitions.

(1) "American Sign Language Proficiency Interview (ASLPI) as administered by Gallaudet University" means the assessment that rates the ability to use American Sign Language grammar and vocabulary in most formal and informal conversations on social and work topics.

(2) "BEI" means the Board of Evaluation of Interpreters sponsored by the Department of Assistive and Rehabilitative Services in Texas, and the University of Arizona National Center for Interpretation Testing, Research, and Policy.

(3) "Board-approved supervisor[mentor]" means a licensed interpreter in this state or the resident of another state who meets the requirements established by 201 KAR 39:075.[:]

~~[(a)] [Meets the requirements for licensure in this state as set forth in KRS 309.300 to 390.319 and 201 KAR Chapter 39;]~~

~~[(b)] [Holds a valid certificate meeting the requirements for full licensure for a minimum of three (3) years prior to serving as a mentor; and]~~

~~[(c)] [Has completed forty-five (45) hours of continuing education since obtaining certification.]~~

(4) "Case manager" means a member of the board appointed by the chair of the board to review complaints and investigative reports, and to participate in informal proceedings to resolve a formal

complaint.

(5) "CASLI" means the Center for Assessment of Sign Language Interpretation.

(6) "CGKE" means the CASLI Generalist Knowledge Exam is an exam administered by CASLI to both hearing and deaf candidates.

(7) "CGPE-NIC" means the CASLI Generalist Performance Exam-NIC administered to hearing candidates after passing the CGKE.

(8) "CGPE-CDI" means the CASLI Generalist Performance Exam-CDI administered to deaf candidates after passing the CGKE.

(9) [(5)] "Certificate of Interpretation (CI) granted by RID" means a certificate indicating that the holder has demonstrated the ability to interpret between American Sign Language and spoken English in both sign-to-voice and voice-to-sign, without consideration of the interpreter's ability to transliterate.

(10) [(6)] "Certificate of Transliteration (CT) granted by RID" means a certificate indicating that the holder has demonstrated the ability to transliterate between English-based sign language and spoken English in both sign-to-voice and voice-to-sign, without consideration of the transliterator's ability to interpret.

(11) [(7)] "Certified Deaf Interpreter (CDI) granted by RID" means a certificate indicating the holder of this certificate is an interpreter who is deaf or hard of hearing, has passed comprehensive written and performance tests, and is recommended for a broad range of assignments where an interpreter who is deaf or hard of hearing would be beneficial.

(12) [(8)] "Chair" means the chair or vice-chair of the board.

(13) [(9)] "Charge" means a specific allegation contained in a formal complaint issued by the board alleging a violation of a specified provision of KRS 309.300 to 309.319, 201 KAR Chapter 39, or any other state or federal statute or administrative regulation.

(14) [(10)] "Complaint" means any written or videotaped allegation of misconduct by a licensed individual that might constitute a violation of KRS 309.300 to 309.319, 201 KAR Chapter 39, or any state or federal statute regulating the practice of interpreting.

(15) [(11)] "Complaint screening committee" means a committee consisting of three (3) persons on the board appointed by the chairman of the board to review complaints and investigative reports, and to participate in informal proceedings to resolve a formal complaint or recommend action to the board.

(16) [(12)] "Comprehensive Skills Certificate (CSC) granted by RID" means a certificate indicating that the holder has demonstrated the ability to interpret between American Sign Language and Spoken English and to transliterate between spoken English and an English-based sign language.

(17) [(13)] "Conditional Legal Interpreting Permit-Relay (CLIP-R) granted by RID" means that the holder of this conditional permit has completed a RID-recognized training program designed for interpreters and transliterators who work in legal settings, who are also deaf or hard of hearing, and who are recommended for a broad range of assignments in the legal setting.

(18) [(14)] "Cued Language Transliterator National Certification Examination (CLTNCE)" means the examination which measures skills that satisfy the TECUnit minimum standard of both knowledge and skills in cued language transliteration and passage of which is required to recommend the individual for limited settings that require cued speech.

(19) [(15)] "Deaf Interpreter" means an individual who is deaf or hard of hearing and holds licensure or temporary licensure indicating the holder is an interpreter who is deaf or hard of hearing, has submitted proof of qualification to the board, and is recommended for a broad range of assignments where an interpreter who is deaf or hard of hearing would be beneficial.

(20) [(16)] "Deaf or Hard of Hearing Individuals" means individuals who have hearing disorders and who cannot hear and understand speech clearly through the ear alone with or without amplification, as verified by a licensed medical professional specializing in the provision of services to the deaf and hard of hearing.

(21) [(17)] "Education Interpreter Performance Assessment (EIPA) granted by Boys Town National Research Hospital" means a proficiency assessment for K-12 interpreting only, which indicates

that the holder:

(a) Has demonstrated the ability to expressively interpret classroom content and discourse;

(b) Has demonstrated the ability to receptively interpret student sign language;

(c) Is not limited to any one sign language or system; and

(d) Is recommended to work with students who predominately use American Sign Language (ASL), Manually-Coded English (MCE), or Pidgin Sign English (PSE).

(22) [(18)] "Educational Certificate: K-12 (Ed: K-12) granted by RID" means that the holder has demonstrated:

(a) The ability to interpret classroom content, discourse, and student sign language; and

(b) Proficient expressive and receptive interpreting skills in all elementary and secondary school classroom settings.

(23) [(19)] "Formal complaint" means a formal administrative pleading authorized by the board which:

(a) Sets forth charges against a licensed individual or other person; and

(b)

1. Commences a formal disciplinary proceeding pursuant to KRS Chapter 13B; or

2. Requests the court to take criminal or civil action.

(24) [(20)] "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching a dispensation of any matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

(25) [(21)] "Interpretation Certificate (IC) granted by RID" means that the holder has demonstrated the ability to interpret between American Sign Language and spoken English.

(26) [(22)] "Interpreting Certificate/Transliteration Certificate (IC/TC) granted by RID" means that the holder has demonstrated the ability to transliterate between English and a signed code for English and the ability to interpret between American Sign Language and spoken English.

(27) [(23)] "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint.

(28) [(24)] "Licensure year" means the period between July 1st of each year and June 30th of the following year or the time from which a license or temporary license was granted until the next June 30th.

(29) [(25)] "Master Comprehensive Skills Certificate (MCSC) granted by RID" means that the holder has demonstrated a higher standard of performance than holders of the CSC and is recommended for a broad range of interpreting and transliterating assignments.

(30) [(26)] "NAD" means the National Association of the Deaf.

(31) [(27)] "NAD Level III (Generalist)" means that the holder has demonstrated average voice-to-sign skills, good sign-to-voice skills, and the minimum competence needed to meet generally accepted interpreter standards, except that this individual is not qualified for all situations.

(32) [(28)] "NAD Level IV (Advanced)" means that the holder has demonstrated excellent voice-to-sign skills and above average sign-to-voice skills, and this individual is recommended for most situations.

(33) [(29)] "NAD Level V (Master)" means that the holder has demonstrated superior voice-to-sign skills and excellent sign-to-voice skills, and this individual is recommended for a broad range of interpreting assignments.

(34) [(30)] "National Interpreter Certification (NIC)" means a certification indicating that the holder has passed the NIC Knowledge exam [as administered by RID] and has scored within the standard range on the interview and performance portions of the test.

(35) [(31)] "National Interpreter Certification (NIC Advanced)" means a certification indicating that the holder has passed the NIC Knowledge exam [as administered by RID], scored within the standard range on the interview portion, and scored within the high range on the performance portion of the test.

(36) [(32)] "National Interpreter Certification Master (NIC Master)" means a certification indicating that the holder has passed the NIC Knowledge exam [as administered by RID] and has scored

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within the high range on both the interview and performance portions of the test.

~~(37)~~~~(33)~~ "Nationally Recognized Organization" means an organization that owns or administers an interpreting skills assessment that has been adopted by law or regulation by two (2) or more state agencies or state regulatory boards.

~~(38)~~ "Nonresident Interpreter" means a person who resides in another state and engages in the practice of interpreting for less than twenty (20) days without a Kentucky license.

~~(39)~~ "Nonresident Interpreter Registry" means the registry required for tracking the number of days of service a nonresident interpreter provides in Kentucky which is authorized without a license.

~~(40)~~~~(34)~~ "One (1) continuing education hour" means sixty (60) contact minutes of participating in continuing education experiences.

~~(41)~~~~(35)~~ "Oral Interpreting Certificate. Comprehensive (OIC:C) granted by RID" means a certificate indicating that the holder has demonstrated the ability to transliterate a spoken message from a person who hears to a person who is deaf or hard-of-hearing and the ability to understand and repeat the message and intent of the speech and mouth movements of the person who is deaf or hard-of-hearing.

~~(42)~~~~(36)~~ "Oral Interpreting Certificate. Spoken to Visible (OIC:SV) granted by RID" means a certificate indicating that the holder has demonstrated the ability to transliterate a spoken message from a person who hears to a person who is deaf or hard-of-hearing.

~~(43)~~~~(37)~~ "Oral Interpreting Certificate. Visible to Spoken (OIC:VS) granted by RID" means a certificate indicating that the holder has demonstrated the ability to understand the speech and silent mouth movements of a person who is deaf or hard-of-hearing and to repeat the message for a hearing person.

~~(44)~~~~(38)~~ "Oral Transliteration Certificate (OTC) granted by RID" means a certificate indicating that the holder has demonstrated ability to transliterate a spoken message from a person who hears to a person who is deaf or hard-of-hearing and the ability to understand and repeat the message and intent of the speech and mouth movements of the person who is deaf and hard-of-hearing.

~~(45)~~~~(39)~~ "Reverse Skills Certificate (RSC) granted by RID" means a certificate indicating that the holder:

- (a) Is deaf or hard of hearing; and
- (b) Has demonstrated the ability to:

1. Interpret between American Sign Language and English-based sign language; or

2. Transliterate between spoken English and a signed code for English.

~~(46)~~~~(40)~~ "Revoked" means the process by which the board terminates all rights and privileges associated with that license, in settlement of a disciplinary action initiated by the board.

~~(47)~~~~(41)~~ "RID" means Registry of Interpreters for the Deaf, Inc.

~~(42)~~ ["~~Sign Communication Proficiency Interview (SCPI) as developed by National Technical Institute for the Deaf" means the assessment that rates the ability to communicate expressively and receptively in a video-taped one-on-one interview or conversation with a trained interviewer.~~]

~~(48)~~~~(43)~~ "Sign Language Proficiency Interview (SLPI) as developed by National Technical Institute for the Deaf" means the assessment that rates the ability to communicate expressively and receptively in a video-taped one-on-one interview or conversation with a trained interviewer.

~~(49)~~~~(44)~~ "Specialist Certificate: Legal (SC:L) granted by RID" means a certificate indicating that the holder has demonstrated specialized knowledge of legal settings and greater familiarity with language used in the legal system and is recommended for a broad range of assignments in the legal setting.

~~(50)~~~~(45)~~ "Specialist Certificate: Performing Arts (SC:PA) granted by RID" means a certificate indicating that the holder has demonstrated specialized knowledge in performing arts interpretation and is recommended for a broad range of assignments in the performing arts setting.

~~(51)~~~~(46)~~ "TECUnit" means the National Training, Evaluation, and Certification Unit.

~~(52)~~~~(47)~~ "Transliteration Certificate (TC) granted by RID"

means a certificate indicating that the holder has demonstrated the ability to transliterate between spoken English and a signed code for English.

~~(53)~~~~(48)~~ "Voluntary surrender" means the process by which a person who holds a license issued by the board, knowingly and willingly, returns the license to the board, forfeiting all rights and privileges associated with that license, in settlement of a disciplinary action initiated by the board.

MARVA JOHNSON, Chair

APPROVED BY AGENCY: June 12, 2024

FILED WITH LRC: June 12, 2024 at 4:20 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2024, at 11:00 a.m., at the Mayo-Underwood Building, Room 127CW, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 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 by using the PPC public comment portal at the address listed below.

CONTACT PERSON: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov, link to PPC public comment portal: https://ppc.ky.gov/reg_comment.aspx.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This defines terms for this regulatory chapter.

(b) The necessity of this administrative regulation: This defines terms for this regulatory chapter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This defines terms for this regulatory chapter.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds definitions for a change in the nationally recognized organization for certification and strike reference to "mentor".

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary because the nationally recognized organization for certification has changed and references needed to be added and defined. Additionally, "mentor" has been changed to "supervisor" to be consistent with the requirements of KRS 309.312(3) relating to training under the supervision of a licensed interpreter. Definitions for "nonresident interpreter" and "nonresident interpreter registry" have been added to clarify the meaning of a new regulation requiring registration for services being provided in the Commonwealth that are authorized by KRS 309.301(2)(a).

(c) How the amendment conforms to the content of the authorizing statutes: KRS 309.312 requires applicants to meet current certification standards from a nationally recognized organization at the requisite level for sign language interpreters and consistency with KRS 309.312(3) relating to training under the supervision of a licensed interpreter. The amendment conforms to the authorizing statute, KRS 309.304(3) providing that the Board shall promulgate necessary and reasonable administrative regulations to effectively carry out and

enforce the provisions of KRS 309.300 to 309.319.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will incorporate the current nationally recognized organization for certification to ensure applicants have up to date skills and establish standards for supervision within the definition and strike reference to “mentor” which has a different connotation than “supervisor”, and provide definitions for a nonresident interpreter and nonresident interpreter registry that will provide a means to track the number of days an unlicensed interpreter provides services in Kentucky without the protections afforded to Kentucky consumers by the licensing requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 533 full and 45 temporarily licensed interpreters, and an unknown number of nonresident interpreters in Kentucky who may be providing services for less than twenty “20” days per year in Kentucky

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: More individuals will be able to obtain licensure with the inclusion of current national certifying entities being added to the regulations. Additionally, nonresident interpreters without a Kentucky license and the register being created to track services will understand who they are and what the registry is.

(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 cause any increase in cost for applicants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): More individuals will be able to obtain licensure with the inclusion of current national certifying entities being added to the regulations and temporary licensees and the supervisor will have a clearer understanding of the role and expectations for supervision. Additionally, Kentucky will have a way to track the number of days a nonresident interpreter provides unlicensed services in Kentucky.

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

(a) Initially: No new costs will be incurred.

(b) On a continuing basis: No new costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board’s operations are funded by fees paid by credential holders and applicants.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

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 309.304, KRS 309.312.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Board of Interpreters for the Deaf and Hard of Hearing is an administrative body created by KRS 309.302 and the promulgating agency.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: Unknown.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no difference in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire

departments, school districts): None anticipated.

(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 difference in expenditures, revenues or cost savings to local entities in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): There are no other regulated entities not otherwise listed.

(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: There is no anticipated fiscal impact to this administrative regulation.

(b) Methodology and resources used to determine the fiscal impact: Methodology and resources was a review of the existing budget by the board’s fiscal administrator as well as consideration of the amendment and whether staff time and costs will be increased.

(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: Methodology and resources was a review of the existing budget by the board’s fiscal administrator as well as consideration of the amendment and whether staff time and costs will be increased.

BOARDS AND COMMISSIONS

Board of Interpreters for the Deaf and Hard of Hearing (Amendment)

201 KAR 39:030. Application; qualifications for full licensure; and certification levels.

RELATES TO: KRS 309.304(1), 309.312(1)(b)

STATUTORY AUTHORITY: KRS 309.304(3), 309.312(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.304(3) and 309.312(1)(b) require the Kentucky Board of Interpreters for the Deaf and Hard of Hearing to promulgate an administrative regulation establishing the requirements for an applicant for licensure as an interpreter for the deaf and hard of hearing. This administrative regulation establishes these requirements.

Section 1. Application. Each applicant for a full license shall:

(1) Submit a completed Application for Licensure form to the board;

(2) Pay the application and license fee as set forth in 201 KAR 39:040; and

(3) Submit proof of valid certification from one (1) of the following nationally recognized organizations:

(a) At a level recognized by RID, with the exception of NAD III;

(b) [At EIPA-level 4.0 and passage of the EIPA written;]

[(e)] TECUnit;

[(c)] [(e)] BEI Advanced or better achieved within three (3) years of application; or

[(d)] [(e)] Other certifications as described in 201 KAR 39:080, if applying for licensure via reciprocity.

Section 2. Appeal of Denial of an Application for Licensure.

(1) If an Application for Full Licensure is denied, the applicant shall have the right to appeal that preliminary determination.

(2) An appeal shall be:

(a) Submitted to the board in writing by certified mail; and

(b) Received by the board within thirty (30) days after the date the applicant receives the notice of preliminary denial by certified mail or by email message delivered to the addresses stated on the Application for Licensure.

(3) The appeal of a preliminary denial of an Application for Licensure shall be held in accordance with the provisions of KRS Chapter 13B.

Section 3. Those fully licensed with an EIPA level 4.0 or 3.5 and passage of the EIPA written shall have until July 1, 2030, to achieve a nationally recognized certification as identified in Section 1 of this administrative regulation.

Section 4. Incorporation by Reference.

(1) "Application for Full Licensure", DPL-KBI-001, April 2024 [December 2016], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing, 500 Mero Street, [911 Leewood Drive,] Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. and on the board's Web site at www.kbi.ky.gov.

MARVA JOHNSON, Chair

APPROVED BY AGENCY: June 12, 2024

FILED WITH LRC: June 12, 2024 at 4:20 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2024, at 11:00 a.m., at the Mayo-Underwood Building, Room 127CW, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 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 by using the PPC public comment portal at the address listed below.

CONTACT PERSON: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov, link to PPC public comment portal: https://ppc.ky.gov/reg_comment.aspx.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the licensure of persons who wish to practice in the state as a Licensed Interpreter for the Deaf and Hard of Hearing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the process and minimum certification testing score for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 309 requires the board to verify the qualifications of and establish a procedure for the licensure of persons who wish to practice in the state as a Licensed Interpreter for the Deaf and Hard of Hearing. This administrative regulation establishes the minimum qualifications and requirements for licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the applicants of the examinations required, minimum test scores, and requirements for obtaining licensure from the board.

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

(a) How the amendment will change this existing administrative regulation: The amendment will clarify this regulation relates only to applicants for full licensure; strikes the EIPA level 4.0 and passage of the EIPA written as qualification for full licensure; and provides for a revision to the form for full licensure and an update to the form.

(b) The necessity of the amendment to this administrative regulation: The Policy Committee recommended amending the regulation to clarify its application to full licensure and the board deemed the amendment necessary to clarify confusion among applicants as to whether the regulation related to temporary licenses. Additionally, the EIPA is not a nationally recognized certification but only a testing instrument only intended for service in K-12 schools. The EIPA level 3.5 and passage of the EIPA written remains qualifying for temporary licensure. There is a limited grandfather clause for those licensees who qualified for full licensure with only the EIPA. They will have five (5) years to obtain a national certification to remain fully licensed.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 309.304(1) requires the board to evaluate the qualifications for applicants for licensure and establish procedures for the issuance of licenses. The amendment conforms with the promulgating authority to establish administrative regulations for effective administration.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify that the current application for licensure form will be used for full licensure and a new form will be created for applicants for temporary licensure. This amendment will help alleviate current confusion related to the application process. The amendment will also ensure individuals who are not qualified to provide interpreting services generally will not have a full license; and motivate those with the EIPA to obtain their national certification to provide interpreting services as a fully licensed interpreter. This will ensure students have quality language services for success.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 533 full licensees and 45 temporary licensees. This regulation will also affect new applicants seeking temporary or full licensure from the board. There are currently seventeen (17) known fully licensed interpreters with the EIPA of 4.0. There are an additional sixty (60) licensees who were fully licensed in 2023 and 2024 with no qualifying classification on record, some of whom may be affected by this administrative regulation. Applications for new licensure are filed on paper and the data system does not capture this information when scanned into eServices. However, these licensees must file the annual renewal application online through eServices during the annual renewal period ending July 1, or within the sixty (60) day grace period thereafter and must file proof of current nationally recognized certification. After the renewal and grace period expire on September 1, 2024, the board will know the exact number of licensees 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: This applicant for full licensure will be required to complete the application for consideration by the board. Fully licensed interpreters who are EIPA-qualified interpreters will have five (5) years to obtain a national certification to maintain their full license.

(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 application for full licensure as set forth in 201 KAR 36:040.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for licensure will understand the regulation relates only to application for full licensure. Additionally, licensees who are EIPA-qualified will gain stronger skills to provide quality services by obtaining a national certification within the required timeframe.

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

- (a) Initially: No new costs will be incurred.
- (b) On a continuing basis: No new costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation only sets the procedure for obtaining a full license. This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.304, KRS 309.312.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Board of Interpreters for the Deaf and Hard of Hearing is an administrative body created by KRS 309.302 and the promulgating agency.

- (a) Estimate the following for the first year:
Expenditures: None.
Revenues: None.
Cost Savings: Unknown.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no difference in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None anticipated.

- (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 difference in expenditures, revenues or cost savings to local entities in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): There are no other regulated entities not otherwise listed.

- (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: There is no anticipated fiscal impact to this administrative regulation.

(b) Methodology and resources used to determine the fiscal impact: Methodology and resources was a review of the existing budget by the board's fiscal administrator as well as consideration of the amendment and whether staff time and costs will be increased.

(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: Methodology and resources was a review of the existing budget by the board's fiscal administrator as well as consideration of the amendment and whether staff time and costs will be increased.

BOARDS AND COMMISSIONS
Board of Interpreters for the Deaf and Hard of Hearing
(Amendment)

201 KAR 39:040. Fees.

RELATES TO: KRS 309.312(1)(a), (4), 309.306, 309.314(1), (2), (4), (6)

STATUTORY AUTHORITY: KRS 309.304(3), 309.314(1), (2), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.304(3) and 309.314 require the Board of Interpreters for the Deaf and Hard of Hearing to promulgate administrative regulations to effectively carry out the provisions of KRS 304.300 to 309.319 and to establish requirements concerning license fees. This administrative regulation establishes all fees charged by the board.

Section 1. Fees for Licensure.

(1) The application fee for initial licensure shall consist of the following:

(a) A nonrefundable seventy-five (75)~~[fifty (50)]~~ dollar fee for general application; and

(b) A \$150~~[\$125]~~ fee for initial licensure which shall be refunded if:

- 1. The application is denied; and
 - 2. The applicant submits a written request for the refund.
- (2) The annual renewal fee shall be \$150~~[\$125]~~. Renewal fees shall not be refundable.

Section 2. Fees for Temporary Licensure.

(1) The application fee for initial temporary licensure shall be seventy-five (75)~~[fifty (50)]~~ dollars. This fee shall be nonrefundable.

(2) The initial licensure fee for a temporary license shall be \$150~~[\$125]~~. ~~This fee shall be nonrefundable. [If the application for initial temporary licensure is denied, the initial licensure fee shall be refunded upon written request of the applicant.]~~ The extension application fee to maintain or extend a temporary license shall be \$150~~[\$125]~~. This fee shall be nonrefundable.

Section 3. Late Renewal ~~[and Extension]~~ Fees.

(1) All licenses renewed during the sixty (60) day grace period shall require payment of a late renewal fee of \$100~~[sixty (60) dollars]~~ in addition to the current renewal fee set forth in Section 1(3) of this administrative regulation.

(2) ~~[All temporary licenses extended during the sixty (60) day grace period shall pay a late fee of thirty-five (35) dollars in addition to the current extension application fee set forth in Section 2(3) of this administrative regulation.]~~

~~[(3)]~~ Late renewal ~~[and extension]~~ fees shall be nonrefundable.

Section 4. Reinstatement Fee.

(1) The reinstatement fee for a license terminated pursuant to KRS 309.314(3) shall be \$150~~[\$125]~~, in addition to the current renewal or extension application fee as set forth in Section 1(3) or 2(3) of this administrative regulation.

(2) The reinstatement fee shall be nonrefundable.

Section 5. Fee for a Reciprocal License.

(1) The fee for a reciprocal license shall be \$250.

(2) The reciprocal license fee shall be nonrefundable.

Section 6. Duplicate License Fee. The fee for a duplicate license shall be ten (10) dollars.

MARVA JOHNSON, Chair

APPROVED BY AGENCY: June 12, 2024

FILED WITH LRC: June 12, 2024 at 4:20 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2024, at 11:00 a.m., at the Mayo-Underwood Building, Room 127CW, 500 Mero Street, Frankfort, Kentucky. Individuals

interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 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 by using the PPC public comment portal at the address listed below.

CONTACT PERSON: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov, link to PPC public comment portal: https://ppc.ky.gov/reg_comment.aspx.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes fees for interpreters.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the fees which generate the revenue that the Board needs to operate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with KRS 309.309(3), KRS 309.312(1)(a), and KRS 309.314(1), (2), and (4) which authorize the Board to charge fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists the board in establishing fees which generate the revenue which the Board needs to operate effectively to protect the public it is charged to serve.

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

(a) How the amendment will change this existing administrative regulation: The amendment increases fees and strikes reference to refunding the licensure fee for a denial and the late fee for temporary licensees since there is no grace period.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to increase fees because the costs for administrative and legal services have led the Board to operate with an annual budget which leaves no room for needed services that may be requested under the ADA or investigations into board complaints; and, to strike language authorizing the board to refund the licensure fee for denials; and, to strike the late fee for temporary licensees since there is no grace period but rather a requirement for reinstatement. The Board is also in hopes the increase in the late fee will serve as a deterrent for filing a late renewal.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation is in conformity with the authorizing statute that gives the board the ability to promulgate regulations related to fees as are necessary to operate in such a way to protect the public it is charged to serve.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide the Board with additional revenue necessary to continue to operate and fulfill its statutory duties.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 533 full and 45 temporarily licensed interpreters who will be affected, as well as an unknown number of new applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The individuals identified in question (3) will be required to pay greater fees to obtain, renew or reinstate a license.

(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 those entities twenty-five (25) – forty (40) dollars in additional costs depending on whether they apply for or hold temporary or permanent licensure or file a late renewal during the grace period.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Board will be able to continue providing the services that the Board currently provides including the ability to provide reasonable accommodations for services that may be requested and for the protection of the public by investigating unethical and illegal practitioners and ensuring that qualifications are met by initial licensees.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment specifically relates to a fee increase but the change will not cause any additional services to be used which would require additional revenue to implement the regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation increases fees.

(9) TIERING: Is tiering applied? This regulation does not distinguish between similarly situated individuals on the basis of any factor.

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 309.309(3), KRS 309.312(1)(a), and KRS 309.314(1), (2), and (4).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Board of Interpreters for the Deaf and Hard of Hearing is an administrative body created by KRS 309.302 and the promulgating agency.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: This amendment should generate approximately an additional \$17,000 in revenue for Board operations and expenses.

Cost Savings: Unknown.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This amendment should generate approximately an additional \$17,000 in revenue for Board operations and expenses.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None anticipated.

(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 difference in expenditures, revenues or cost savings to local entities in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): There are no other regulated entities not otherwise listed.

(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 fee increase should generate about \$17,000 in additional funds as it constitutes a twenty-five (25) dollar increase annually on approximately 533 full licensees and a twenty-five (25) dollar increase on approximately 45 temporary licensees. Additionally, new applicants will be paying a twenty-five (25) dollar increase which should provide some additional revenue if the Board continues to gain new licensees. Additionally, the late renewal fee for filing for renewal during the grace period will increase from sixty (60) dollars to \$100 which will hopefully deter someone from filing late renewal. Costs associated with procuring an investigator as may be needed for complaints cannot yet be determined but any government contract awarded for an investigator will have a cap based on budget allowances and will hinge on the number of complaints filed requiring investigation, which cannot be determined. Further, requests for reasonable accommodations under the ADA are dependent upon the required services and a dollar figure cannot be determined on unknown requests and needs. However, one of the services now being requested is costly, as explained in Q. 3(c) herein, and may become an accommodation that will be required to be provided. The board currently has \$49,200 each fiscal year for its operations. Each quarter the Board is allotted \$12,300. Any dollars left at the end of each quarter will roll over to the next quarter, but will not roll over to the next fiscal year. At the end of FY2023, there was \$6,461.05 left of the Board's allotment that was not spent. However, the Board is initiating a Request for Proposal (RFP) for an investigative services contract with a cap of \$5000, and the Board anticipates the upcoming need to provide Communication Access Real-time Translation (CART) services at its meetings in the future. These services range in cost from \$125 - \$150 per hour with a two (2) hour minimum, with mileage or set-up fees in some cases for in-person services. KBI Board meetings are typically three (3) to five (5) hours in length and the board has four (4) regular meetings per year. Additionally, the Regulations and Complaints Committees meet as needed, which are open meetings and may also require CART services. Finally, the Policy Committee is a creature of statute under the umbrella of the Board. When the Policy Committee meets the Board provides administrative services and contracts for interpreting services as are required for open meetings, and which may also require CART services. If CART services are requested or otherwise offered, the current budget will not cover these Board expenses. Therefore, the Board believes additional funds will be needed to meet obligations for ongoing board expenses and obligations.

(b) Methodology and resources used to determine the fiscal impact: The board requested its fiscal administrator for a budget analysis and extrapolate the increase in board funding based on what it considered to be a modest increase in fees, in an effort to fund the investigation contract, CART services and other accommodation requests.

(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: Methodology and resources was a review of the existing budget by the board's fiscal administrator as well as consideration of the amendment and whether staff time and costs will be increased.

BOARDS AND COMMISSIONS
Board of Interpreters for the Deaf and Hard of Hearing
(Amendment)

201 KAR 39:050. Renewal and reinstatement of full licenses, ~~extension of temporary licenses and reinstatement.~~

RELATES TO: KRS 309.304(5), 309.312, 309.314.
 STATUTORY AUTHORITY: KRS 309.304(3), 309.312, 309.314
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.304(3), 309.312, and 309.314 require the Board of Interpreters for the Deaf and Hard of Hearing to promulgate administrative regulations to carry the provisions of KRS 309.300 to 309.319; to establish certification requirements for licensure; and to establish renewal and reinstatement fees. This administrative regulation establishes requirements for renewal of licenses, ~~extension of temporary licenses,~~ and reinstatement.

Section 1. Renewal of Full Licenses. A person licensed as an interpreter shall renew that license annually, as required by KRS 309.314(1) by submitting the following to the board:

- (1) A completed License Renewal Application form;
- (2) The renewal fee as established in 201 KAR 39:040;
- (3) Proof of current certification of the licensee as an interpreter for the deaf and hard of hearing by a nationally recognized organization; and
- (4) Documentation of completion of the continuing education requirement established in 201 KAR 39:090.

Section 2. Grace Period. If a full license is not renewed by July 1, it may be renewed during the following sixty (60) day period, in accordance with KRS 309.314, by:

- (1) Complying with the requirements established in Section 1 of this administrative regulation; and
- (2) Submitting the late renewal fee established in 201 KAR 39:040.

Section 3.

(1) Reinstatement of full license. A license not renewed prior to the close of the sixty (60) day grace period, in accordance with KRS 309.314(4), may be reinstated upon:

- ~~(2)(a)~~ Payment of the renewal fee plus a reinstatement fee as established by 201 KAR 39:040, Section 4(1);
- ~~(3)(b)~~ Submission of a completed Reinstatement Application for Licensed Interpreters form to the board;
- ~~(4)(e)~~ Submission of evidence of completion of continuing education as required by 201 KAR 39:090, Section 10; and
- ~~(5)(d)~~ Proof of current certification of the licensee as an interpreter for the deaf and hard of hearing by a nationally recognized organization.

~~(2)~~ [The board may reinstate a temporary license only if the licensee submits proof sufficient to the board of situations such as:]

- ~~(a)~~ [Medical disability of the licensee;]
- ~~(b)~~ [Illness of the licensee or an immediate family member; or]
- ~~(c)~~ [Death or serious injury of an immediate family member.]

~~(3)~~ [A request for reinstatement of a temporary license involving medical disability or illness shall be:]

- ~~(a)~~ [Submitted by the person holding a license; and]
- ~~(b)~~ [Accompanied by a verifying document signed by a licensed physician.]

~~(4)~~ [To request reinstatement of a temporary license a licensee shall submit:]

- ~~(a)~~ [Sufficient proof in support of the reinstatement as required by subsections (2) and (3) of this section;]
- ~~(b)~~ [A completed Temporary License Reinstatement Application form;]

~~(c)~~ [The appropriate fee set forth in 201 KAR 39:040;]

~~(d)~~ [Proof of completion of the continuing education]

requirements in 201 KAR 39:090;]

~~[(e)] [A letter recommending the reinstatement and extension written by the Mentor(s) of Record for the previous licensure term which describes the progress achieved by the mentee. The board may waive this requirement upon submission of proof by the licensee that the licensee has substantially met the goals stated in the plan of supervision; and]~~

~~[(f)] [A revised plan of supervision for the upcoming licensure year.]~~

~~Section 4. [Extensions of Temporary Licenses.]~~

~~[(1)] [Temporary licenses shall expire on July 1 each year. To extend a temporary license, a request for extension shall be submitted by July 1 each year.]~~

~~[(2)] [To request an extension of a temporary license:]~~

~~[(a)] [A temporary licensee shall submit:]~~

~~[1.] [A completed Temporary License Extension Application form;]~~

~~[2.] [The appropriate fee set forth in 201 KAR 39:040;]~~

~~[3.] [Proof of completion of the continuing education requirements set forth in 201 KAR 39:090;]~~

~~[4.] [A letter recommending extension written by the Mentor(s) of Record for the previous licensure term which describes the progress achieved by the mentee. The board may waive this requirement upon submission of proof by the licensee that the licensee has substantially met the goals stated in the plan of supervision; and]~~

~~[5.] [A revised plan of supervision for the upcoming licensure year.]~~

~~[(b)] [A deaf or hard of hearing temporary licensee shall submit:]~~

~~[1.] [Upon applying for a first, second, or third extension:]~~

~~[a.] [A completed Temporary License Extension Application form;]~~

~~[b.] [The appropriate fee set forth in 201 KAR 39:040;]~~

~~[c.] [Proof of completion of the continuing education requirements set forth in 201 KAR 39:090;]~~

~~[d.] [A letter recommending extension written by the Mentor(s) of Record which describes the progress achieved by the Mentee. The board may waive this requirement upon submission of proof by the licensee that the licensee has substantially met the goals stated in the plan of supervision; and]~~

~~[e.] [A revised plan of supervision for the upcoming licensure year.]~~

~~[2.] [Upon applying for a fourth and subsequent extensions, a temporary license holder shall submit to the board documentation proving:]~~

~~[a.] [All requirements listed in paragraph (a) of this subsection; and]~~

~~[b.] [Proof of passage of the RID-CDI Knowledge Exam.]~~

~~[(3)] [The extensions of temporary licenses under this section shall be subject to the term limitations imposed by 201 KAR 39:070, Section 2(2)-.]~~

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

~~(1) The following material is incorporated by reference:~~

~~(a) "Full License Renewal Application", DPL-KBI-02, April 2024 [June 2017]; and~~

~~(b) "Reinstatement Application for Full License [Licensed Interpreters]", DPL-KBI-03, April 2024 [December 2016];~~

~~[(c)] ["Temporary License Reinstatement Application", December 2016; and]~~

~~[(d)] ["Temporary License Extension Application", June 2017.]~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing, 500 Mero Street, [911 Leawood Drive,] Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. and on the board's Web site at kbi.ky.gov.~~

MARVA JOHNSON, Chair

APPROVED BY AGENCY: June 12, 2024

FILED WITH LRC: June 12, 2024 at 4:20 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public

hearing on this administrative regulation shall be held on August 27, 2024, at 11:00 a.m., at the Mayo-Underwood Building, Room 127CW, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 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 by using the PPC public comment portal at the address listed below.

CONTACT PERSON: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov, link to PPC public comment portal: https://ppc.ky.gov/reg_comment.aspx.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the renewal and reinstatement application requirements, as well as the requirements for extension of a temporary license for interpreters.

(b) The necessity of this administrative regulation: This regulation is necessary to provide appropriate procedures for the application process for renewing or reinstating license or extending a temporary license as an interpreter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by ensuring that licensees have a clear understanding of the process for renewing and reinstating a license and extending a temporary license and requirements for doing so.

(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 clarify that the renewal, renewal grace period and reinstatement of license apply to full licensure only. The amendment also strikes language relating to reinstatement of a temporary license, as well as striking the terms "mentor" and "mentee" and replacing it with "supervisor" and "supervisee" to be consistent with the statutory requirement for supervision set forth in KRS 309.312(3). The amendment also strikes language permitting a waiver of the letter recommending extension by the supervisor describing progress achieved because it has never been used and the Board wished to close the loophole waiving the supervisor's recommendation for an extension. The language relating to an extension request by a deaf or hard of hearing temporary licensee has been stricken because it is repetitious and unnecessary as the extension requirements in place can be used by all temporary licensees. Additionally, the amendment will strike the reinstatement of the temporary license since there is no reinstatement authorized by statute, however extensions are authorized by statute, and move the language relating to extensions to 201 KAR 39:070 which relates only to temporary licenses in order to reduce confusion. Finally, the materials incorporated by reference will be updated and some moved in conformity with these amendments.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to reduce the confusion surrounding renewal, reinstatement and extension of full and temporary licenses and to make the regulations consistent with the statutory requirements of supervision versus mentoring and reinstatement versus extensions of temporary licenses. the

amendment also closes a loophole that would allow a temporary licensee to bypass the temporary license extension requirement, to reduce confusion created by requirements for temporary license extension by both hearing and deaf interpreters and to update the forms.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally related to the practice of interpreting.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in effective administration by clarifying what the options for renewal, reinstatement and extension are for different license types which will in turn reduce questions and confusion by licensees requiring the board to process. The amendment will also make the regulations consistent with statute which specifically precludes renewal of a temporary license and never authorized reinstatement of a temporary license in the first place.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 533 full and 45 temporarily licensed interpreters who will be affected, as well as an unknown number of new applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees will be required to apply for renewal and reinstatement of a full license; and an extension of a temporary license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees for renewal, extension or reinstatement of licensure are established in 201 KAR 36:030. There are no costs provided for in this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will understand how to apply for renewal, reinstatement and extensions of each license.

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

(a) Initially: It will not cost the administrative body any additional funds to implement this administrative regulation.

(b) On a continuing basis: It will not cost the administrative body any additional funds to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation only sets the procedure for renewal or reinstatement of a full license and extension or reinstatement of a temporary license. This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.304, KRS 309.312.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Board of Interpreters for the Deaf and Hard of Hearing is an administrative body created by KRS 309.302 and the promulgating agency.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: Unknown.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no difference in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None anticipated.

(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 difference in expenditures, revenues or cost savings to local entities in subsequent years

(4) Identify additional regulated entities not listed in questions (2) or (3): There are no other regulated entities not otherwise listed.

(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: There is no anticipated fiscal impact to this administrative regulation.

(b) Methodology and resources used to determine the fiscal impact: Methodology and resources used was a review of the existing budget by the board's fiscal administrator as well as consideration of the amendment and whether staff time and costs will be increased.

(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: Methodology and resources was a review of the existing budget by the board's fiscal administrator as well as consideration of the amendment and whether staff time and costs will be increased.

BOARDS AND COMMISSIONS

Board of Interpreters for the Deaf and Hard of Hearing (Amendment)

201 KAR 39:060. Reinstatement of full license subject to disciplinary action.

RELATES TO: KRS Chapter 13B, 309.318

STATUTORY AUTHORITY: KRS 309.304(3), 309.314

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.304(3) requires the Board of Interpreters for the Deaf and Hard of Hearing to promulgate administrative regulations to carry the provisions of KRS 309.300 to 309.3189. KRS 309.314 requires the board to promulgate administrative regulations concerning reinstatement and renewal fees, as well as evidence of completion of continuing education. This administrative regulation establishes the requirements for reinstatement of a license that has been the subject of disciplinary action by the board.

Section 1. Reinstatement of a License Revoked by Disciplinary Action of the Board.

(1) If a license has been revoked, an individual may apply for reinstatement by:

(a) Submitting a completed License Reinstatement Application Form;

(b) Paying the initial licensure fee as set forth in 201 KAR 39:040 and the reinstatement fee as set forth in 201 KAR 39:040;

(c) Submitting proof of qualification for licensure as set forth in 201 KAR 39:030; and

(d) Show evidence of completion of fifteen (15) hours of

continuing education for each year since the date of revocation in accordance with the requirements established in 201 KAR 39:090.

(2)

(a) The board shall review the reinstatement request and determine whether to reinstate the license, based on the provisions of this subsection.

(b) Based upon the information submitted, the board shall determine if the conditions for reinstatement listed in KRS 309.318(5) have been met.

(c) If the board finds that the conditions for reinstatement have been met, it shall reinstate the license.

(d) If the board finds that the conditions for reinstatement have not been met, or the applicant failed to comply with the requirements of this administrative regulation, it shall refuse to reinstate the license. The applicant may then request, and the board shall grant, a hearing on the denial conducted pursuant to KRS Chapter 13B.

Section 2. Reinstatement of a License which was Voluntarily Surrendered as if Revoked.

(1) If a license has been voluntarily surrendered as if revoked, an individual may apply for reinstatement by:

(a) Meeting of all of the requirements of Section 1(1) of this administrative regulation; and

(b) Providing documentation of the successful completion of all requirements established in the agreed order that resulted in the voluntary surrender of the license as if revoked.

(2) For a request for reinstatement of a license voluntarily surrendered as if revoked, the board shall review the reinstatement request, make its determination, and provide for an appeal in accordance with Section 1(2)(a) through (d) of this administrative regulation.

Section 3. Incorporation by Reference.

(1) "Reinstatement Application for Full License", DPL-KBI-03, April 2024, [License Reinstatement Application, 2011 form.] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing, 500 Mero Street, [Kentucky Board of Interpreters for the Deaf and Hard of Hearing, 911 Leewood Drive], Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m. and on the board's Web site at kbi.ky.gov.

MARVA JOHNSON, Chair

APPROVED BY AGENCY: June 12, 2024

FILED WITH LRC: June 12, 2024 at 4:20 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2024, at 11:00 a.m., at the Mayo-Underwood Building, Room 127CW, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 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 by using the PPC public comment portal at the address listed below.

CONTACT PERSON: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov, link to PPC public comment portal: https://ppc.ky.gov/reg_comment.aspx.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation creates a procedure for the reinstatement of a licensed terminated based on a previous disciplinary action.

(b) The necessity of this administrative regulation: This regulation provides a procedure for the reinstatement of a licensed terminated based on a previous disciplinary action.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board by creating a procedure for the reinstatement of a licensed terminated based on a previous disciplinary action.

(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 material incorporated by reference, correct the agency address and add the board's website address.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide the public with the correct address for obtaining information and to update the material incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally related to the practice of interpreting.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will correct the board's address and website information.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 533 full and 45 temporarily licensed interpreters who 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: Prospective licensees will need to meet the requirements for reinstatement of their licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees as promulgated in 201 KAR 39:040 and any costs associated with testing as required. These costs have not changed as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have the opportunity to have their license reinstated if the requirements are met.

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

(a) Initially: No new costs will be incurred by this change.

(b) On a continuing basis: No continuing costs will be incurred by this change.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation only sets the procedure for obtaining a temporary license. This administrative regulation does not establish fees.

(9) TIERING: Is tiering applied? This regulation does not distinguish between similarly situated individuals on the basis of any factor.

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 309.304, KRS 309.312.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Board of Interpreters for the Deaf and Hard of Hearing is an administrative body created by KRS 309.302 and the promulgating agency.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: Unknown.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no difference in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None anticipated.

(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 difference in expenditures, revenues or cost savings to local entities in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): There are no other regulated entities not otherwise listed.

(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: There is no anticipated fiscal impact to this administrative regulation.

(b) Methodology and resources used to determine the fiscal impact: Methodology and resources was a review of the existing budget by the board's fiscal administrator as well as consideration of the amendment and whether staff time and costs will be increased.

(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: Methodology and resources was a review of the existing budget by the board's fiscal administrator as well as consideration of the amendment and whether staff time and costs will be increased.

BOARDS AND COMMISSIONS

Board of Interpreters for the Deaf and Hard of Hearing
(Amendment)

201 KAR 39:070. Application and qualifications for temporary licensure and extensions.

RELATES TO: KRS 309.312(1)(b), (3)

STATUTORY AUTHORITY: KRS 309.304(3), 309.312

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.304(3) and 309.312(1)(b) and (3) require the board to promulgate an administrative regulation establishing the requirements for an applicant for temporary licensure as an

interpreter for the deaf and hard of hearing. This administrative regulation establishes the requirements regarding temporary licensure, including extensions.

Section 1. Application for Temporary Licensure. Each applicant shall submit:

(1) A completed Application for Temporary Licensure [~~Form, as incorporated by reference in 201 KAR 39:030~~];

(2) The appropriate application and licensure fees as required by 201 KAR 39:040;

(3) A Plan of Supervision for Temporary License from a board approved supervisor[~~mentor~~];

(4) Proof documenting passage of the CGKE, the NIC, or EIPA Knowledge Exam for anyone working in the K-12 school setting, within the last five (5) years of application. If the interpreter is deaf or hard of hearing, forty (40)[~~eighteen (18)~~] hours of continuing education focused on general interpretation and ethics[~~CDI preparation~~] may be obtained in lieu of this requirement; and

(5) Proof of achieving or holding one (1) of the following:

(a) Valid NAD Level III as a currently certified member;

(b) [~~SCPI Advanced or better, within three (3) years of application;~~

~~[(e)] SLPI Advanced or better, within three (3) years of application;~~

~~[(c)]~~[~~(f)~~] ASLPI of three and one-half (3.5) or better, within three (3) years of application;

~~[(d)]~~[~~(e)~~] EIPA of three and one-half (3.5) or better, within three (3) years of application[~~three (3.0) or better~~]; or

~~[(e)]~~[~~(f)~~] BEI Basic or better, within three (3) years of application.

Section 2. Temporary Licensure Duration.

(1) An individual may hold temporary licensure for a maximum of five (5) consecutive licensure years from the date of initial issuance.

(2) An individual who is deaf or hard of hearing may hold temporary licensure for a maximum of ten (10) consecutive licensure years from the date of initial licensure.

(3) Any [~~reinstatement or~~]extension of a temporary license shall occur during the period established in subsection (1) or (2) of this section and 201 KAR 36:050, Sections 3 and 4.

~~[(4)] [The board shall, in individual cases involving medical disability, illness, undue hardship, or active military service, or other extenuating circumstances that preclude the individual from completing the requirements, grant an extension of temporary licensure for an additional one (1) year for applicants who submit to the board.]~~

~~[(a)] [A written request for an extension of the temporary licensure term delivered to the board, by certified mail, no less than thirty (30) days before the expiration of the temporary license; and]~~

~~[(b)]~~

~~[1.] [Verifying documentation signed by a licensed physician or proper military personnel, if applicable; or]~~

~~[2.] [Documentation that provides evidence to support the extension.]~~

Section 3. Supervision Requirements.

~~[(1)] Each applicant for a temporary license shall be trained and supervised by a board-approved supervisor and shall meet the requirements of 201 KAR 39:075[~~mentor~~].~~

~~[(2)] [During the period of training and supervision the mentor shall meet with the licensee on a quarterly basis. One (1) of these meetings shall be on a face to face basis with each person being mentored. The remaining meetings may be through the use of video or video teleconferencing or any other method outlined in the approved plan of supervision.]~~

~~[(3)] [A mentor shall contract with no more than twenty (20) temporary licensees during a calendar year.]~~

Section 4. Extensions of Temporary Licenses.

(1) Temporary licenses shall expire on July 1 each year. To extend a temporary license, a request for extension shall be submitted by July 1 each year. An applicant whose temporary

license has expired may apply for an extension during the initial five (5) year period for a hearing interpreter, or the initial ten (10) year period for a deaf interpreter, from the date the temporary license was issued. The board may issue the extension for good cause shown as determined by board, and the duration of the extended temporary license shall not exceed the duration of the initial temporary license.

(2) To request an extension of a temporary license a temporary licensee shall submit:

(a) A completed Temporary License Extension Application form;

(b) The appropriate fee set forth in 201 KAR 39:040;

(c) Proof of completion of the continuing education requirements set forth in 201 KAR 39:090;

(d) A letter recommending extension written by the board-approved supervisor for the previous licensure term which describes the progress achieved by the supervisee; and

(e) A revised plan of supervision for the upcoming licensure year.

(3) The extensions of temporary licenses under this section shall be subject to the term limitations imposed by Section 2(1) and (2) of this administrative regulation.

(4) The board may extend the use of the temporary license to an applicant who has submitted an Application for Extension on or before the July 1 deadline for a period not to exceed sixty (60) days. The board shall review the application for extension prior to the expiration of the sixty (60) day period.

Section 5. Appeal of Denial of an Application for Temporary Licensure.

(1) If an Application for Temporary Licensure is denied, the applicant shall have the right to appeal that preliminary determination.

(2) An appeal shall be:

(a) Submitted to the board in writing by certified mail; and

(b) Received by the board within thirty (30) days after the date the applicant receives the notice of preliminary denial by certified mail or by email message delivered to the addresses stated on the Application for Licensure.

(3) The appeal of a preliminary denial of an Application for Licensure shall be held in accordance with the provisions of KRS Chapter 13B.

Section 6. Incorporation by Reference.

(1) "Application for Temporary Licensure", DPL-KBI-04, April 2024, is incorporated by reference.

(2) "Plan of Supervision for Temporary License", DPL-KBI-05, April 2024[40/2044], is incorporated by reference.

(3) "Temporary License Extension Application", DPL-KBI-06, April 2024.

(4)[(2)] This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing, 500 Mero Street,[914 Leewood Drive], Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. and can be found on the board website at kbi.ky.gov.

MARVA JOHNSON, Chair

APPROVED BY AGENCY: June 12, 2024

FILED WITH LRC: June 12, 2024 at 4:20 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2024, at 11:00 AM, at the Mayo-Underwood Building, Room 127CW, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 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 by using the PPC public comment portal at the address listed below.

CONTACT PERSON: Name: Sara Boswell Janes, Title: Staff Attorney III, Agency: Department of Professional Licensing, Office of Legal Services, Address: 500 Mero Street, 2 NC WK#2, Phone Number: (502) 782-2709 (office), Fax: (502) 564-4818, Email: Sara.Janes@ky.gov, Link to PPC public comment portal: https://ppc.ky.gov/reg_comment.aspx

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the requirements to obtain a temporary license as an Interpreter for the Deaf and Hard of Hearing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set the process and minimum certification testing scores for temporary licensure and establish an expiration date for certifications.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 309 requires the board to verify the qualifications of and establish a procedure for the temporary licensure of persons who wish to practice in the state as a Licensed Interpreter for the Deaf and Hard of Hearing. This administrative regulation establishes the minimum qualifications and supervision requirements for temporary licensure and the expiration date for certifications.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs the applicants of the examinations required, minimum test scores, and supervision requirements for obtaining temporary licensure from the board.

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

(a) How the amendment will change this existing administrative regulation: The amendment: 1. Clarifies the proper application for temporary licensure; 2. Requires that the temporary licensee have a board-approved "supervisor" rather than "mentor" in compliance with the requirements of KRS 309.312(3); 3. Adds the CASLI Generalist Knowledge Exam (CGKE) which is the current exam administered which replaces the NIC Knowledge Exam, which was retired on January 1, 2021, and retired with the CGKE. However, the Board will still accept passage of the NIC for applicants who took the exam prior to 2021; 4. Clarifies that the EIPA Knowledge Exam is appropriate only for those working in the K-12 school setting; 5. Strikes reference to CDI preparation since CDI is too limiting, does not have enough courses and is only offered every two (2) years and replaces it with CE focused on general interpretation and ethics; 6. Strikes reference to an assessment (SCPI) that is no longer available and increases certain skill assessment scores to ensure proper knowledge for protection of the public served; 7. Strikes language allowing the Board to grant additional extensions of temporary licensure under extenuating circumstances; 8. Strikes the language relating to the number of supervisees a supervisor may have to place the language in a new regulation relating only to supervision; 9. Inserts appeal rights for a denial; 10. To add regulations relating to extensions to the regulation relating to temporary licensure; and, 11. Updates the MIR.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary in order to: 1. Clear up confusion on the proper form to use for temporary licensure applicants; 2. To be consistent with KRS 309.312(3) requiring supervision rather than a mentor; 3. To list current examinations for licensure eligibility based on the current examinations offered for certification; 4. To increase the score to ensure individuals with EIPA Knowledge Exam passage-only have more proficiency and are limited to the K-12 school setting, the setting that assessment of skills is designed for and which is not an appropriate assessment of skills for someone working with the general public; 5. To remove courses that are not widely available and which make licensure too limiting and replace them with courses that are more readily accessible to increase opportunities for licensure; 6. To increase assessment scores and thus the level of proficiency in interpreting before issuance of a temporary license in an effort to protect the public; 7. To strike

language relating to extensions of the temporary license for extenuating circumstances since this led to extensions beyond the five (5) years authorized in Section 2.(1) and (2). Further, the Board felt the authorization for extension under extenuating circumstances was too subjective; 8. To strike all reference to reinstatement of temporary and put all regulations relating to supervision of a temporary licensee into one regulation rather than having them in multiple regulations; 9. To provide clarification on appeal rights for a denial of temporary licensure; 10. To add regulations relating to the extension of a temporary license so all regulations relating to temporary licensure are together and to reduce confusion. This was also a recommendation made by the Policy Committee; and 11. To update the MIR based on the amendments to the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 309.304(1) requires the board to evaluate the qualifications for applicants for licensure and establish procedures for the issuance of temporary licenses. KRS 309.312 requires applicants to meet current certification standards from a nationally recognized organization at the requisite level for sign language interpreters. The amendment clarifies multiple items for the proper administration of temporary licensees.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clear up substantial confusion experienced by applicants in ensuring the proper form is used and the proper application of the credential, and allow to update the certifications that have expired to ensure licensees have up to date skills.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 45 temporarily licensed interpreters and an unknown number of future applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation requires applicants to complete the current application for licensure as the first step of obtaining temporary licensure as an interpreter. This application will require licensees to obtain current certification in sign language skills and have higher scores for certain exams to qualify for temporary licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board does not anticipate any additional cost to the applicants affected by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for licensure will know the correct title of the current application for temporary licensure and will better understand the required qualifications for temporary licensure, as well as the appropriate setting for using the temporary license for those qualifying with the EIPA Knowledge Exam.

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

(a) Initially: It will not cost the administrative body any additional funds to implement this administrative regulation.

(b) On a continuing basis: It will not cost the administrative body any additional funds to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation only sets the procedure for obtaining a temporary license. This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.304, KRS 309.312.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Board of Interpreters for the Deaf and Hard of Hearing is an administrative body created by KRS 309.302 and the promulgating agency.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: Unknown.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no difference in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None anticipated.

(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 difference in expenditures, revenues or cost savings to local entities in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): There are no other regulated entities not otherwise listed.

(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: There is no anticipated fiscal impact to this administrative regulation.

(b) Methodology and resources used to determine the fiscal impact: Methodology and resources was a review of the existing budget by the board's fiscal administrator as well as consideration of the amendment and whether staff time and costs will be increased.

(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: Methodology and resources was a review of the existing budget by the board's fiscal administrator as well as consideration of the amendment and whether staff time and costs will be increased.

BOARDS AND COMMISSIONS

Board of Interpreters for the Deaf and Hard of Hearing (Amendment)

201 KAR 39:090. Continuing education unit requirements.

RELATES TO: KRS 309.304(5)

STATUTORY AUTHORITY: KRS 309.304(3), 309.314(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.314(7) authorizes the board to promulgate an administrative regulation that requires interpreters who apply for renewal or reinstatement to show evidence of completion of continuing education. This administrative regulation delineates the requirements for continuing education units and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Accrual of Continuing Education Hours Mandatory for Full Licensure; Computation of Accrual.

(1) A person who is licensed as an interpreter shall have earned a minimum of fifteen (15) continuing education unit hours during each licensure period.~~[total of fifteen (15) hours of approved continuing education during the compliance period, prior to renewal of his or her license for the next licensure period.]~~

(2) A minimum of half of the fifteen (15) hours shall be from any of the following sources, alone or in combination:

- (a) Alexander Graham Bell Association of the Deaf;
- (b) American Sign Language Teacher Association;
- (c) National Association of the Deaf;
- (d) National Educational Interpreters Conference;
- (e) Registry of Interpreters for the Deaf - Certificate Maintenance Program; or

(f) Registry of Interpreters for the Deaf - Associate Continuing Education Training.

(3) ~~[A minimum of fifteen (15) continuing education hours shall be accrued by each licensee during the licensure period for renewal for the following year.]~~

~~[(4)] A minimum of three (3) of the fifteen (15)[total] continuing education unit hours shall be related to ethics.~~

Section 2. Accrual of Continuing Education Unit Hours Mandatory for Temporary Licensure; Computation of Accrual.

(1) A person who holds a temporary license as an interpreter shall have earned a minimum~~[total]~~ of eighteen (18) hours of approved continuing education units during each~~[the compliance period, prior to renewal or extension of his or her license for the next] licensure period.~~

(2) A minimum of seven and one-half (7.5) of the eighteen (18) hours shall be from any of the following sources, alone or in combination;

- (a) Alexander Graham Bell Association for the Deaf;
- (b) American Sign Language Teacher Association;
- (c) National Association of the Deaf;
- (d) National Educational Interpreters Conference;
- (e) Registry of Interpreters for the Deaf - Certificated Maintenance Program; or
- (f) Registry of Interpreters for the Deaf - Associate Continuing Education Training.

(3) A minimum of three (3) of the eighteen (18)~~[total]~~ continuing education unit hours shall be related to ethics.

Section 3. Methods of Acquiring Continuing Education Unit Hours. Continuing education unit hours applicable to the renewal of the license shall be directly related to the professional growth and development of an interpreter. The hours shall be earned by completing any of the following educational activities:

(1) Programs not requiring board review and approval. An educational program from any of the following providers shall be deemed to be relevant to the practice of interpreting and shall be approved without further review by the board:

- (a) A program sponsored or approved by the:
 1. Alexander Graham Bell Association of the Deaf;
 2. American Sign Language Teacher Association;
 3. National Association of the Deaf; or
 4. Registry of Interpreters for the Deaf; or
 5. National Association of Interpreters in Education.

(b) An academic course offered by an accredited postsecondary institution that is directly related to interpreting. Credit shall only be granted for grades of "C" or above.

(2) Programs requiring board review and approval. A program from any of the following sources shall be reviewed and determined if the program is relevant and therefore subsequently approved by the board:

- (a) Relevant programs, including asynchronous and synchronous learning either in-person or virtual.~~[home study courses and in-service] training provided by other organizations, educational institutions, or other service providers approved by the board;~~
- (b) Relevant programs or academic courses presented by the

licensee. Presenters of relevant programs or academic courses may earn full continuing education credit for each contact hour of instruction, not to exceed three (3) hours of continuing education credits. Credit shall not be issued for repeated presentation of the same course.

(c) Authoring an article in a relevant, professionally-recognized, or juried publication. Credit shall not be granted for an article unless the article was published within the one (1) year period immediately preceding the renewal date. A licensee shall earn three (3) hours of continuing education credit toward the hours required for renewal. No more than one (1) publication shall be counted during a renewal period.

(d) A general education course, elective course, or a course designed to meet degree requirements offered by an accredited postsecondary institution. Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equals 10 continuing education hours. Credit shall only be granted for grades of "C" or above.

Section 4. Procedures for Preapproval of Continuing Education Unit Sponsors and Programs.

(1) Any entity seeking to obtain approval of a continuing education program prior to its offering shall complete and submit the Application for Continuing Education Program Approval form to the board at least sixty (60) days in advance of the commencement of the program, stating the following:

(a) A published course or similar description containing educational objectives;

(b) Names and qualifications of the instructors;

(c) A copy of the program agenda indicating hours of instruction, coffee and lunch breaks;~~[-and]~~

(d) Number of continuing education unit hours being requested~~[offered]; and~~

(e) A copy of the evaluation.

(2) A continuing education activity shall be approved~~[qualified for approval]~~ if the board determines the activity being offered:

(a) Is an organized program of learning;

(b) Pertains to subject matters, which integrally relate to the practice of interpreting;

(c) Contributes to the professional competency of the licensee; and

(d) Is conducted by individuals who have educational training or experience acceptable to the board.

(3) A sponsor of continuing education requiring board approval shall be responsible for submitting a course offering to the board for review and approval before listing or advertising that offering as approved by the board.

Section 5. Responsibilities and Reporting Requirements of Licensees. A licensee shall be responsible for obtaining the required continuing education unit hours.~~[He shall identify his own continuing education needs, take the initiative in seeking continuing education activities to meet these needs, and seek ways to integrate new knowledge, skills and attitudes. Each person holding a license shall:]~~

~~[(1)] [Select approved activities by which to earn continuing education hours;]~~

~~[(2)] [Submit to the board when applicable a request for approval for continuing education activities not approved by the board as set forth in Section 7 of this administrative regulation;]~~

~~[(1)]~~⁽³⁾ Maintain records of continuing education unit hours. Each licensee shall maintain all documentation verifying successful completion of continuing education unit hours for a period of two (2) years from the date of renewal. During each licensure renewal period, up to fifteen (15) percent of all licensees, chosen at random, shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education unit hours for the current renewal period. Verification of continuing education unit hours shall not be otherwise reported to the board;

~~[(4)] [Document attendance and participation in a continuing education activity in the form of official documents including transcripts, certificates, affidavits signed by instructors, [receipts for fees paid to the sponsor,]] or less formal evidence including written~~

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summaries of experience that are not otherwise formally or officially documented in any way. The type of documentation required shall vary depending on the specific activity submitted to the board for approval; and]

~~(2)(5)~~ Fully comply with the provisions of this administrative regulation. Failure to comply shall constitute a violation of KRS 309.318(1)(e) and may result in the refusal to renew, suspension, or revocation of the licensure.

Section 6. Procedures for Approval of Continuing Education Programs. A program~~[course,]~~ which has not been preapproved by the board, may be used for continuing education units if the licensee submits the program for board approval~~[is secured from the board for the course]~~. In order for the board to adequately review a program for approval, the following information shall be submitted:

(1) A published course or similar description containing educational objectives; and

(2) Names and qualifications of the instructors.

(3) A copy of the program agenda indicating hours of instruction, coffee and lunch breaks;

(4) Number of continuing education hours being requested; and

(5) A copy of the course evaluation.

Section 7. Carry Over of Continuing Education Unit Hours. A licensee with a full license may carry over six (6) continuing education unit hours earned in excess of those required under Section 1 of this administrative regulation for one (1) renewal period, after which time they expire. All carry-over hours shall comply with the requirements of Sections 1 through 3 of this administrative regulation.

Section 8. Board to Approve Continuing Education Unit Hours; Appeal when Approval Denied. In the event of a denial, in whole or in part, of any application for approval of continuing education hours, the licensee shall have the right to request reconsideration by the board of its decision. The request shall be in writing, specifically stating the reasons for reconsideration, and shall be received by the board within thirty (30) days of the board's decision denying approval of continuing education hours.

~~Section 9. [Waiver or Extensions of Continuing Education. All requests for waiver or extension shall accompany the License Renewal Application Form.]~~

~~[(1)] [Upon written request, the board shall consider whether to grant a waiver of continuing education requirements or an extension of time within which to fulfill the requirements, in the following cases:]~~

~~[(a)] [Medical disability of the licensee;]~~

~~[(b)] [Illness of the licensee or an immediate family member;]~~

~~[(c)] [Death or serious injury of an immediate family member; or]~~

~~[(d)] [For good cause shown.]~~

~~[(2)] [A written request for a waiver or extension of time involving medical disability or illness shall be:]~~

~~[(a)] [Submitted by the person holding a license; and]~~

~~[(b)] [Accompanied by a verifying document signed by a licensed physician.]~~

~~[(3)] [A request for a waiver or extension of the continuing education requirements applies only to the current licensure year.]~~

~~[(a)] [Subsequent requests for waiver or extension of the continuing education requirements shall be made at the time of licensure renewal.]~~

~~[(b)] [There shall be no limit to the number of waivers or extensions that the board may grant, as long as the applicant meets the requirements set forth in subsections (1) and (2) of this section.]~~

~~[Section—10.] Continuing Education Requirements for Reinstatement of License.~~

(1) A person requesting reinstatement of licensure shall submit evidence of completion of required hours of continuing education units within the twelve (12) month period immediately preceding the date on which the request for reinstatement is submitted to the board.

(2) If the person seeking reinstatement does not meet the requirements established in subsection (1) of this section, the board may conditionally reinstate licensure, requiring the applicant to obtain required hours of continuing education units within six (6) months of the date on which licensure is reinstated.

(3) The continuing education unit hours received in compliance with this section for reinstatement shall be in addition to the regular continuing education unit requirements established in Section 1 of this administrative regulation and shall not be used to comply with the requirements of that section.

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

(1) "Application for Continuing Education Unit Program Approval", DPL-KBI-08, April 2024~~[40/2014]~~, form is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing, 500 Mero Street~~[Division of Occupations and Professions, 911 Leewood Drive,]~~ Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or found on the board's Web site at www.kbi.ky.gov.

MARVA JOHNSON, Chair

APPROVED BY AGENCY: June 12, 2024

FILED WITH LRC: June 12, 2024 at 4:20 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2024, at 11:00 a.m., at the Mayo-Underwood Building, Room 127CW, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 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 by using the PPC public comment portal at the address listed below.

CONTACT PERSON: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov, link to PPC public comment portal: https://ppc.ky.gov/reg_comment.aspx.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets requirements for approval of continuing education courses and sets licensee requirements for acceptable continuing education.

(b) The necessity of this administrative regulation: This regulation sets requirements for approval of continuing education courses and sets licensee requirements for acceptable continuing education.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets requirements for approval of continuing education courses and sets licensee requirements for acceptable continuing 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: This amendment clarifies existing procedures and requirements and adds the word "unit" throughout to clarify the standard for this profession which may differ from the continuing education calculation for various certifying organizations or agencies.

(b) The necessity of the amendment to this administrative

regulation: This amendment clarifies existing procedures and requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally related to the practice of interpreting.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will incorporate the current application for licensure form. This amendment will allow the board to determine certifications that have expired and licensees that may not have up to date skills.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 533 full and 45 temporarily licensed interpreters.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees will need to meet the requirements for renewal of licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees as promulgated in 201 KAR 39:040 and any costs associated with testing or education as required. These costs have not changed as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will have the opportunity to renew their license if they meet the stated requirements.

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

(a) Initially: It will not cost the administrative body any additional funds to implement this administrative regulation.

(b) On a continuing basis: It will not cost the administrative body any additional funds to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

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

(9) TIERING: Is tiering applied? This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.304(3).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Board of Interpreters for the Deaf and Hard of Hearing is an administrative body created by KRS 309.302 and the promulgating agency.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: Unknown.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no difference in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None anticipated.

(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 difference in expenditures, revenues or cost savings to local entities in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): There are no other regulated entities not otherwise listed.

(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: There is no anticipated fiscal impact to this administrative regulation.

(b) Methodology and resources used to determine the fiscal impact: Methodology and resources was a review of the existing budget by the board's fiscal administrator as well as consideration of the amendment and whether staff time and costs will be increased.

(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: Methodology and resources was a review of the existing budget by the board's fiscal administrator as well as consideration of the amendment and whether staff time and costs will be increased.

BOARDS AND COMMISSIONS

Board of Interpreters for the Deaf and Hard of Hearing (Amendment)

201 KAR 39:100. Complaint procedure.

RELATES TO: KRS 309.304(7), 309.316, 309.318

STATUTORY AUTHORITY: KRS 309.304(3), 309.316(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.316(2) authorizes the board to establish procedures for receiving and investigating complaints. KRS 309.318 delineates the causes for which disciplinary action may be taken against a licensee. This administrative regulation establishes procedures for the filing, evaluation, and disposition of administrative complaints.

Section 1. Receipt of Complaints.

(1) A complaint:

(a) May be submitted by an:

- 1. Individual;
2. Organization; or
3. Entity.

(b) Shall:

- 1. Be in writing or contained on a videotape or digital media; and
2. Include the signature or stated name, address, and telephone or videophone number of the person submitting the complaint; and
(c) May be filed by the board or board member based upon information in its possession.

(2) Upon receipt of the complaint a copy of the complaint shall be sent to the licensee named in the complaint along with a request for the licensee's response to the complaint. The individual shall be allowed a period of twenty (20) days from the date of receipt to submit a written, videotaped, or other digital media response.

Section 2. Initial Review.

(1) After the receipt of a complaint and the expiration of the period for the licensee's response, [the case manager or] the complaint screening committee shall consider the complaint, the licensee's response, and any other relevant material available and make a recommendation to the board. The board shall determine

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whether there is enough evidence to warrant a formal investigation of the complaint.

(2) If the board determines before formal investigation that a complaint is without merit, it shall:

- (a) Dismiss the complaint; and
- (b) Notify the complainant and licensee of the board's decision.

(3) If the board determines that a complaint warrants a formal investigation, it shall:

- (a) Authorize an investigation into the matter; and
- (b) Order a report to be made to the ~~[case manager or the]~~ complaint screening committee at the earliest opportunity.

Section 3. Results of Formal Investigation; Board Decision on Hearing.

(1) Upon completion of the formal investigation, the investigator shall submit a written report to ~~[the case manager or]~~ the complaint screening committee of the facts regarding the complaint. The ~~[case manager or the]~~ complaint screening committee shall review the investigative report and make a recommendation to the board. The board shall determine whether there has been a prima facie violation of KRS 309.300 to 309.319 or the administrative regulations promulgated thereunder and if a formal complaint should be filed.

(2) If the board determines that a complaint does not warrant issuance of a formal complaint, it shall:

- (a) Dismiss the complaint; and
- (b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a violation has occurred but is not serious, the board may issue a written admonishment to the licensee in accordance with KRS 309.316(4).

(4) If the board determines that a complaint warrants the issuance of a formal complaint against a respondent, the board attorney in conjunction with ~~[the case manager or]~~ the complaint screening committee shall prepare a formal complaint which states clearly the charge or charges to be considered at the hearing. The formal complaint shall be reviewed by the board and, if approved, signed by the chairman and served upon the individual as required by KRS Chapter 13B.

(5) If the board determines that a person may be in violation of KRS 309.301(1), it shall:

- (a) Order the individual to cease and desist from further violations of KRS 309.301(1);
- (b) Forward information to the county attorney of the county of residence of the person allegedly violating KRS 309.301(1) with a request that appropriate action be taken under KRS 309.319; or
- (c) Initiate action in Franklin Circuit Court for injunctive relief to stop the violation of KRS 309.301(1) pursuant to KRS 309.304(7).

Section 4. Settlement by Informal Proceedings.

(1) The board through counsel and ~~[the case manager or]~~ the complaint screening committee may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chair~~[man]~~.

(3) The board may employ mediation as a method of resolving the matter informally.

Section 5. Notice and Service of Process. A notice required by KRS 309.300 to 309.319 or this administrative regulation shall be issued pursuant to KRS Chapter 13B.

Section 6. Notification. The board shall make public:

- (1) Its final order in a disciplinary action under KRS 309.316(3); and
- (2) An action to restrain or enjoin a violation of KRS 309.301(1).

Section 7. Incorporation by Reference.

- (1) "Complaint Form", DPL-KBI-009, April 2024,~~[2014,]~~ is

incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing, 500 Mero Street,~~[Division of Occupations and Professions, 911 Leewood Drive,]~~ Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and found on the board's Web site at www.kbi.ky.gov.

MARVA JOHNSON, Chair

APPROVED BY AGENCY: June 12, 2024

FILED WITH LRC: June 12, 2024 at 4:20 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2024, at 11:00 a.m., at the Mayo-Underwood Building, Room 127CW, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 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 by using the PPC public comment portal at the address listed below.

CONTACT PERSON: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov, link to PPC public comment portal: https://ppc.ky.gov/reg_comment.aspx.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation creates the procedure for filing a disciplinary complaint with the Board and sets the disciplinary process utilized by the Board.

(b) The necessity of this administrative regulation: This regulation creates the procedure for filing a disciplinary complaint with the Board and sets the disciplinary process utilized by the Board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation creates the procedure for filing a disciplinary complaint with the Board and sets the disciplinary process utilized by the Board.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies existing procedures and requirements and increases transparency of Board actions.

(b) The necessity of the amendment to this administrative regulation: This amendment clarifies existing procedures and requirements and increases transparency of Board actions.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally related to the practice of interpreting.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies existing procedures and requirements and increases transparency of Board actions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 533 full and 45 temporarily licensed interpreters.

(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: Aggrieved parties or members of the public will submit complaints in the same way that those complaints have been submitted.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board does not anticipate any cost to the applicants affected by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The profession will be stronger through the discipline of bad actors.

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

(a) Initially: It will not cost the administrative body any additional funds to implement this administrative regulation.

(b) On a continuing basis: It will not cost the administrative body any additional funds to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

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

(9) TIERING: Is tiering applied? This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.304, KRS 309.312.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Board of Interpreters for the Deaf and Hard of Hearing is an administrative body created by KRS 309.302 and the promulgating agency.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: Unknown.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no difference in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None anticipated.

(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 difference in expenditures, revenues or cost savings to local entities in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): There are no other regulated entities not otherwise listed.

(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: There is no anticipated fiscal impact to this administrative regulation.

(b) Methodology and resources used to determine the fiscal impact: Methodology and resources was a review of the existing

budget by the board's fiscal administrator as well as consideration of the amendment and whether staff time and costs will be increased.

(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: Methodology and resources was a review of the existing budget by the board's fiscal administrator as well as consideration of the amendment and whether staff time and costs will be increased.

BOARDS AND COMMISSIONS

Board of Interpreters for the Deaf and Hard of Hearing (Amendment)

201 KAR 39:120. Code of ethics.

RELATES TO: KRS 309.304(3), 309.318(1)(e), (f)

STATUTORY AUTHORITY: KRS 309.304(3), 309.318(1)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.318(1)(e) and (f) authorizes the board to take disciplinary action against a licensee who violates any state statute or administrative regulation governing the practice of interpreting or violates the code of ethics, known as the Professional Code of Conduct of the licensee's national certifying organization or organizations. This administrative regulation establishes the code of ethics in accordance with KRS 309.318(1)(f).

Section 1. A licensee[license] shall abide by the following standards of professional and ethical conduct:

(1) A licensee shall keep all service-related[assignment-related] information strictly confidential. From the moment of accepting the service[assignment], the licensee[interpreter] holds a trustworthy relationship with the consumer, in which the licensee[interpreter] is bound to confidentiality.

(a) All information [~~obtained from the interpreter service~~] shall be considered confidential. This applies whether the licensee[interpreter] accepts or declines the request for services[assignment].

(b) All information about a consumer that is received from other licensees[interpreters] shall be considered confidential and shall be exchanged in a manner which protects both the consumer and the service[assignment].

(c) The licensee[interpreter] shall comply with the requirements of KRS 620.030 by reporting to the proper authorities the dependency, neglect, or abuse of a child if the licensee[interpreter] reasonably believes that the dependency, neglect, or abuse of a child is ongoing or has occurred.

(2) A licensee shall faithfully convey the content and spirit of the speaker using language most readily understood by the persons whom they serve. Every interpretation shall be faithful to the message of the source text. A faithful interpretation should not be confused with a literal interpretation. The fidelity of an interpretation includes an adaptation to make the form, the tone, and the deeper meaning of the source text felt in the target language and culture.

(3) A licensee shall possess the knowledge and skills to support accurate and appropriate interpretation. A licensee works in a variety of settings and with a wide range of consumers and therefore shall be adept at meeting the linguistic needs of consumers, the cultural dynamics of each situation, and the spirit and content of the discourse.

(4) A licensee shall not counsel, advise or interject personal opinions.

(a) A licensee[An interpreter] shall remain neutral, impartial, and objective. If the licensee is[interpreter finds himself or herself] unable to put aside personal biases or reactions which threaten impartiality, the licensee[interpreter] is under an obligation to examine options and take actions to remedy the situation.

(b) A licensee[An interpreter] shall refrain from altering a

message for political, religious, moral, or philosophical reasons, or for any other biased or subjective considerations.

(c) The ~~licensee~~~~[interpreter]~~ shall advise the consumer that ~~the licensee~~~~[he or she]~~ assumes a position of neutrality in the relationship between all parties during an interpreting ~~service~~~~[assignment]~~. The ~~licensee~~~~[interpreter]~~ shall not become personally involved in ~~[regards to]~~ the issues or persons present at the interpreting ~~service~~~~[assignment]~~.

(5) A licensee shall accept a request for services~~[assignments]~~ using discretion with regard to skill, setting, and the consumers involved.

(a) Licensees shall approach requests for services with respect and cultural sensitivity towards all participants.

(b) When a request for services demands an additional deaf or hearing licensee, a licensee shall not accept the request, or continue with the services if it has been initially accepted, until the additional deaf or hearing licensee is included in the professional interpreting team.

~~[(a)] [An interpreter shall recognize the need for a deaf interpreter and advocate his or her participation as part of the interpreting team. A deaf interpreter may be necessary if working with individuals who use regional sign dialects, nonstandard signs, foreign sign languages, and those with emerging language use.]~~

~~[(b)] A licensee [An interpreter] shall [generally] refrain from accepting a request for services [providing services in situations] where family members, personal or business associations may affect impartiality. In an emergency situation, a licensee [an interpreter] may provide services for family members, friends or business associates, and the licensee [In those situations, the interpreter] shall guard against allowing [his or her] personal involvement to affect the licensee's [his or her] ability to interpret impartially. If the licensee [interpreter] finds that he or she can no longer [is unable to] be impartial, the licensee [interpreter] shall inform the parties involved and may assist in finding another licensee [interpreter].~~

(6) Prior to accepting an engagement for services, a licensee shall advise the party responsible for payment of the services to be provided of the amount of compensation to be charged for the services.

(7) A licensee shall not advertise ~~the licensee's~~~~[his or her]~~ services in a false, deceptive or misleading manner.

(8) A licensee shall function in a manner appropriate to the situation. A licensee~~[An interpreter]~~ shall ~~[attempt to]~~ become familiar with the anticipated discussion topic, type of activity, level of formality, expected behaviors, and possible presentational materials prior to commencement of the ~~service~~~~[assignment]~~.

~~[(9)] [Each licensee shall strictly adhere to the parameters set forth by RID specific to the certification or certifications awarded which address appropriate conduct for a particular situation and setting.]~~

~~[Section 2.] [In addition to the standards delineated in Section 4 of this administrative regulation, a licensee shall abide by the code of ethics or code of professional conduct for his or her respective certification or certifications.]~~

MARVA JOHNSON, Chair

APPROVED BY AGENCY: June 12, 2024

FILED WITH LRC: June 12, 2024 at 4:20 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2024, at 11:00 a.m., at the Mayo-Underwood Building, Room 127CW, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 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 by using the PPC public comment portal at the address listed below.

CONTACT PERSON: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov, link to PPC public comment portal: https://ppc.ky.gov/reg_comment.aspx.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation creates a code of conduct for interpreters.

(b) The necessity of this administrative regulation: This regulation creates a code of conduct for interpreters.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation creates a code of conduct for interpreters.

(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 strengthens ethical standards by requiring licensees to meet the standards of their national certifying body in addition to those of the Board and clarifies standards when team interpreting is needed. The amendments include housekeeping to use the term "licensee" rather than "interpreter" and strike the word "assignment" and replace it with "services".

(b) The necessity of the amendment to this administrative regulation: This amendment strengthens ethical standards by requiring licensees to meet the standards of their national certifying body in addition to those of the Board.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations generally related to the practice of interpreting.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will incorporate the current application for licensure form. This amendment strengthens ethical standards by requiring licensees to meet the standards of their national certifying body in addition to those of the Board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 533 full and 45 temporarily licensed interpreters.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees will need to meet the ethical standards of the national certifying bodies to which they belong.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board does not anticipate any cost to the applicants affected by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The profession will be stronger as licensees will be required to comply with additional ethical standards in some instances.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)**

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

(9) TIERING: Is tiering applied? This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.304, KRS 309.312.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Board of Interpreters for the Deaf and Hard of Hearing is an administrative body created by KRS 309.302 and the promulgating agency.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: Unknown.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no difference in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None anticipated.

(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 difference in expenditures, revenues or cost savings to local entities in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): There are no other regulated entities not otherwise listed.

(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: There is no anticipated fiscal impact to this administrative regulation.

(b) Methodology and resources used to determine the fiscal impact: Methodology and resources was a review of the existing budget by the board's fiscal administrator as well as consideration of the amendment and whether staff time and costs will be increased.

(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: Methodology and resources was a review of the existing budget by the board's fiscal administrator as well as consideration of the amendment and whether staff time and costs will be increased.

301 KAR 1:410. Taking of fish by nontraditional fishing methods.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.235, 150.445, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.440, 150.470, 235.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the Kentucky 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 permitted, ~~[to regulate limits, and methods of take,]~~ and the application of administrative regulations ~~[to make those requirements apply]~~ to a limited area or to the entire state. KRS 150.440 requires the department to promulgate administrative regulations for establishing open seasons and limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470 ~~[(1)]~~ requires the department to promulgate administrative regulations for ~~[bag or]~~ daily limits and size limits for fish. KRS 235.280 requires the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state. This administrative regulation establishes the procedures for taking sport and rough fish by nontraditional fishing methods.

Section 1. General Provisions.

(1) A person using nontraditional fishing methods shall observe the daily limits and size limits established in paragraphs (a) through (d) of this subsection:

(a) The daily limit for catfish using any non-traditional fishing method shall not include more than one (1) trophy catfish of each species, except as established in Section 6(3) of this administrative regulation.

(b) The paddlefish daily limit shall be two (2) with no size limit.

(c) The shovelnose sturgeon daily limit shall be two (2) with no size limit.

(d) The invasive carp daily limit shall be unlimited with no size limit.

(2) The possession limit for paddlefish, ~~[and]~~ trophy catfish, and shovelnose sturgeon shall be two (2) times the daily limit for each species.

(3) Shovelnose sturgeon shall not be harvested from the Mississippi River and shall be immediately released.

(4) A person shall release any:

(a) Lake sturgeon;

(b) Pallid sturgeon; or

(c) Alligator gar.

Section 2. Skin Diving, Scuba Diving, and Underwater Spear Fishing.

(1) Skin diving or scuba diving shall be prohibited in all lakes owned by the department, except as established in subsections (2), (3), and (4) of this section.

(2) Skin diving and scuba diving shall be allowed in salvage operations if the diver receives prior written permission from:

(a) The department's Division of Law Enforcement; or

(b) The local game warden ~~[conservation officer]~~ who is assigned to the particular department-owned lake.

(3) Skin diving or scuba diving shall be permitted anytime without prior authorization in cases of emergency involving the possibility of saving human life or in the recovery of a drowning victim.

(4) Skin diving and scuba diving shall be allowed in Greenbo Lake:

(a) In a designated cove marked with signage and buoys;

(b) From April 1 through October 31; and

(c) From 10:00 a.m. to 6:00 p.m. daily.

(5) A person who is skin diving or scuba diving in a designated

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cove as established in subsection (4) of this section shall display an international diving flag as established in 301 KAR 6:030.

(6) Recreational boating and angling shall be prohibited in the designated cove marked with signage and buoys during the times open to skin diving and scuba diving as established in subsection (4) of this section if an international diving flag is present in the cove.

(7) Underwater spearing of fish with a hand-held spear or mechanically propelled spear shall be legal throughout the year in lakes 1,000 surface acres in size or larger, as measured at the normal summer pool level as established in paragraphs (a) and (b) of this subsection.

(a) An angler who is spearing fish shall:

1. Be completely submerged in the water where spearing takes place; and

2. Only spear rough fish.

(b) The daily limit shall be fifteen (15) rough fish, no more than five (5) of which shall be catfish.

Section 3. Sport Fishing Trot Lines[Trotlines], Jug Lines[Jugging], and Set Lines[Setlines].

(1) Each sport fishing trot line[trotline], jug line, or set line[setline] shall be permanently labeled or tagged with the customer identification number found on the current sport fishing license of the person using it.

(2) Each sport fishing trot line shall be permanently labeled or tagged as established in subsection (1) of this section at both ends of the line.

(3) Each trot line[trotline], jug line, or set line[setline] shall be checked by the owner at least once every twenty-four (24) hours, at which time the owner shall:

(a) Bait all hooks; and

(b) Remove all caught fish.

(4)[(3)] A trot line[trotline], set line[setline], or jug line shall be confiscated if it is not:

(a) Properly labeled or tagged; or

(b) Checked or baited at least once every twenty-four (24) hours.

(5)[(4)] An angler shall not use more than:

(a) Two (2) sport fishing trot lines[trotlines];

(b) Twenty-five (25) set lines[setlines]; or

(c) Fifty (50) jug lines.

(6)[(5)] Multiple anglers in one (1) boat shall not use more than fifty (50) jug lines per boat.

(7)[(6)] An angler using a sport fishing trot line[trotline] shall:

(a) Set the trot line[trotline] at least three (3) feet below the water's surface;

(b) Not have more than fifty (50) single or multi-barbed hooks; and

(c) Have all hooks at least eighteen (18) inches apart on the trot line[trotline].

(8)[(7)] A person shall not use a jug line or set line[setline] with more than one (1) single or multi-barbed hook.

(9)[(8)] A sport fishing trot line[trotline], jug line, or set line[setline] shall not be used in the waters established in paragraphs (a) through (d) of this subsection:

(a) In the Tennessee River within 700 yards of Kentucky Lake Dam;

(b) In the Cumberland River below Lake Barkley Dam to the Highway 62 bridge;

(c) In any lake less than 500 surface acres owned or managed by the department, except:

1. Ballard Wildlife Management Area lakes, Ballard County;

2. Peal Wildlife Management Area lakes, Ballard County; and

3. Swan Lake Wildlife Management Area lakes, Ballard County;

or

(d) In the areas of the Ohio River established in subparagraphs 1. through 8. of this paragraph:

1. Smithland Dam downstream to a line perpendicular to the end of the outer lock wall;

2. J. T. Meyers Dam downstream to a line perpendicular to the end of the outer lock wall and that portion of the split channel around the southern part of Wabash Island from the fixed weir dam to the first dike;

3. Newburgh Dam downstream to a line perpendicular to the end

of the outer lock wall;

4. Cannelton Dam downstream to a line perpendicular to the end of the outer lock wall;

5. McAlpine Dam downstream to the K & I railroad bridge;

6. Markland Dam downstream to a line perpendicular to the end of the outer lock wall;

7. Meldahl Dam downstream to a line perpendicular to the end of the outer lock wall; or

8. Greenup Dam downstream to a line perpendicular to the end of the outer lock wall.

(10)[(9)] An angler using a trot line[trotline], jug line, or set line[setline] shall follow all sport fish daily limits, possession limits, and size limits as established in 301 KAR 1:201.

Section 4. Temporary Aquatic Areas and Temporary Pools.

(1) The department, with consent of the landowner, may delineate temporary aquatic areas and temporary pools where anglers may take rough fish by any method except:

(a) Poison;

(b) Electrical devices;

(c) Firearms; or

(d) Explosives.

(2) The department shall be authorized to establish the exact dates and times when rough fish may be taken in temporary aquatic areas and temporary pools.

(3) A person with a valid commercial fishing license may use nets and seines if the nets and seines are appropriately tagged, as established in 301 KAR 1:146.

(4) A person shall first obtain the permission of the landowner before taking rough fish from a temporary pool.

Section 5. Gigging and Snagging.

(1) Gigging and snagging season shall be February 1 through May 10, except as established in subsections (8)[(7)] and (10)[(9)] of this section.

(2) It shall be illegal to possess a gig, of any type, while in a boat, or on or in a stream or lake, from November 1 through the last day of January of the following year.

(3) A person shall not:

(a) Gig or snag a sport fish, as established in 301 KAR 1:060, except as established in subsections (8)[(7)] and (10)[(9)] of this section;

(b) Gig or snag from a platform;

(c) Gig from a boat in any lake less than 500 surface acres;

(d) Gig at night from a boat; or

(e) Snag from a boat.

(4)[(3)] A snagging rod shall be equipped with:

(a) Line;

(b) Guides;

(c) A reel; and

(d) One (1) single hook or treble hook attached to the line, except that five (5) hooks, either single or treble, may be used while snagging in:

1. The Green River and its tributaries; or

2. The Rolling Fork River and its tributaries.

(5)[(4)] A person who accidentally gigs or snags a sport fish shall immediately return the fish to the water, except as established in subsections (8)[(7)] and (10)[(9)] of this section.

(6)[(5)] A person shall not gig or snag in the areas or bodies of water established in paragraphs (a) through (g) of this subsection:

(a) The Cumberland River below Wolf Creek Dam downstream to the Tennessee line, including Hatchery Creek;

(b) Any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream;

(c) The Cumberland River below the Lake Barkley Dam to the U.S. 62 bridge;

(d) The Middle Fork of the Kentucky River, from Buckhorn Lake Dam downstream to the Breathitt County line in Perry County;

(e) The Rough River, below Rough River Lake Dam downstream to the State Highway 54 bridge in Breckinridge and Grayson counties;

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- (f) Cave Run Lake; or
- (g) Within 200 yards of any dam on a river or stream, except as established in subsection (8)(7) of this section.

(7)(6) A person shall not gig in the Tennessee River below Kentucky Lake Dam.

(8)(7) A person may snag sport fish or rough fish in the Tennessee River below the Kentucky Lake Dam to the U.S. 62 bridge:

(a) For twenty-four (24) hours a day from January 1 through May 31; and

(b) From sunset to sunrise from June 1 through December 31.

(9)(8) A person shall not snag in that section of the Tennessee River from the U.S. 62 bridge to the Interstate 24 bridge.

(10)(9) A person may snag sport fish or rough fish year-round in the section of the Tennessee River from the Interstate 24 bridge to the Ohio River.

(11)(10) A person shall not snag on the Tennessee River:

(a) Under the U.S. 62 bridge;

(b) Under the P & L Railroad bridge; or

(c) From any fishing pier or jetty.

(12)(11) There shall not be a daily limit for rough fish except the daily aggregate limit for snagging of rough and sport fish in the Tennessee River below Kentucky Lake Dam shall be eight (8), except there shall not be a daily limit on invasive carp.

(13)(12) There shall not be a size limit for sport fish snagged in the Tennessee River below Kentucky Lake Dam.

(14)(13) A person shall immediately retain, and not release or cull, any gigger or snagged paddlefish.

(15)(14) All snagged fish in the Tennessee River below Kentucky Lake Dam shall be immediately retained, and not released or culled, except for invasive carp, shad, or herring.

(16)(15) All gigger or snagged rough fish in the Cumberland River below Lake Barkley Dam shall be immediately retained, and not released or culled, except for invasive carp, shad, or herring.

(17)(16) A person shall immediately cease snagging if:

(a) A daily limit of paddlefish is reached;

(b) A daily limit of shovelnose sturgeon is reached;

(c) A daily limit of sport fish has been caught in the Tennessee River below Kentucky Lake Dam, even if the daily limit for that sport fish is less than eight (8); or

(d) A trophy catfish is snagged.

Section 6. Grabbing.

(1) The grabbing season for rough fish shall be June 1 to August 31 during daylight hours.

(2) Grabbing shall not be permitted in ~~[all waters]~~any lake less than 500 surface acres owned or managed by the department, except: [-]

(a) Ballard Wildlife Management Area lakes, Ballard County;

(b) Peal Wildlife Management Area lakes, Ballard County; and

(c) Swan Lake Wildlife Management Area lakes, Ballard County.

(3) The daily limit for grabbing shall be fifteen (15) fish, no more than five (5) of which may be catfish, except anglers grabbing at Barren River Lake, Carr Creek Lake, Dewey Lake, Fishtrap Lake, Taylorsville Lake, or Yatesville Lake may only harvest one (1) blue or channel catfish over twenty-five (25) inches.

Section 7. Bow Fishing.

(1) An angler using archery equipment, a crossbow, or a pneumatic arrow launching device shall not take:

(a) Sport fish;

(b) Alligator gar;

(c) More than five (5) catfish daily; or

(d) Lake sturgeon.

(2) Any paddlefish, shovelnose sturgeon, or catfish shot with archery equipment, a crossbow, or a pneumatic arrow launching device shall:

(a) Be immediately retained, and not released or culled; and

(b) Count toward a person's daily limit.

(3) Bow fishing shall be open statewide, except:

(a) In the Cumberland River below Wolf Creek Dam downstream to the Tennessee line including Hatchery Creek;

(b) In any tributary of the Cumberland River below Wolf Creek Dam to the Tennessee line, from the junction of the tributary with the Cumberland River to one-half (1/2) mile upstream;

(c) In:

1. Carpenter Lake (Davies County);

2. Clear Creek Lake (Bath County);

3. Greenbo Lake (Greenup County);

4. Lake Carnico (Nicholas County); and

5. Lake Reba (Madison County); or

(d) From a boat in restricted areas below navigation, power generating, or flood control dams.

RICH STORM, Commissioner

APPROVED BY AGENCY: June 13, 2024

FILED WITH LRC: June 13, 2024 at 3:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 29, 2024, at 9:00 a.m. at KDFWR Administrative 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 August 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for taking sport and rough fish by nontraditional fishing methods.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the fish populations of Kentucky and to provide for reasonable recreational fishing opportunities.

(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 regarding the buying, selling, and transporting of fish and wildlife, the restriction of places where taking is permitted, and the application of administrative regulations to a limited area or to the entire state. KRS 150.440 requires the department to promulgate administrative regulations for establishing open seasons and limits for rough fish by giggering, grabbing, snaring, and snagging. KRS 150.470 requires the department to promulgate administrative regulations for daily limits and size limits for fish. KRS 235.280 requires the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by authorizing the methods used to take fish, the areas open for such take, and the seasons and limits to be used when taking fish by nontraditional methods.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies the dates when it is illegal to possess a gig, adds a shovelnose sturgeon possession limit of two (2) fish, adds a possession limit of two (2) fish for sportfish taken by trot line, jug line, or set line, requires sport fishing trotlines to be tagged at both ends with the angler's customer identification number, and

prohibits hand grabbing on lakes less than 500 acres owned or managed by the department, except Ballard, Peale, and Swan Lake Wildlife Management Area lakes in Ballard County.

(b) The necessity of the amendment to this administrative regulation: 301 KAR 1:082 – Frog season; limits, states that it is illegal to "possess a gig, of any type, while in a boat, or on or in a stream or lake, from November 1 through the last day of January the following year." This wording is not in 301 KAR 1:410 under the gigging section. Unless an angler looks at the frog season regulation, they would not know of the gig possession restrictions. Adding this wording to 301 KAR 1:410 will clarify this restriction. Paddlefish and trophy catfish possession limits are already set in the "General Provisions" section of 301 KAR 1:410, along with their daily limits. A daily limit for shovelnose sturgeon is also set, but there is no possession limit listed for this species. Similarly, sportfish size limits and daily limits listed in 301 KAR 1:201 already must be observed by persons using a trotline, jugline, or setline. However, there is not currently a possession limit. A possession limit of 2 times the daily limit is needed in both cases to provide the necessary protection. Sport fishing trot lines are currently required to be tagged, but the regulation does not specify where. To make it easier for Law Enforcement to efficiently identify the owner of a sport fishing trotline and not have to examine the whole line to find the single tag, Fisheries recommends the customer identification number be placed at both ends of the line. 301 KAR 1:410 already contains wording prohibiting the use of trotlines, jug lines, and setlines in lakes less than 500 acres that are owned or managed by the department. These smaller lakes are often not conducive to natural reproduction of catfish and often receive high use by shoreline fishing anglers, so they are not intended or conducive to these nontraditional fishing methods. Prohibiting hand grabbing on these small lakes will prevent user conflicts, especially at designated FINS lakes. Fisheries also proposes exceptions for Ballard, Peal, and Swan Lake WMA lakes to match the regulations for trotlines jug lines, and setlines.

(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 anglers using non-traditional methods to take rough fish and sport fish will be affected by this amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Anglers will have to follow the possession limits for shovelnose sturgeon and sport fish listed in the amendment, as well as tag their sportfishing trot lines at both ends and not hand grab on lakes less than 500 acres owned or managed by the department, except those lakes on the Wildlife Management Areas listed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to comply with these regulations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with these amendments, anglers will provide better protection for shovelnose sturgeon and sportfish, which will help maintain these populations. In addition, by tagging their trotlines at both ends, they will assist law enforcement with compliance checks and reduce unnecessary injuries to the wardens. Finally, by avoiding hand grabbing on the smaller state-owned or managed lakes, anglers will help reduce user conflict and better protect department-stocked catfish for use in the FINS (Fishing in Neighborhoods) Program lakes.

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

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

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The

source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals using non-traditional fishing methods in Kentucky must abide by 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 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations regarding the buying, selling, and transporting of fish and wildlife, the restriction of places where taking is permitted, and the application of administrative regulations to a limited area or to the entire state. KRS 150.440 requires the department to promulgate administrative regulations for establishing open seasons and limits for rough fish by gigging, grabbing, snaring, and snagging. KRS 150.470 requires the department to promulgate administrative regulations for daily limits and size limits for fish. KRS 235.280 requires the department to promulgate administrative regulations to govern the fair, reasonable, equitable, and safe use of all waters of the state.

(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 no additional cost for KDFWR to administer this program in the first year.

Revenues: There will be no additional revenue generated by this amendment in the first year.

Cost Savings: There will be no cost savings generated by this amendment in the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no change to expenditures, revenues, or cost savings in 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 additional costs for regulated entities in the first year.

Revenues: This regulation will not directly generate revenue for state or local government in the first year.

Cost Savings: There will be no cost savings generated for regulated entities or state or local government in the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no change in expenditures, revenues, or cost savings in subsequent years.

(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: This regulation amendment adds possession limits for some fish species, restricts hand grabbing on smaller lakes, and provides clarification and better cooperation with law enforcement on certain gears. These amendments will not add any additional costs to regulated entities and no additional revenue or cost savings will be generated.

(b) Methodology and resources used to determine the fiscal impact: Since the anglers are still paying the same price for their license, there are no additional costs. Sport (recreational) anglers are

not allowed to sell the fish they harvest (except invasive carp), so there has never been an opportunity for them to generate revenue from non-traditional fishing methods.

(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 fishing license. This was required prior to these amendments and the cost has not changed.

**JUSTICE AND PUBLIC SAFETY CABINET
Parole Board
(Amendment)**

501 KAR 1:080. Parole Board policies and procedures.

RELATES TO: KRS 439.310 – 439.440, 532.040 – 532.060, 532.400

STATUTORY AUTHORITY: KRS 439.340(3)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 439.340(3)(b) requires the Parole Board to promulgate administrative regulations with respect to the conduct of parole and parole revocation hearings and other matters that come before the board, and conditions to be imposed upon parolees. This administrative regulation establishes the policies and procedures for the Parole Board.

Section 1. Incorporation by Reference.

(1) "Kentucky Parole Board Policies and Procedures", May 29, 2024 [October 13, 2015], are incorporated by reference. Kentucky Parole Board Policies and Procedures include:

KYPB 10-00	Parole Board Hearing Process (Amended 5/29/24[10/13/2015])
KYPB 10-01	Parole Release Hearings (Amended 5/29/24[10/13/2015])
KYPB 11-00	Conditions of Parole (Amended 5/29/24[10/13/2015])
KYPB 12-00	Final Discharge of Parole and Payment of Restitution (Amended 5/29/24[10/13/2015])
KYPB 13-00	Revocation of Parole: Issuance of Warrants (Amended 5/29/24[10/13/2015])
KYPB 13-01	Revocation of Parole: Preliminary Hearings (Amended 5/29/24[10/13/2015])
KYPB 13-02	Revocation of Parole: Final Hearings and Dispositions (Amended 5/29/24[10/13/2015])
[KYPB 13-03]	[Revocation: Youthful Offenders (Amended 2/14/2011)]
[KYPB 13-04]	[Revocation of Parole: Good Cause Hearings (Amended 12/6/2011)]
KYPB 14-00	Public and Legislative Relations (Amended 5/29/24[2/14/2011])
KYPB 20-00	Mandatory Reentry Supervision Orders (Amended 5/29/24[10/13/2015])
KYPB 21-00	Conditions of Mandatory Reentry Supervision (Amended 5/29/24[10/13/2015])
KYPB 22-00	Final Discharge from Mandatory Reentry Supervision (Amended 5/29/24[10/13/2015])
[KYPB 23-00]	[Revocation of Mandatory Reentry Supervision: Issuance of Warrants (Amended 10/13/2015)]
[KYPB 23-01]	[Revocation of Mandatory Reentry Supervision: Preliminary Hearings (Amended 10/13/2015)]
[KYPB 23-02]	[Revocation of Mandatory Reentry Supervision: Final Hearings (Amended 10/13/2015)]
[KYPB 30-00]	[Revocation of Postincarceration Supervision: Issuance of Warrants (Amended 10/13/2015)]

[KYPB 30-01]	[Revocation of Postincarceration Supervision: Preliminary Hearings (Amended 10/13/2015)]
[KYPB 30-02]	[Revocation of Postincarceration Supervision: Final Hearings (Amended 10/13/2015)]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Parole Board, 275 Main Street, 2nd Floor, 40602, telephone (502) 564-3620, fax (502) 564-8995, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Kentucky Parole Board Web site in the policies and procedures area at <https://justice.ky.gov/Boards-Commissions/paroleboard/Pages/default.aspx> or the regulation filing area at <https://corrections.ky.gov/about/pages/lrcfilings.aspx>.

The Kentucky Parole Board approved this administrative regulation at its meeting on May 20, 2024, prior to its filing with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

LADEIDRA N. JONES, Chair

APPROVED BY AGENCY: May 23, 2024

FILED WITH LRC: May 29, 2024 at 9:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 26, 2024, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes 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 August 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: Seth Fawns, Staff Attorney, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Seth Fawns

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the policies and procedures governing the Kentucky Parole Board.

(b) The necessity of this administrative regulation: KRS 439.340(3)(b) requires the Parole Board to promulgate administrative regulations with respect to the conduct of parole and parole revocation hearings and other matters that come before the board, and conditions to be imposed upon parolees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation governs the operations of the Parole Board and the staff assisting the Parole Board. The authorizing statute requires the Parole Board to promulgate administrative regulations with respect to the conduct of parole and parole revocation hearings and other matters that come before the board, and conditions to be imposed upon parolees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation and material incorporated by reference establish the policies and procedures that govern the operations of the Parole Board and the staff assisting the Parole Board. It provides direction and information to Parole Board members and staff concerning the review of offenders for parole, parole conditions, and revocation.

(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 revises the Parole Board's policies with grammatical revisions and revisions to align policies with current governing regulation and statutes, particularly in relation to supervision

revocation. Policies related to supervision conditions have been revised for consistency of language between policy and respective supervision certificate language. Further, some policies have been removed as they are redundant given that current revocation proceedings following the same process regardless of the form of supervision.

(b) The necessity of the amendment to this administrative regulation: These amendments were necessary to bring the language of the policies in line with the current governing regulation and statutes.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute requires the Parole Board to promulgate administrative regulations with respect to the conduct of parole and parole revocation hearings and other matters that come before the board, and conditions to be imposed upon parolees.

(d) How the amendment will assist in the effective administration of the statutes: This amendment simplifies some policies and brings policies in line with the current regulations, particularly those concerning revocation warrants and revocation proceedings.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the nine Kentucky Parole Board members, the Department of Corrections, approximately 800 employees including Administrative Law Judges, the Division of Parole Board Support Services, the Division of Probation and Parole, and the Interstate Compact Office, inmates who may become eligible for parole or placed on some other form of post-incarceration supervision, community offenders on parole or some post incarceration supervision, jailers and jail 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: Parole Board members and staff will have to change their actions to comply with operational changes made by the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that the amendment will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the review of offenders for parole, parole conditions, and revocation.

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

(a) Initially: An increase in funding is not anticipated.

(b) On a continuing basis: An increase in funding is not anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Parole Board budgeted funds for the biennium.

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

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

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 439.340(3)(b)

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Parole Board, Department of Corrections

(a) Estimate the following for the first year:

Expenditures: The administrative regulation impacts how the Parole Board and staff assisting the board operate but is not expected to increase expenditures.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: Cost savings are not anticipated.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The administrative regulation is not expected to change expenditures, revenues, or cost savings in future years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Affected local entities have not been identified.

(a) Estimate the following for the first year:

Expenditures:

Revenues:

Cost Savings:

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

(4) Identify additional regulated entities not listed in questions (2) or (3): Additional regulated entities have not been identified.

(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: The administrative regulation impacts how the Parole Board operates but is not expected to have a fiscal impact.

(b) Methodology and resources used to determine the fiscal impact: The policies and procedures incorporated by reference were reviewed and a fiscal impact was not identified.

(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) An overall negative or adverse major economic impact is not anticipated.

(b) The methodology and resources used to reach this conclusion: The policies and procedures incorporated by reference were reviewed and a fiscal impact was not identified. The policies do not change current practices but rather bring policy language in line with statutory and regulatory language.

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing
(Amendment)**

601 KAR 9:220. Motor vehicle dealer plates.

RELATES TO: KRS Chapters 186, 190

STATUTORY AUTHORITY: KRS 186.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.070(4) authorizes the cabinet to promulgate this administrative regulation which establishes~~To establish~~ the criteria for the issuance and use of a motor vehicle dealer plate and to provide for the cancellation of a dealer plate for misuse of the plate.

Section 1. Definitions.

(1) "Bona fide salesman or employee" is defined by~~means as defined in~~ KRS 186.070(1)(e).

(2) "Commission" means the Kentucky Motor Vehicle Commission.

(3) "Commissioner" means the Commissioner of the Department of Vehicle Regulation or his designee.

(4) "Demonstration trip" means a temporary use of a vehicle by a single prospective customer or his employee for a reasonable evaluative purpose incidental to the sale of the vehicle.

(5) "Dealer plate" means any base plate or supplemental plate issued pursuant to KRS 186.070.

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(6) "Licensed motor vehicle dealer" ~~is defined by~~ means a motor vehicle dealer as defined in] KRS 190.010 and licensed by the commission pursuant to the provisions of KRS Chapter 190.

(7) "Misuse" means use of a dealer plate in a manner unauthorized by KRS 186.070 or Section 3 of this administrative regulation.

Section 2. Issuance of Dealer Plates.

(1) Effective with the issuance of dealer plates for the licensing period beginning January 1, 1996, the maximum number of dealer plates ~~that~~ which] may be issued to a licensed motor vehicle dealer who has been licensed for an uninterrupted period beginning on or prior to January 1, 1994, shall be based upon the total number of that dealer's vehicle sales for the period from July through the following June immediately preceding the date of the report of the information on vehicle sales by the dealer to the commission.

(2)

(a) For a motor vehicle dealer licensed after January 1, 1994, beginning on the first day of January following an uninterrupted eighteen (18) month licensing period from the date of the first issuance of the dealer's license by the commission, the number of dealer plates issued shall depend upon the number of that dealer's vehicle sales for the period from July through the following June preceding the date of the report of the information by the dealer to the commission.

(b) A motor vehicle dealer licensed for less than eighteen (18) uninterrupted months may apply for any number of dealer plates.

(3) The maximum number of dealer plates issued to a motor vehicle dealer shall be as follows:

(a) Ten (10) or fewer vehicle sales - one (1) dealer plate;

(b) Eleven (11) through twenty-five (25) vehicle sales - two (2) dealer plates;

(c) Twenty-six (26) through fifty (50) vehicle sales - three (3) dealer plates;

(d) Fifty-one (51) through seventy-five (75) vehicle sales - four (4) dealer plates;

(e) Seventy-six (76) through 100 vehicle sales - five (5) dealer plates; and

(f) For more than 100 vehicle sales, the number of dealer plates issued shall be as requested by the dealer.

(4) Upon recommendation by the commission to the commissioner, and for good cause shown, a dealer who is restricted in the number of plates issued based upon his sales figures may receive an additional plate or plates.

(5)

(a) The information on vehicle sales shall be provided by the commission to the Transportation Cabinet.

(b) The Transportation Cabinet shall cause the information to be entered into the automated vehicle information system.

Section 3. Use of Dealer Plates.

(1) Use of a motor vehicle bearing a dealer plate upon the highways by a licensed dealer or bona fide salesman of the dealer shall consist of the use of the motor vehicle upon the highways at any time with the intent of offering or advertising the vehicle for sale to the public.

(2) A bona fide employee of the dealer who is not a licensed salesman shall only operate a motor vehicle bearing a dealer plate:

(a) When testing the mechanical operation of the vehicle;

(b) When transporting vehicles to or from the dealer's place of business; or

(c) For the necessary operation in furtherance of the dealer's business during the dealer's business hours.

(3) A bona fide employee of the dealer who is not a licensed salesman shall not operate the vehicle for personal purposes or in demonstration or advertising to a prospective customer.

(4) A prospective customer] ~~may operate a vehicle with a properly issued dealer plate who is operating upon the highways a motor vehicle bearing a dealer plate, shall be limited to one (1) demonstration trip unless he is accompanied by the licensed dealer to whom the dealer's plate was issued or a licensed salesman of the dealer].~~

Section 4. Cancellation of Dealer Plates Upon Misuse.

(1) A final order issued by the commission finding misuse of a dealer plate shall be forwarded to the commissioner.

(2) Upon receipt of the commission's final order, if no appeal from the commission's final order has been filed, and the time for taking an appeal has expired, or, if an appeal has been filed, after a ruling has been entered upholding the finding of the commission, the commissioner shall cause the dealer plate involved in the misuse to be canceled.

Section 5. Appeal from Final Order of Commission. The final order of the commission cancelling dealer plates may be appealed in accordance with KRS Chapter 13B.

JIM GRAY, Secretary

MATTHEW COLE, Commissioner

APPROVED BY AGENCY: June 12, 2024

FILED WITH LRC: June 13, 2024 at 11:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2024, at 11:00 a.m. EST, at the Kentucky Transportation Cabinet, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is 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 11:59 PM on August 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 below.

CONTACT PERSON: Jon Johnson, Staff Attorney Manager/Assistant General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238, email jon.johnson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jon Johnson

(1) Provide a brief summary of:

(a) What this administrative regulation does: It allows for test drives without a salesperson present. It allows a test drive to be a longer duration than just a drive around the block. A dealer could allow the customer to take the vehicle home overnight to allow their spouse or family members to participate in the decision toward the purchase.

(b) The necessity of this administrative regulation: Establishes policy and guidelines for dealer plate use.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Establishes use of dealer plates, addresses misuse of dealer plates, and number of plates based upon sales.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: provides boundaries to safeguard against abuse of dealer plates.

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

(a) How the amendment will change this existing administrative regulation: The proposed change would give greater flexibility for dealerships in accommodating potential customers for test drives.

(b) The necessity of the amendment to this administrative regulation: The change would be pro-business activity.

(c) How the amendment conforms to the content of the authorizing statutes: The change does not negatively impact the overall statute.

(d) How the amendment will assist in the effective administration of the statutes: The change allows flexibility for dealers to sell motor vehicles to potential customers whereas current language is very restrictive.

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: 2,500 licensed car dealerships operating in the Commonwealth.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each dealer would have its own policies and procedures for overnight test drives.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There would be not cost associated with this proposed amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This proposed amendment could benefit all licensed dealers to increase motor vehicle sells.

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

(a) Initially: Nothing

(b) On a continuing basis: Nothing

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Enforcement of this regulation is maintained by the Kentucky Motor Vehicle Commission whose funding is from dealer fees. The proposed change would not have any financial impact for administration.

(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 change would not cause a need for increased fees to implement. Also, there should be no increased cost to the Kentucky Motor Vehicle Commission

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No, it does not.

(9) TIERING: Is tiering applied? In this case there is no tiering of functions or operations.

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 Chapters 186, 190

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Transportation Cabinet, Department of Vehicle Regulation. The enforcement of this regulation and monitoring activities would be the responsibility of the Kentucky Motor Vehicle Commission. Insurance providers may have stipulations within their policies with dealers.

(a) Estimate the following for the first year:

Expenditures: The proposed change would not have any impact for expenditures.

Revenues: The proposed change would not have any impact for revenues.

Cost Savings: The proposed change would not have any cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The proposed change would not have any impact for expenditures or revenues in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Approval of the amendment would not have any negative impact for the listed entities. It is very probable that the approval of this amendment would promote increased sales for dealerships. Increased sales activities will benefit the tax structure at the local level.

(a) Estimate the following for the first year:

Expenditures: Zero

Revenues: Zero

Cost Savings: Zero

(b) How will expenditures, revenues, or cost savings differ in

subsequent years? Longer test drives i.e., overnight test drives would result in increased motor vehicle sales. The family becomes more involved in the decision.

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

(a) Estimate the following for the first year:

Expenditures: Zero

Revenues: Zero

Cost Savings: Zero

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Revenues should increase after implementation and use by dealerships.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no fiscal impact to government, local jurisdictions, and entities. This amendment will allow flexibility for dealers to allow test drives on an overnight basis. It encourages the consumer to check out their potential purchase prior to a definite decision. Spouses like to be part of financial decisions which are made for the family.

(b) Methodology and resources used to determine the fiscal impact: This proposal allows for test drives to be more than a ride around the block or a mile from the dealership. The difference is about time. A consumer can use more than 15 minutes to study a vehicle for worthiness, value, and safety concerns. There is no cost for the exception of gasoline and mileage for an extended test drive. The dealer or consumer will be responsible for the purchase of gasoline.

(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) Absolutely not. There would be no financial impact to these entities.

(b) The methodology and resources used to reach this conclusion: There are no tax issues involved in this matter. The proposal is to remove restrictive language in the use of a dealer plate for test drives. The consumers will have a positive impact and benefit on the approval of the proposed.

EDUCATION AND LABOR CABINET
Board of Education
Department of Education
(Amendment)

702 KAR 3:320. Finance officer certification requirements.

RELATES TO: KRS 160.431, 161.020(1)(b)

STATUTORY AUTHORITY: KRS 156.070, 160.431

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 authorizes the Kentucky Board of Education to promulgate administrative regulations necessary for the efficient management, control, and operation of the schools and programs under its jurisdiction. KRS 160.431(2) requires the Kentucky Board of Education to promulgate administrative regulations identifying and prescribing the criteria and procedures for school finance officer certification and continuing education. This administrative regulation establishes the standards for school finance officer certification and continuing education.

Section 1. Definitions.

(1) "Break in service" means an end to the employment relationship of the individual as the designated finance officer for a Kentucky school district without a transfer of employment to another Kentucky school district to serve as the designated finance officer.

(2) "Finance officer" means a person appointed pursuant to KRS 160.431(1).

(3) "Finance officer intern" means any finance officer who has obtained a provisional certificate under Section 3 of this administrative regulation but who has not acquired a full certificate under Section 4 of this administrative regulation.

(4) "Interim finance officer" means an individual who is serving as a district finance officer in a temporary capacity.

(5) "Mentor" means an individual approved by the department to oversee a finance officer intern through the Kentucky Finance Officer [Internship] Program.

Section 2. Initial Qualifications. An individual shall be eligible to be employed as a finance officer on or after July 1, 2015, if the individual:

- (1) Is employed on June 30, 2015, as a finance officer in a Kentucky school district and does not have a six (6) month or longer employment break in service as a finance officer in any Kentucky school district after June 30, 2015. A six (6) month or longer break in service as a finance officer in any Kentucky school district after June 30, 2015, shall terminate the individual's qualification for employment as a finance officer under this subsection; or
- (2) Obtains a provisional or full certificate under Section 3 or 4 of this administrative regulation.

Section 3. Provisional Certification.

(1) An individual who is seeking to be employed as a finance officer in a Kentucky school district who does not meet the requirements of Section 2(1) of this administrative regulation and who does not possess a full certificate shall secure a provisional certificate by submitting the Provisional Certification Application Form[, KDE-FOCP-1,] to the department to verify the individual meets the following eligibility requirements:

- (a) A minimum of ten (10) years' work experience in local school district finance confirmed by the district of employment; or
 - (b) A minimum of a bachelor's degree from any accredited postsecondary institution; and
- [(b)]
1. A minimum of twelve (12) credit hours in accounting coursework from any accredited postsecondary institution;
 2. A minimum of four (4) years' work experience primarily in accounting or finance, confirmed by the district of employment; or
 3. A minimum of two (2) years' work experience in finance in a local school district, confirmed by the district of employment.

(2) The department shall issue a provisional certificate to an individual providing proof of the eligibility requirements of subsection (1) of this section and proof of an offer of employment as a finance officer in a Kentucky school district.

- (3) A finance officer provisional certificate shall be in effect until:
 - (a) The individual obtains full certification;
 - (b) The individual fails to provide to the department the proof of progress toward full certification required by subsection (4) of this section; or
 - (c) Three (3)[five (5)] years have passed since the provisional certificate's issuance date.
- (4) The provisional certificate holder shall annually submit proof of progress toward full certification to the department by the anniversary of the issuance date of the provisional certificate. Failure to provide this annual proof of progress or to obtain full certification within three (3)[five (5)] years of the issuance of a provisional certificate shall result in the loss of the provisional certificate.

Section 4. Full Certification.

(1) An individual who is eligible for employment as a finance officer under Section 2(2) of this administrative regulation shall apply for full certification prior to the expiration of the provisional certificate by submitting the Full Certification Application Form[, KDE-FOCP-2,] to the department to verify:

- (a) Current provisional certification;
- (b) Completion of the Kentucky Finance Officer [Internship] Program [(KFIIP)] under Section 5 of this administrative regulation;
- (c) Fifteen (15) hours of finance officer training from the Finance Officer Curriculum, [KDE-FOCP-6,] provided by a department-approved training provider; and
- (d) Twelve (12) hours of training in the state-approved school district financial software package provided by a department-approved training provider.

(2) A full certificate shall be renewed automatically unless the finance officer fails to meet the biennial continuing education requirements of Section 6 of this administrative regulation.

Section 5. Finance Officer Provisional Certification[Kentucky Finance Officer Internship Program (KFIIP)].

(1) Within thirty (30) days of employment as a finance officer, ~~[the provisionally certified finance officer shall apply for the provisional certification]~~ participation in the KFIIP.

(2) An assessment committee[The KFIIP Assessment Committee] shall consist of:

- (a) The mentor assigned by the department;
- (b) The employing district's superintendent or designee; and
- (c) A department representative; and

(3) The mentor and intern shall complete a signed Mentor-Intern Agreement.

(4)[(3)] Mentors shall meet the following qualification requirements:

- (a) Possess full certification under this administrative regulation or meet the requirements of Section 2(1) of this administrative regulation;
- (b) Complete the department's mentor training; and
- (c) Complete the Mentor Application Form[, KDE-FOCP-5].

(5)[(4)] Mentors shall:

- (a) Work with finance officer interns to develop a chronological task plan based on the Finance Officer Curriculum[, KDE-FPCO-6];
- (b) Continue the mentorship for a period of twelve (12) consecutive months;
- (c) Document the time spent mentoring and provide a summary of the content on the Curriculum Summary Form[form KDE-FOCP-3];
- (d) Document attendance by the finance officer intern at any mentoring meetings during the internship; and
- (e) Serve as a mentor for no more than two (2) individuals concurrently.

(6)[(5)] Mentors shall be eligible to earn, as a mentor, a maximum of twenty (20)[twenty-one (21)] hours of continuing education[, not to exceed one (1) hour per month,] during the mentorship, toward the requirement of KRS 160.431(3) for the mentor training and mentor contact.

(7)[(6)] Mentors shall be eligible to receive from available funds an annual stipend, not to exceed \$1,500[\$1,000] each fiscal year per individual mentored, from the department for the mentorship. A district may also choose to reimburse the mentor for any expenses, including travel, and provide a separate, additional stipend to the mentor. If the [KFIIP] Assessment Committee requires a finance officer intern to repeat a portion or the entire internship curriculum under subsection (9) of this section, then a mentor shall not be eligible to receive the stipend from the department for additional fiscal years of mentorship required by the [KFIIP] Assessment Committee. The district may still reimburse and provide a stipend to a mentor of a finance officer intern in any additional fiscal years of internship required by the [KFIIP] Assessment Committee. A partially completed mentorship may be subject to a reduced stipend approved by the department.

(8)[(7)] The [KFIIP] Assessment Committee shall:

- (a) Assist in the development of the intern's chronological task plan required in subsection (4)(a) of this section;
- (b) Meet six (6) months after the initiation of the internship to assess progress;
- (c) Assess whether the finance officer intern completed the internship; and
- (d) Complete the Assessment Committee Report Form[, KDE-FOCP-4].

(9)[(8)] As part of its assessment, the [KFIIP] Assessment Committee shall consider:

- (a) Documentation provided by the mentor, pursuant to subsection (5)[(4)] of this section;
- (b) The recommendation of the provisional finance officer's[finance officer intern's] superintendent based on actual work performance; and
- (c) Internal approval[The report] by the department of work product submissions and interactions.

(10)[(9)] Based upon the information obtained pursuant to subsection (7) of this section, the [KFIIP] Assessment Committee shall do one (1) of the following at the end of the internship:

- (a) Declare the internship completed;

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(b) Require the finance officer intern to repeat a portion of the internship curriculum; or

(c) Require the finance officer intern to repeat the entire internship curriculum.

~~(11)~~~~(40)~~ The finance officer intern may request a different mentor if the [KFIP] Assessment Committee requires the internship to be repeated.

~~(12)~~~~(41)~~ The mentor may request to be replaced by another mentor if the [KFIP] Assessment Committee requires the internship to be repeated.

Section 6. Continuing Education.

(1) Fully certified finance officers and those qualified under Section 2(1) of this administrative regulation shall meet the continuing education requirements of KRS 160.431(3). A break in service for any length of time for any finance officer shall not reduce the continuing education requirements of KRS 160.431(3).

(2)

~~(a)~~ Each finance officer shall complete at least ~~eighteen~~ ~~(18)~~~~(twelve)~~ ~~(12)~~ hours of continuing education by June 30 of each fiscal year; and

~~(b)~~ Each finance officer shall complete at least forty-two (42) hours of continuing education in a biennium.

(3) The department shall approve continuing education courses offered by providers that:

(a) Include the following subject areas:

1. Evaluation of financial staff;

2. Financial system management, including payroll, purchasing, budgeting, general ledger, and financial reporting;

3. Alignment of the financial budget with federal and state law requirements;

4. Analysis of district financial data and provision of financial reports to the local board of education, school councils, and the department;

5. Comprehension of the district vision for education and the role of district finances in accomplishing that vision;

6. Interpretation, use, and communication of financial data and financial strengths and weaknesses of the district to the local board of education, school councils, and the community; ~~or~~

7. Professional development designed to support any existing district improvement plan; or

8. Courses offered as Continuing Professional Education (CPE) provided by professional organizations;

(b) Adhere to research-based principles of adult learning;

(c) Reflect current thinking in the field and promote generally accepted accounting practices;

(d) Provide for active engagement of participants; ~~and~~

(e) Extend participants' learning, financial, and leadership skills; and

(f) Contain course materials instructional in nature and not marketing or sales oriented.

(4) Continuing education course providers approved by the department shall:

~~[(a)] [Structure a training program so as to improve and maintain the quality and effectiveness of the financial operations in the public school districts of the Commonwealth;]~~

~~[(b)] [Ensure that training is intensive and designed specifically for finance officers;]~~

~~[(c)] [Have an established organizational structure or be an affiliate of this type of organization;]~~

~~[(d)] [Develop and submit programs to the department for approval at least thirty (30) days prior to the scheduled delivery of the continuing education program;]~~

~~[(e)] maintain the necessary records to:~~

~~(a)[1.] Evaluate every continuing education course session;~~

~~(b)[2.] Track attendance; and~~

~~(c)[3.] Evidence course completion consisting of a document prepared by the course sponsor indicating the attendee completed a formal program of learning including the:~~

~~1. Names of the attendee and program sponsor;~~

~~2. Program title and field of study;~~

~~3. Dates attended; and~~

~~4. Number of hours awarded.~~

(d) Maintain certificate of completion records for a period of five (5) years;

(e) Ensure assigned trainers have skill, knowledge, and experience relevant to the subject matter; and

(f) Disclose the subject areas in which training is to be provided.~~[Award certificates of completion to continuing education course attendees that provide the name of session, approval number, hours of continuing education credit awarded, and the name of the sponsor of the training;]~~

~~[(f)] [Provide evidence that the assigned trainers have knowledge, skill, and experience relevant to the particular training;]~~

~~[(g)] [Conduct training as approved; and]~~

~~[(h)] [Identify in all program promotional literature the following:]~~

~~[1.] [The two (2) year cycle for which training approval is granted;]~~

~~[2.] [The subject areas for which training is approved; and]~~

~~[3.] [The approval number assigned by the department for finance officer continuing education course eligibility.]~~

Section 7. Revocation and Appeal for Reinstatement of Full Certification.

(1)

(a) Failure to meet the annual requirement of ~~eighteen~~ ~~(18)~~~~(twelve)~~ ~~(12)~~ hours of continuing education of Section 6(2) of this administrative regulation shall result in a temporary suspension of a finance officer's full certification.

(b) The department shall notify the district superintendent of the temporary suspension.

(c) The certificate holder shall complete the required number of hours of continuing education by the end of the biennial period.

(d) Three (3) temporary suspensions shall result in revocation of the full certification.

(2) Failure to meet the biennial requirement of forty-two (42) hours of continuing education shall result in revocation of the full certification.

(3) The certificate holder may appeal to the department for reinstatement of a provisional or full certification which has been revoked under subsections (1) or (2) of this section if:

(a) The certificate holder requests reinstatement and provides supporting documentation to the department; and

(b) The certificate holder has fulfilled all requirements of the provisional or full certification including the required continuing education for the latest fiscal year.

(4) The department shall review and decide~~[make a determination]~~ regarding reinstatement within thirty (30) days of receipt of the appeal. The department shall reinstate a certificate holder who has met the requirements of subsection (3) of this section.

Section 8. Grandfather Status.

(1) An individual ~~[who is]~~ eligible for grandfather status pursuant to Section 2(1) of this administrative regulation shall submit the Provisional Certification Application Form ~~[, KDE-FOCP-1,]~~ to the department.

(2) An individual with grandfather status may obtain full certification if either:

(a) The department approves the individual as a mentor in the Kentucky Finance Officer Program~~[KFIP]~~ in accordance with the requirements of this administrative regulation; or

(b) The individual meets all provisional and full certification requirements, including successful completion of the Kentucky Finance Officer Program~~[KFIP]~~.

Section 9. Interim Finance Officer.

(1) Upon written notice of a district's finance officer's departure, it shall be the responsibility of the superintendent to ensure the position vacancy is immediately posted and a search for a successor finance officer is undertaken.

(2)

(a) The search process shall continue until a qualified full-time applicant is hired by the district.

(b) During the search for a full-time finance officer, the district

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superintendent may extend a limited contract to employ an interim finance officer.

1. A limited contract with an interim finance officer shall expire upon the employment of a qualified full-time applicant or June 30 of each fiscal year.

2. If a district superintendent wishes to extend the contract of the interim finance officer beyond the end of the fiscal year, a request must be made to the Office of Finance and Operations, Division of District Support and:

3. The district may retain the former interim finance officer as a consultant as needed.

Section 10. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Assessment Committee Report", May 2024;

(b) "Curriculum Summary", May 2024;

(c) "Finance Officer Curriculum", May 2024;

(d) "Full Certification Application", May 2024;

(e) "Mentor Application", May 2024;

(f) "Mentor-Intern Agreement", May 2024; and

(g) "Provisional Certification Application", May 2024.

[(a)] ["Provisional Certification Application", FOCP-1, July 2015;]

[(b)] ["Full Certification Application", FOCP-2, July 2015;]

[(c)] ["Intern Progress Report", FOCP-3, July 2015;]

[(d)] ["Assessment Committee Report", FOCP-4, July 2015;]

[(e)] ["Mentor Application", FOCP-5, July 2015; and]

[(f)] ["Finance Officer Curriculum", FOCP-6, July 2015.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, 300 Sower Boulevard, 4th Floor~~[500 Mero Street, First Floor, Capital Plaza Tower]~~, 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 F. KINNEY, Interim Commissioner of Education
SHARON PORTER ROBINSON, Chair

APPROVED BY AGENCY: June 13, 2024

FILED WITH LRC: June 13, 2024 at 12:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held August 28, 2024 at 10:00 a.m., in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this 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 August 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: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: The existing administrative regulation establishes the training requirements and certification process for school district finance officers.

(b) The necessity of this administrative regulation: KRS 160.431(2) requires the Kentucky Board of Education to promulgate

administrative regulations identifying and prescribing the criteria and procedures for school finance officer certification and continuing education. This administrative regulation establishes the standards for school finance officer certification and continuing education.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the standards for school finance officer certification and continuing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation establishes standards for school finance officers as required by KRS 160.431.

(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: Based on the experience of the Department of Education and at the request of school districts, the proposed amendment provides additional flexibility for school districts in the hiring of school district finance officer while maintaining necessary professionalism and skills required for district finance officers. The amendment permits districts to engage interim finance officers for temporary terms to fill needed gaps, it allows districts to hire finance officers possessing years of experience in school finance but without the previously required educational experience, increases required continuing education hours, requires finance officers to become certified within 3 years rather than 5 years, and increases stipend amounts for finance officer mentors.

(b) The necessity of the amendment to this administrative regulation: Since the original promulgation of this regulation as required by KRS 160.431, it has become clear through the experience of school districts that it is necessary to revise and modernize the existing regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the standards for school finance officer certification and continuing education as required by KRS 160.431.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes the standards for school finance officer certification and continuing education as required by KRS 160.431.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local school districts, district finance officers and the Kentucky Department of Education.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Changes to the regulation should provide additional flexibility to school districts in hiring qualified school district finance officers. Districts will not have to change current procedures. However, districts will be able to employ interim finance officers for temporary terms and they will be able to employ finance officers based on years of experience in school finance and not just on educational attainment. Finance officers will have to obtain full certification in 3 years rather than 5 years and will need to acquire additional continuing education hours. Finance officers serving as mentors will be eligible for an increase in their stipend.

(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 school districts. District finance officers will need to obtain additional continuing education. The cost of the continuing education is unknown. District finance officers can obtain free as well as paid professional development.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): School districts will have increased flexibility to find and hire school district finance officers through increased eligibility options for potential finance officers.

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

(a) Initially: The initial cost to the Kentucky Department of Education will be a minimal increase in costs related to stipends for

current district finance officers that serve as mentors for new finance officers.

(b) On a continuing basis: The ongoing cost to the Kentucky Department of Education will be a minimal increase in costs related to stipends for current district finance officers that serve as mentors for new finance officers.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General Funds

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. The regulation applies uniformly.

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 160.431(2) requires the Kentucky Board of Education to promulgate administrative regulations identifying and prescribing the criteria and procedures for school finance officer certification and continuing education. This administrative regulation establishes the standards for school finance officer certification and continuing education.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Board of Education, the Department of Education and local school districts.

(a) Estimate the following for the first year:

Expenditures: The additional costs are expected to be minimal. Any additional costs are related to the increase in stipend amounts for existing local school district finance officers that serve as mentors for new local district finance officers pursuing certification.

Revenues: The proposed amendment is not expected to generate revenue for the state agency or local school districts.

Cost Savings: Any cost savings will result from a more professional and qualified cadre of school district finance officers that generate cost savings to school districts through being more effective at their jobs.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures are dependent on the number of new school district finance officers requiring mentors. Costs are expected to be minimal. The increase in stipends is from \$1,000 to \$1,500 per year of mentorship.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Local school districts.

(a) Estimate the following for the first year:

Expenditures: There are no expected costs to school districts.

Revenues: The regulation is not expected to generate revenue for local school districts.

Cost Savings: Costs savings may be realized as a result of more effective school district finance officers.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? They are all expected to remain consistent and as previously described.

(4) Identify additional regulated entities not listed in questions (2) or (3): School district finance officers.

(a) Estimate the following for the first year:

Expenditures: District finance officers may experience an unknown increase in costs due to increased continuing education requirements. However, the regulation permits additional sources of continuing education some of which may be provided free of charge to finance officers. Any additional cost is expected to be minimal.

Revenues: The proposed regulation is not expected to generate revenue.

Cost Savings:

(b) How will expenditures, revenues, or cost savings differ in subsequent years? All expenditures, revenues or costs are expected

to remain consistent as described herein.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The costs of this regulation are expected to be minimal and related to two areas - (1st) the Kentucky Department of Education provides a supplement to experienced finance officers to serve as mentors for new district finance officers pursuing certification. The proposed regulation increases the stipend from \$1,000 to \$1,500 per year of mentorship. The costs associated with this is expected to be minimal with approximately 15 mentors serving during any year. The (2nd) source of potential costs is associated with additional continuing education requirements for finance officers. Whether there will be an additional cost or whether the continuing learning will be provided without cost is unknown. Costs are expected to be minimal.

(b) Methodology and resources used to determine the fiscal impact: The estimates contained herein are based on prior program operations.

(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 is not expected to have an overall negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion: Given the nature of the proposed amendments with limited revisions impacting costs, expenditures are expected to only slightly increase over current program expenses.

PUBLIC PROTECTION CABINET Department of Insurance Division of Health Life and Managed Care (Amendment)

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

RELATES TO: KRS 304.2-310, 304.2-320, 304.3-240, 304.12-020, 304.14-120, 304.14-500-304.14-550, 304.17-311, 304.17A-005, 304.18-034, 304.32-275, 304.33-030, 304.38-205, 42 C.F.R. 409.87, 45 C.F.R. Part 46, 74 F.R. 18808 (2009), 29 U.S.C. 1002, 42 U.S.C. 426, 42 U.S.C. 1320c-3, 1320d, 1320d-2, 42 U.S.C. 1395-1395ggg, 42 U.S.C. 1396, Pub. L. 108-173, 114-10, 116-127, 117-328

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.14-510, 304.14-525, 304.32-250, 304.38-150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. KRS 304.14-510 authorizes the commissioner of the Department of Insurance to promulgate administrative regulations establishing minimum standards for Medicare supplement insurance policies. KRS 304.32-250 authorizes the commissioner of the Department of Insurance to promulgate administrative regulations necessary for the proper administration of KRS 304.32. KRS 304.38-150 authorizes the commissioner of the Department of Insurance to promulgate administrative regulations necessary for the proper administration of KRS Chapter 304.38. This administrative regulation establishes minimum standards for Medicare supplement insurance policies and certificates.

Section 1. Definitions.

(1) "Applicant" is defined by KRS 304.14-500(1).

(2) "Bankruptcy" means a petition for declaration of bankruptcy filed by or filed against a Medicare Advantage organization that is not an insurer and has ceased doing business in the state.

(3) "Certificate" is defined by KRS 304.14-500(2).

(4) "Certificate form" means the form on which the certificate is delivered or issued for delivery by the insurer.

(5) "Commissioner" means Commissioner of the Department of

Insurance.

(6) "Compensation" means monetary or non-monetary remuneration of any kind relating to the sale or renewal of the policy or certificate including bonuses, gifts, prizes, awards, and finder's fees.

(7) "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare Select insurer or its network providers.

(8) "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than sixty-three (63) days.

(9) "Creditable coverage" is defined by KRS 304.17A-005(8).

(10) "Employee welfare benefit plan" means a plan, fund, or program of employee benefits as defined in 29 U.S.C. Section 1002 of the Employee Retirement Income Security Act.

(11) "Family member" means, with respect to an individual, any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of the individual.

(12) "Genetic information" means except for information relating to the sex or age:

(a) With respect to any individual:

1. Information about the individual's genetic tests, the genetic tests of family members of the individual, and the manifestation of a disease or disorder in family members of the individual; or

2. Any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by the individual or any family member of the individual.

(b) Any reference to genetic information concerning an individual or family member of an individual who is a pregnant woman, including:

1. Genetic information of any fetus carried by a pregnant woman; or

2. With respect to an individual or family member utilizing reproductive technology, genetic information of any embryo legally held by an individual or family member.

(13) "Genetic services" means a genetic test, genetic counseling (including obtaining, interpreting, or assessing genetic information), or genetic education.

(14) "Genetic test":

(a) Means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detect genotypes, mutations, or chromosomal changes;

(b) Except for an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that may reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

(15) "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select insurer or its network providers.

(16) "Health care expenses" means expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of insurers.

(17) "Insolvency" is defined by KRS 304.33-030(12)(48).

(18) "Insurer" means insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates.

(19) "Insurer of a Medicare supplement policy or certificate" means an insurer or third-party administrator, or other person acting for or on behalf of the insurer.

(20) "Medicare" is defined by KRS 304.14-500(4).

(21) "Medicare Advantage plan" means a plan of coverage for health benefits under Medicare Part C as defined in 42 U.S.C. 1395w-28(b)(1), including:

(a) A coordinated care plan, which provides health care services, including the following:

1. A health maintenance organization plan, with or without a point-of-service option;

2. A plan offered by provider-sponsored organization; and

3. A preferred provider organization plan;

(b) A medical savings account plan coupled with a contribution into a Medicare Advantage plan medical savings account; and

(c) A Medicare Advantage private fee-for-service plan.

(22) "Medicare Select insurer" means an insurer offering, or seeking to offer, a Medicare Select policy or certificate.

(23) "Medicare Select policy" or "Medicare Select certificate" means, respectively, a Medicare supplement policy or certificate that contains restricted network provisions.

(24) "Medicare supplement policy" is defined by KRS 304.14-500(3).

(25) "Network provider" means a provider of health care, or a group of providers of health care, that has entered into a written agreement with the insurer to provide benefits insured under a Medicare Select policy.

(26) "Non-age eligible person" is defined by KRS 304.14-525(1)(a).

(27)(26) "Policy form" means the form on which the policy is delivered or issued for delivery by the insurer.

(28)(27) "Pre-Standardized Medicare supplement benefit plan[.]" "Pre-Standardized benefit plan[.]" or "Pre-Standardized plan" means a group or individual policy of Medicare supplement insurance issued prior to January 1, 1992.

(29)(28) "Restricted network provision" means any provision that conditions the payment of benefits, in whole or in part, on the use of network providers.

(30)(29) "Secretary" means the Secretary of the U.S. Department of Health and Human Services.

(31)(30) "Service area" means the geographic area approved by the commissioner within which an insurer is authorized to offer a Medicare Select policy.

(32)(34) "Structure, language, designation, and format" means style, arrangement, and overall content of a benefit.

(33)(32) "Underwriting purposes" means:

(a) Rules for, or determination of, eligibility, including enrollment and continued eligibility, for benefits under the policy;

(b) The computation of premium or contribution amounts under the policy;

(c) The application of any pre-existing condition exclusion under the policy; and

(d) Other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

(34) "Weighted average aged premium rate" is defined by KRS 304.14-525(1)(b).

(35)(33) "1990 Standardized Medicare supplement benefit plan[.]" "1990 Standardized benefit plan[.]" or "1990 plan" means a group or individual policy of Medicare supplement insurance issued on or after January 1, 1992, with an effective date for coverage prior to June 1, 2010 including Medicare supplement insurance policies and certificates renewed on or after that date that are not replaced by the insurer at the request of the insured.

(36)(34) "2010 Standardized Medicare supplement benefit plan[.]" "2010 Standardized benefit plan[.]" or "2010 plan" means a group or individual policy of Medicare supplement insurance issued with an effective date for coverage on or after June 1, 2010.

Section 2. Purpose. The purpose of this administrative regulation shall be to:

(1) Provide for the reasonable standardization of coverage and simplification of terms and benefits of Medicare supplement policies;

(2) Facilitate public understanding and comparison of the policies;

(3) Eliminate provisions contained in the policies that may be misleading or confusing in connection with the purchase of the policies or with the settlement of claims; and

(4) Provide for full disclosures in the sale of accident and sickness insurance coverage to persons eligible for Medicare.

Section 3. Applicability and Scope.

(1) Except as provided in Sections 6, 15, 16, 19, and 24, the requirements of this administrative regulation shall apply to:

(a) All Medicare supplement policies delivered or issued for delivery in Kentucky on or after January 4, 2010; and

(b) All certificates issued under group Medicare supplement policies, which certificates have been delivered or issued for delivery in Kentucky.

(2) This administrative regulation shall not apply to a policy or contract:

(a) Of one (1) or more employers or labor organizations, or of the trustees of a fund established by one (1) or more employers or labor organizations, or combination thereof;

(b) For employees or former employees, or a combination thereof; or

(c) For members or former members, or a combination thereof, of the labor organizations.

Section 4. Policy Definitions and Terms. A policy or certificate shall not be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy or certificate unless the policy or certificate contains definitions or terms that conform to this section.

(1) "Accident", "accidental injury", or "accidental means" shall be defined to employ "result" language and shall not include words that establish an accidental means test or use words including "external, violent, visible wounds" or similar words of description or characterization.

(a) The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."

(b) The definition may provide that injuries shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless the definition is prohibited by law.

(2) "Activities of daily living" shall include bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(3) "At-home recovery visit" shall mean the period of a visit required to provide at home recovery care, without limit on the duration of the visit, except each consecutive four (4) hours in a twenty-four (24) hour period of services provided by a care provider shall be one (1) visit.

(4) "Benefit period" or "Medicare benefit period" shall not be defined more restrictively than as defined in the Medicare program.

(5) "Care provider" shall mean a duly qualified or licensed home health aide or homemaker, personal care aide, or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

(6) "Convalescent nursing home", "extended care facility", or "skilled nursing facility" shall not be defined more restrictively than as defined in the Medicare Program.

(7) "Emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

(8) "Home" shall mean any place used by the insured as a place of residence, if the place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

(9) "Hospital" may be defined in relation to its status, facilities, and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but shall not be defined more restrictively than as defined in the Medicare Program.

(10) "Medicare" shall be defined in the policy and certificate. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended", or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof", or words of similar import.

(11) "Medicare eligible expenses" shall mean expenses of the kinds covered by Medicare Parts A and B, to the extent recognized as reasonable and medically necessary by Medicare.

(12) "Physician" shall not be defined more restrictively than as defined in the Medicare program.

(13) "Preexisting condition" shall not be defined more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

(14) "Sickness" shall not be defined to be more restrictive than the following: "Sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force." The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability, or similar law.

Section 5. Policy Provisions.

(1) Except for permitted preexisting condition clauses as described in Sections 6(2)(a), 7(1)(a), and 8(1) of this administrative regulation, a policy or certificate shall not be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy if the policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

(2) A Medicare supplement policy or certificate shall not:

(a) Contain a probationary or elimination period; or

(b) Use waivers to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

(3) A Medicare supplement policy or certificate in force in the state shall not contain benefits that duplicate benefits provided by Medicare.

(4)

(a) Subject to Sections 6(2)(d), (e), and (g), and 7(1)(d) and (e) of this administrative regulation, a Medicare supplement policy with benefits for outpatient prescription drugs in existence prior to January 1, 2006, shall be renewed for current policyholders who do not enroll in Part D at the option of the policyholder.

(b) A Medicare supplement policy with benefits for outpatient prescription drugs shall not be issued after December 31, 2005.

(c) After December 31, 2005, a Medicare supplement policy with benefits for outpatient prescription drugs shall not be renewed after the policyholder enrolls in Medicare Part D unless:

1. The policy is modified to eliminate outpatient prescription coverage for expenses of outpatient prescription drugs incurred after the effective date of the individual's coverage under a Part D plan; and

2. Premiums are adjusted to reflect the elimination of outpatient prescription drug coverage at Medicare Part D enrollment, accounting for any claims paid, if applicable.

Section 6. Minimum Benefit Standards for Pre-Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery Prior to January 1, 1992.

(1) A policy or certificate shall not be advertised, solicited, or issued for delivery in Kentucky as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards, which shall not preclude the inclusion of other provisions or benefits that are not inconsistent with these standards.

(2) General standards. The following standards shall apply to Medicare supplement policies and certificates and are in addition to all other requirements of this administrative regulation.

(a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition and the policy or certificate shall not define a preexisting condition more restrictively than Section 4(13) of this administrative regulation.

(b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment, or coinsurance

amounts. Premiums may be modified to correspond with the changes.

(d) A "noncancellable[...]" "guaranteed renewable[...]" or "noncancellable and guaranteed renewable" Medicare supplement policy shall not:

1. Provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or

2. Be cancelled or nonrenewed by the insurer solely on the grounds of deterioration of health.

(e)

1. An insurer shall not cancel or nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

2. If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in subparagraph 4. of this paragraph~~[paragraph (e)4 of this subsection]~~, the insurer shall offer certificate holders an individual Medicare supplement policy with at least the following choices:

a. An individual Medicare supplement policy currently offered by the insurer having comparable benefits to those contained in the terminated group Medicare supplement policy; and

b. An individual Medicare supplement policy that provides the benefits as are required to meet the minimum standards as defined in Section 8(2) of this administrative regulation.

3. If membership in a group is terminated, the insurer shall:

a. Offer the certificate holder the conversion opportunities described in subparagraph 2_ of this paragraph; or

b. At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

4. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the insurer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination, and coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits. Receipt of Medicare Part D benefits shall not be considered in determining a continuous loss.

(g) If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108-173, the modified policy shall satisfy the guaranteed renewal requirements of this subsection.

(3) Minimum benefit standards. The following minimum benefit standards shall apply to Medicare supplement policies and certificates and are in addition to all other requirements of this administrative regulation.

(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(b) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

(c) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(d) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety (90) percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

(e) Coverage under Medicare Part A for the reasonable cost of the first three (3) pints of blood, or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 409.87(a)(2), unless replaced in accordance with 42 C.F.R. 409.87(c)(2) or already paid for under Part B;

(f) Coverage for the coinsurance amount, or in the case of

hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible; and

(g) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood, or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 409.87(a)(2), unless replaced in accordance with 42 C.F.R. 409.87(c)(2) or already paid for under Part A, subject to the Medicare deductible amount.

Section 7. Benefit Standards for 1990 Standardized Medicare Supplement Benefit Plan and Policies or Certificates Issued or Delivered on or After January 1, 1992, and With an Effective Date for Coverage Prior to June 1, 2010. The following standards shall apply to all Medicare supplement policies or certificates delivered or issued for delivery in Kentucky on or after January 1, 1992, and with an effective date for coverage prior to June 1, 2010. A policy or certificate shall not be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards.

(1) General Standards. The following standards shall apply to Medicare supplement policies and certificates and are in addition to all other requirements of this administrative regulation.

(a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition and the policy or certificate shall not define a preexisting condition more restrictively than Section 4(13) of this administrative regulation.

(b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare shall be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment, or coinsurance amounts. Premiums may be modified to correspond with the changes.

(d) A Medicare supplement policy or certificate shall not provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(e) Each Medicare supplement policy shall be guaranteed renewable.

1. The insurer shall not cancel or nonrenew the policy solely on health status of the individual.

2. The insurer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

3. If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under subparagraph 5_ of this paragraph, the insurer shall offer certificate holders an option to choose an individual Medicare supplement policy which, at the option of the certificate holder:

a. Provides for continuation of the benefits contained in the group policy; or

b. Provides for benefits that meet the requirements of this subsection.

4. If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the insurer shall:

a. Offer the certificate holder the conversion opportunity described in subparagraph 3_ of this paragraph; or

b. At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

5. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the insurer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been

covered under the group policy being replaced.

6. If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement and Modernization Act of 2003, Pub. L. 108-173, the modified policy shall satisfy the guaranteed renewal requirements of this paragraph.

(f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss that commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits shall not be considered in determining a continuous loss.

(g)

1. A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period, not to exceed twenty-four (24) months, in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq., but only if the policyholder or certificate holder notifies the insurer of the policy or certificate within ninety (90) days after the date the individual becomes entitled to assistance.

2. If suspension occurs and if the policyholder or certificate holder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstated, effective as of the date of termination of entitlement, as of the termination of entitlement if the policyholder or certificate holder provides notice of loss of entitlement within ninety (90) days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

3. Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended, for any period that may be provided by 42 U.S.C. 1395ss(q)(5), at the request of the policyholder if the policyholder is entitled to benefits under Section 226[(b) of the Social Security Act, 42 U.S.C. 426(b), and is covered under a group health plan, as defined in Section 1862[(b)(1)(A)(v) of the Social Security Act, 42 U.S.C. 1395y(b)(1)(A)(v). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstated, effective as of the date of loss of coverage, if the policyholder provides notice of loss of coverage within ninety (90) days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan.

4. Reinstatement of coverages as described in subparagraphs 2₂ and 3₃ of this paragraph:

a. Shall not provide for any waiting period with respect to treatment of preexisting conditions;

b. Shall provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension. If the suspended Medicare supplement policy provided coverage for outpatient prescription drugs, reinstatement of the policy for Medicare Part D enrollees shall be without coverage for outpatient prescription drugs and shall provide substantially equivalent coverage to the coverage in effect before the date of suspension; and

c. Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage not been suspended.

(h) If an insurer makes a written offer to the Medicare Supplement policyholders or certificate holders of one or more of its plans, to exchange during a specified period from his or her 1990 Standardized plan, as described in Section 9 of this administrative regulation, to a 2010 Standardized plan, as described in Section 10 of this administrative regulation, the offer and subsequent exchange shall comply with the following requirements:

1. An insurer shall not be required to provide justification to the commissioner if the insured replaces a 1990 Standardized policy or certificate with an issue age rated 2010 Standardized policy or certificate at the insured's original issue age. If an insured's policy or

certificate to be replaced is priced on an issue age rate schedule at offer, the rate charged to the insured for the new exchanged policy shall recognize the policy reserve buildup, due to the pre-funding inherent in the use of an issue age rate basis, for the benefit of the insured. The method proposed to be used by an insurer shall be filed with the commissioner in accordance with KRS 304.14-120 and 806 KAR 14:007.

2. The rating class of the new policy or certificate shall be the class closest to the insured's class of the replaced coverage.

3. An insurer shall not apply new pre-existing condition limitations or a new incontestability period to the new policy for those benefits contained in the exchanged 1990 Standardized policy or certificate of the insured, but may apply pre-existing condition limitations of no more than six (6) months to any added benefits contained in the new 2010 Standardized policy or certificate not contained in the exchanged policy.

4. The new policy or certificate shall be offered to all policyholders or certificate holders within a given plan, except if the offer or issue would be in violation of state or federal law.

5. An insurer may offer its policyholders or certificate holders the following exchange options:

a. Selected existing plans; or

b. Certain new plans for a particular existing plan.

(2) Standards for basic (core) benefits common to benefit plans A to J. Every insurer shall make available a policy or certificate including at a minimum the following basic "core" package of benefits to each prospective insured. An insurer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not in lieu of it.

(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(b) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;

(c) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days;

(d) Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood, or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 409.87(a)(2), unless replaced in accordance with 42 C.F.R. 409.87(c)(2); and

(e) Coverage for the coinsurance amount or for hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

(3) Standards for Additional Benefits. The following additional benefits shall be included in Medicare Supplement Benefit Plans "B" through "J" only as provided by Section 9 of this administrative regulation:

(a) Medicare Part A Deductible, which is coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.

(b) Skilled Nursing Facility Care, which is coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A.

(c) Medicare Part B Deductible, which is coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(d) Eighty (80) Percent of the Medicare Part B Excess Charges, which is coverage for eighty (80) percent of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program, and the Medicare-approved Part B charge.

(e) 100 Percent of the Medicare Part B Excess Charges, which is coverage for all of the difference between the actual Medicare Part B charges as billed, not to exceed any charge limitation established

by the Medicare Program or state law, and the Medicare-approved Part B charge.

(f) Basic Outpatient Prescription Drug Benefit which is coverage for fifty (50) percent of outpatient prescription drug charges, after a \$250 calendar year deductible, to a maximum of \$1,250 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.

(g) Extended Outpatient Prescription Drug Benefit, which is coverage for fifty (50) percent of outpatient prescription drug charges, after a \$250 calendar year deductible to a maximum of \$3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.

(h) Medically Necessary Emergency Care in a Foreign Country, which is coverage to the extent not covered by Medicare for eighty (80) percent of the billed charges for Medicare eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year deductible of \$250, and a lifetime maximum benefit of \$50,000.

(i)

1. Preventive Medical Care Benefit, which is coverage for the following preventive health services not covered by Medicare:

a. An annual clinical preventive medical history and physical examination that may include tests and services from subparagraph 2₂ of this paragraph and patient education to address preventive health care measures; and

b. Preventive screening tests or preventive services, the selection and frequency of which are determined to be medically appropriate by the attending physician.

2. Reimbursement shall be for the actual charges up to 100 percent of the Medicare approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of \$120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

(j) At-Home Recovery Benefit, which is coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.

1. Coverage requirements and limitations.

a. At-home recovery services provided shall be primarily services that assist in activities of daily living.

b. The insured's attending physician shall certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.

c. Coverage shall be limited to:

(i) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare-approved home health care visits under a Medicare-approved home care plan of treatment;

(ii) The actual charges for each visit up to a maximum reimbursement of forty (40) dollars per visit;

(iii) \$1,600 per calendar year;

(iv) Seven (7) visits in any one (1) week;

(v) Care furnished on a visiting basis in the insured's home;

(vi) Services provided by a care provider as described in Section 4(5) of this administrative regulation;

(vii) At-home recovery visits while the insured is covered under the policy or certificate and not excluded; and

(viii) At-home recovery visits received during the period the insured is receiving Medicare-approved home care services or no more than eight (8) weeks after the service date of the last Medicare-approved home health care visit.

2. Coverage shall be excluded for:

a. Home care visits paid for by Medicare or other government programs; and

b. Care provided by family members, unpaid volunteers, or providers who are not care providers.

(4) Standards for Plans K and L.

(a) Standardized Medicare supplement benefit plan "K" shall consist of the following:

1. Coverage of 100 percent of the Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;

2. Coverage of 100 percent of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period;

3. Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days;

4. Medicare Part A Deductible, which is coverage for fifty (50) percent of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in subparagraph 10₂ of this paragraph;

5. Skilled Nursing Facility Care, which is coverage for fifty (50) percent of the coinsurance amount for each day used from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in subparagraph 10₂ of this paragraph;

6. Hospice Care, which is coverage for fifty (50) percent of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in subparagraph 10₂ of this paragraph;

7. Coverage for fifty (50) percent, under Medicare Part A or B, of the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, pursuant to 42 C.F.R. 409.87(a)(2)), unless replaced in accordance with 42 C.F.R. 409.87(c)(2), until the out-of-pocket limitation is met as described in subparagraph 10₂ of this paragraph;

8. Except for coverage provided in subparagraph 9₂ of this paragraph, coverage for fifty (50) percent of the cost sharing applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in subparagraph 10₂ of this paragraph;

9. Coverage of 100 percent of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and

10. Coverage of 100 percent of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of \$4,000 in 2006, indexed each year by the appropriate inflation adjustment specified by the secretary.

(b) Standardized Medicare supplement benefit plan "L" shall consist of the following:

1. The benefits described in paragraph (a)1₂, 2₂, 3₂, and 9₂ of this subsection[section];

2. The benefit described in paragraph (a)4₂, 5₂, 6₂, 7₂, and 8₂ of this subsection[section], but substituting seventy-five (75) percent for fifty (50) percent; and

3. The benefit described in paragraph (a)10₂ of this section, but substituting \$2,000 for \$4,000.

Section 8. Benefit Standards for 2010 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery with an Effective Date for Coverage on or After June 1, 2010. The following standards shall apply to all Medicare supplement policies or certificates delivered or issued for delivery in Kentucky with an effective date for coverage on or after June 1, 2010. A policy or certificate shall not be advertised, solicited, delivered, or issued for delivery in Kentucky as a Medicare supplement policy or certificate unless it complies with these benefit standards. An insurer shall not offer any 1990 Standardized Medicare supplement benefit plan for sale on or after June 1, 2010. Benefit standards applicable to Medicare supplement policies and certificates issued before June 1, 2010, remain subject to the requirements of Sections 7 and 9 of this

administrative regulation.

(1) General Standards. The general standards of Section 7(1)(a) through (g), except 7(1)(e)6., shall apply to all policies under Section 8 of this administrative regulation.

(2) Standards for Basic (Core) Benefits Common to Medicare Supplement Insurance Benefit Plans A, B, C, D, F, High Deductible F, G, M and N. Every insurer of Medicare supplement insurance benefit plans shall make available a policy or certificate including, at a minimum, the following basic "core" package of benefits to each prospective insured. An insurer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not in lieu of it.

(a) The basic core benefits included within Section 7(2)(a) through (e) of this administrative regulation shall be applied to plans under this section; and

(b) Hospice Care, which is coverage of cost sharing for all Part A Medicare eligible hospice care and respite care expenses.

(3) Standards for Additional Benefits. The following additional benefits shall be included in Medicare supplement benefit Plans B, C, D, F, High Deductible F, G, M, and N as provided by Section 10 of this administrative regulation.

(a) Medicare Part A Deductible, which is coverage for 100 percent of the Medicare Part A inpatient hospital deductible amount per benefit period.

(b) Medicare Part A Deductible, which is coverage for fifty (50) percent of the Medicare Part A inpatient hospital deductible amount per benefit period.

(c) Skilled Nursing Facility Care, which is coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A.

(d) Medicare Part B Deductible, which is coverage for 100 percent of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(e) 100 percent of the Medicare Part B Excess Charges, which is coverage for the difference between the actual Medicare Part B charges as billed, not to exceed any charge limitation established by the Medicare program, and the Medicare-approved Part B charge.

(f) Medically Necessary Emergency Care in a Foreign Country, which is coverage to the extent not covered by Medicare for eighty (80) percent of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year deductible of \$250, and a lifetime maximum benefit of \$50,000.

Section 9. Standard Medicare Supplement Benefit Plans for 1990 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery on or After January 1, 1992, and with an Effective Date for Coverage Prior to June 1, 2010.

(1) An insurer shall make available to each prospective policyholder and certificate holder a policy form or certificate form containing only the basic core benefits, as defined in Section 7(2) of this administrative regulation.

(2) Groups, packages, or combinations of Medicare supplement benefits other than those listed in this section shall not be offered for sale in Kentucky, except as may be permitted in subsection (7) of this section and Section 11 of this administrative regulation.

(3) Benefit plans shall be uniform in structure, language, designation, and format to the standard benefit plans "A" through "L" listed in this section and conform to the definitions in Section 1 of this administrative regulation. Each benefit shall be structured in accordance with the format provided in Section[Sections] 7(2) and [7](3) or 7(4) of this administrative regulation and shall list the benefits in the order shown in this section.

(4) An insurer may use, in addition to the benefit plan designations required in subsection (3) of this section, other designations to the extent permitted by law.

(5) Make-up of benefit plans:

(a) Standardized Medicare supplement benefit Plan "A" shall be limited to the basic (core) benefits common to all benefit plans, as

described in Section 7(2) of this administrative regulation.

(b) Standardized Medicare supplement benefit Plan "B" shall include only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible as described in Section 7(3)(a).

(c) Standardized Medicare supplement benefit Plan "C" shall include only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible and medically necessary emergency care in a foreign country as described in Section[Sections] 7(3)(a), (b), (c), and (h) respectively.

(d) Standardized Medicare supplement benefit Plan "D" shall include only the following: The core benefit, as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and the at-home recovery benefit as described in Section[Sections] 7(3)(a), (b), (h), and (j) respectively.

(e) Standardized Medicare supplement benefit Plan "E" shall include only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and preventive medical care as described in Section[Sections] 7(3)(a), (b), (h), and (i) respectively.

(f) Standardized Medicare supplement benefit Plan "F" shall include only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, the skilled nursing facility care, the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as described in Section 7(3)(a), (b), (c), (e), and (h) respectively.

(g) Standardized Medicare supplement benefit high deductible Plan "F" shall include only the following: 100 percent of covered expenses following the payment of the annual high deductible Plan "F" deductible. The covered expenses shall include the core benefits as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as described in Section 7(3)(a), (b), (c), (e), and (h) respectively. The annual high deductible Plan "F" deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement Plan "F" policy, and shall be in addition to any other specific benefit deductibles. The annual high deductible Plan "F" deductible shall be \$1,500 for 1998 and 1999, and shall be based on the calendar year. It shall be adjusted annually thereafter by the secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of ten (10) dollars.

(h) Standardized Medicare supplement benefit Plan "G" shall include only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, eighty (80) percent of the Medicare Part B excess charges, medically necessary emergency care in a foreign country, and the at-home recovery benefit as described in Section 7(3)(a), (b), (d), (h), and (j) respectively.

(i) Standardized Medicare supplement benefit Plan "H" shall consist of only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, basic prescription drug benefit and medically necessary emergency care in a foreign country as described in Section 7(3)(a), (b), (f), and (h) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(j) Standardized Medicare supplement benefit Plan "I" shall consist of only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country and at-home recovery benefit as described in Section 7(3)(a), (b), (e), (f), (h), and (j) respectively. The outpatient prescription drug benefit

shall not be included in a Medicare supplement policy sold after December 31, 2005.

(k) Standardized Medicare supplement benefit Plan "J" shall consist of only the following: The core benefit as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care and at-home recovery benefit as described in Section 7(3)(a), (b), (c), (e), (g), (h), (i), and (j) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(l) Standardized Medicare supplement benefit high deductible Plan "J" shall consist of only the following: 100 percent of covered expenses following the payment of the annual high deductible Plan "J" deductible. The covered expenses shall include the core benefits as described in Section 7(2) of this administrative regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care benefit and at-home recovery benefit as described in Section 7(3)(a), (b), (c), (e), (g), (h), (i) and (j) respectively. The annual high deductible Plan "J" deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement Plan "J" policy, and shall be in addition to any other specific benefit deductibles. The annual deductible shall be \$1,500 for 1998 and 1999, and shall be based on a calendar year. It shall be adjusted annually thereafter by the secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve (12) [-]month period ending with August of the preceding year, and rounded to the nearest multiple of ten (10) dollars. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(6) Design of two (2) Medicare supplement plans mandated by The Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA), Pub. L. 108-173.

(a) Standardized Medicare supplement benefit plan "K" shall consist of only those benefits described in Section 7(4)(a) of this administrative regulation.

(b) Standardized Medicare supplement benefit plan "L" shall consist of only those benefits described in Section 7(4)(b) of this administrative regulation.

(7) New or Innovative Benefits: An insurer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not available, cost-effective, and offered in a manner that is consistent with the goal of simplification of Medicare supplement policies. After December 31, 2005, the innovative benefit shall not include an outpatient prescription drug benefit.

Section 10. Standard Medicare Supplement Benefit Plans for 2010 Standardized Medicare Supplement Benefit Plan Policies or Certificates with an Effective Date for Coverage on or After June 1, 2010. The following standards shall apply to all Medicare supplement policies or certificates with an effective date for coverage in this state on or after June 1, 2010. A policy or certificate shall not be advertised, solicited, delivered, or issued for delivery in Kentucky as a Medicare supplement policy or certificate unless it complies with these benefit plan standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued before June 1, 2010, shall remain subject to the requirements of Sections[~~Section~~] 7 and 9 of this administrative regulation.

(1)

(a) An insurer shall make available to each prospective policyholder and certificate holder a policy form or certificate form containing only the basic (core) benefits, as described in Section 8(2) of this administrative regulation.

(b) If an insurer makes available any of the additional benefits described in Section 8(3), or offers standardized benefit Plans K or L, as described in subsection (5)(h) and (i) of this section[~~Section 10(5)(h) and (i) of this administrative regulation~~], then the insurer shall make available to each prospective policyholder and certificate holder, in addition to a policy form or certificate form with only the basic (core) benefits as described in paragraph (a) of this subsection of this section, a policy form or certificate form containing either standardized benefit Plan C, as described in subsection (5)(c) of this section[~~Section 10(5)(c) of this administrative regulation~~], or standardized benefit Plan F, as described subsection (5)(e) of this section[~~Section 10(5)(e) of this administrative regulation~~].

(2) Groups, packages or combinations of Medicare supplement benefits other than those listed in this section shall not be offered for sale in this state, except as may be permitted in subsection (6) of this section[~~Section 10(6)~~] and in Section 12 of this administrative regulation.

(3) Benefit plans shall be uniform in structure, language, designation, and format to the standard benefit plans listed in this subsection and conform to the definitions in Section 1 of this administrative regulation. Each benefit shall be structured in accordance with the format provided in Section[~~Sections~~] 8(2) and [8](3) of this administrative regulation; or, in the case of plans K or L, in subsection(5)(h) or (i) of this section and list the benefits in the order shown.

(4) In addition to the benefit plan designations required in subsection (3) of this section, an insurer may use other designations if approved by the commissioner in accordance with subsection (6) of this section.

(5) 2010 Standardized Benefit Plans:

(a) Standardized Medicare supplement benefit Plan A shall include only the following: The basic (core) benefits as described in Section 8(2) of this administrative regulation.

(b) Standardized Medicare supplement benefit Plan B shall include only the following: The basic (core) benefit as described in Section 8(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible as described in Section 8(3)(a) of this administrative regulation.

(c) Standardized Medicare supplement benefit Plan C shall include only the following: The basic (core) benefit as described in Section 8(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B deductible, and medically necessary emergency care in a foreign country as described in Section 8(3)(a), (c), (d), and (f) of this administrative regulation, respectively.

(d) Standardized Medicare supplement benefit Plan D shall include only the following: The basic (core) benefit, as described in Section 8(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a[~~an~~] foreign country as described in Section[~~Sections~~] 8(3)(a), (c), and (f) of this administrative regulation, respectively.

(e) Standardized Medicare supplement Plan F shall include only the following: The basic (core) benefit as described in Section 8(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible, the skilled nursing facility care, 100 percent of the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as described in Section[~~Sections~~] 8(3)(a), (c), (d), (e), and (f), respectively.

(f) Standardized Medicare supplement Plan High Deductible F shall include only the following: 100 percent of covered expenses following the payment of the annual deductible set forth in subparagraph 2_ of this paragraph[~~of this subsection~~].

1. The basic (core) benefit as described in Section 8(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as described in Section[~~Sections~~] 8(3)(a), (c), (d), (e), and (f) of this administrative regulation, respectively.

2. The annual deductible in High Deductible Plan F shall consist of out-of-pocket expenses, other than premiums, for services

covered by Plan F, and shall be in addition to any other specific benefit deductibles. The basis for the deductible shall be \$1,500 and shall be adjusted annually from 1999 by the Secretary of the U.S. Department of Health and Human Services to reflect the change in the Consumer Price Index for all urban consumers for the twelve (12) month period ending with August of the preceding year, and rounded to the nearest multiple of ten (10) dollars.

(g)

1. Standardized Medicare supplement benefit Plan G shall include only the following: The basic (core) benefit as described in Section 8(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as described in Section[Sections] 8(3)(a), (c), (e), and (f), respectively.

2. Beginning January 1, 2020, the standardized benefit plans described in Section 11[(44)](1)(d) of this administrative regulation (Redesignated Plan G High Deductible) may be offered to any individual who was eligible for Medicare prior to January 1, 2020.

(h) Standardized Medicare supplement Plan K is mandated by The Medicare Prescription Drug, Improvement and Modernization Act of 2003, Pub. L. 108-173, and shall include only the following:

1. Part A Hospital Coinsurance 61st through 90th days: Coverage of 100 percent of the Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;

2. Part A Hospital Coinsurance, 91st through 150th days: Coverage of 100 percent of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period;

3. Part A Hospitalization After 150 Days: Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days;

4. Medicare Part A Deductible: Coverage for fifty (50) percent of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in subparagraph 10₂ of this paragraph;

5. Skilled Nursing Facility Care: Coverage for fifty (50) percent of the coinsurance amount for each day used from the twenty-first (21) day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in subparagraph 10₂ of this paragraph;

6. Hospice Care: Coverage for fifty (50) percent of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in subparagraph 10₂ of this paragraph;

7. Blood: Coverage for fifty (50) percent, under Medicare Part A or B, of the reasonable cost of the first three (3) pints of blood, or equivalent quantities of packed red blood cells, as described under 42 C.F.R. 409.87(a)(2) unless replaced in accordance with 42 C.F.R. 409.87(c)(2) until the out-of-pocket limitation is met as described in subparagraph 10₂ of this paragraph;

8. Part B Cost Sharing: Except for coverage provided in subparagraph 9₂ of this paragraph, coverage for fifty (50) percent of the cost sharing applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in subparagraph 10₂ of this paragraph;

9. Part B Preventive Services: Coverage of 100 percent of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and

10. Cost Sharing After Out-of-Pocket Limits: Coverage of 100 percent of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of \$4,000 in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.

(i) Standardized Medicare supplement Plan L is mandated by

The Medicare Prescription Drug, Improvement and Modernization Act of 2003, Pub. L. 108-173, and shall include only the following:

1. The benefits described in paragraph(h)1₂, 2₂, 3₂, and 9₂ of this subsection;

2. The benefit described in paragraph(h)4₂, 5₂, 6₂, 7₂, and 8₂ of this subsection, but substituting seventy-five (75) percent for fifty (50) percent; and

3. The benefit described in paragraph(h)10₂ of this subsection, but substituting \$2,000 for \$4,000.

(j) Standardized Medicare supplement Plan M shall include only the following: The basic core benefit as described in Section 8(2) of this administrative regulation, plus fifty (50) percent of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as described in Section[Sections] 8(3)(a), (c) and (f) of this administrative regulation, respectively.

(k) Standardized Medicare supplement Plan N shall include only the following: The basic core benefit as described in Section 8(2) of this administrative regulation, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as described in Section[Sections] 8(3)(a), (c) and (f) of this administrative regulation, respectively, with copayments in the following amounts:

1. The lesser of twenty (20) dollars or the Medicare Part B coinsurance or copayment for each covered health care provider office visit, including visits to medical specialists; and

2. The lesser of fifty (50) dollars or the Medicare Part B coinsurance or copayment for each covered emergency room visit; however, this copayment shall be waived if the insured is admitted to any hospital and the emergency visit is subsequently covered as a Medicare Part A expense.

(6) New or Innovative Benefits: An insurer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits, in addition to the standardized benefits provided in a policy or certificate that complies with the applicable standards of this section. The new or innovative benefits shall include only benefits that are appropriate to Medicare supplement insurance, are new or innovative, are not available, and are cost-effective. Approval of new or innovative benefits shall not adversely impact the goal of Medicare supplement simplification. New or innovative benefits shall not include an outpatient prescription drug benefit. New or innovative benefits shall not be used to change or reduce benefits, including a change of any cost-sharing provision, in any standardized plan.

Section 11. Standard Medicare Supplement Benefit Plans for 2020 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery to individuals Newly Eligible for Medicare on or After January 1, 2020. The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA), Pub. L. 114-10, requires the following standards to be applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state to individuals newly eligible for Medicare on or after January 1, 2020. A policy or certificate providing coverage of the Medicare Part B deductible shall not be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate to individuals newly eligible for Medicare on or after January 1, 2020. All policies shall comply with the following benefit standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued to individuals eligible for Medicare before January 1, 2020, shall remain subject to the requirements of Sections 9 and 10 of this administrative regulation.

(1) Benefit Requirements. The standards and requirements of Section 10 shall apply to all Medicare supplement policies and certificates delivered or issued for delivery to individuals newly eligible for Medicare on or after January 1, 2020, with the following exceptions:

(a) Standardized Medicare supplement benefit Plan C is redesignated as Plan D and shall provide the benefits contained in Section 10[(40)](5)(c) of this administrative regulation but shall not provide coverage for any portion of the Medicare Part B deductible.

(b) Standardized Medicare supplement benefit Plan F is

redesignated as Plan G and shall provide the benefits contained in Section 10[(40)](5)(e) of this administrative regulation but shall not provide coverage for 100 percent or any portion of the Medicare Part B deductible.

(c) Standardized Medicare supplement benefit plans C, F, and F with High Deductible shall not be offered to individuals newly eligible for Medicare on or after January 1, 2020.

(d)

1. Standardized Medicare supplement benefit Plan F with High Deductible is redesignated as Plan G with High Deductible and shall provide the benefits contained in Section 10[(40)](5)(f) of this administrative regulation but shall not provide coverage for any portion of the Medicare Part B deductible.

2. The Medicare Part B deductible paid by the beneficiary shall be considered an out-of-pocket[~~out-of-pocket~~] expense in meeting the annual high deductible.

(2) Applicability to Certain Individuals. This section shall apply only to individuals that are newly eligible for Medicare on or after January 1, 2020:

(a) By reason of attaining age sixty-five (65) on or after January 1, 2020; or

(b) By reason of entitlement to benefits under Part A pursuant to section 226(b) or 226A of the Social Security Act, 42 U.S.C. 426(b) or 426-1, or who is deemed eligible for benefits under section 226(a) of the Social Security Act, 42 U.S.C. 426(a), on or after January 1, 2020.

(3) Guaranteed Issue for Eligible Persons. For purposes of Section 14(5) of this administrative regulation, in the case of any individual newly eligible for Medicare on or after January 1, 2020, any reference to a Medicare supplement policy C or F (including F with High Deductible) shall be deemed to be a reference to Medicare supplement policy D or G (including G with High Deductible) respectively that meet the requirements of this section.

(4) Offer of Redesignated Plans to Individuals Other than Newly Eligible. On or after January 1, 2020, the standardized benefit plans described in subsection (1)(d) of this section may be offered to any individual who was eligible for Medicare prior to January 1, 2020 in addition to the standardized plans described in Section 10(5) of this administrative regulation.

Section 12. Medicare Select Policies and Certificates.

(1)

(a) This section shall apply to Medicare Select policies and certificates, as described in this section.

(b) A policy or certificate shall not be advertised as a Medicare Select policy or certificate unless it meets the requirements of this section.

(2) The commissioner may authorize an insurer to offer a Medicare Select policy or certificate, pursuant to this section and Section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990, 42 U.S.C. 1395ss and 42 U.S.C. 1320c-3, if the commissioner finds that the insurer has satisfied all of the requirements of this administrative regulation.

(3) A Medicare Select insurer shall not issue a Medicare Select policy or certificate in this state until its plan of operation has been approved by the commissioner pursuant to this section and KRS 304.14-120.

(4) A Medicare Select insurer shall file a proposed plan of operation with the commissioner. The plan of operation shall contain at least the following information:

(a) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

1. Covered services may be provided by network providers with reasonable promptness with respect to geographic location, hours of operation and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall not be more than sixty (60) miles from the insured's place of residence.

2. The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:

a. To deliver adequately all services that are subject to a restricted network provision; or

b. To make appropriate referrals.

3. There are written agreements with network providers describing specific responsibilities.

4. Emergency care is available twenty-four (24) hours per day and seven (7) days per week.

5. If covered services are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate. This subparagraph shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate.

(b) A statement or map providing a clear description of the service area.

(c) A description of the grievance procedure to be utilized.

(d) A description of the quality assurance program, including:

1. The formal organizational structure;

2. The written criteria for selection, retention, and removal of network providers; and

3. The procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action if warranted.

(e) A list and description, by specialty, of the network providers.

(f) Copies of the written information proposed to be used by the insurer to comply with subsection (8) of this section.

(g) Any other information requested by the commissioner in accordance with this section, KRS 304.14-120, and KRS 304.14-130.

(5)

(a) A Medicare Select insurer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the commissioner prior to implementing the changes. Changes shall be considered approved by the commissioner after sixty (60) days unless specifically disapproved.

(b) An updated list of network providers shall be filed with the commissioner at least quarterly.

(6) A Medicare Select policy or certificate shall not restrict payment for covered services provided by nonnetwork providers if:

(a) The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury, or a condition;

(b) It is not reasonable to obtain services through a network provider; or

(c) There are no network providers available within sixty (60) miles of the insured's place of residence.

(7) A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

(8) A Medicare Select insurer shall make full and fair disclosure in writing of the provisions, restrictions and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following:

(a) An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:

1. Other Medicare supplement policies or certificates offered by the insurer; and

2. Other Medicare Select policies or certificates.

(b) A description, which shall include address, phone number and hours of operation of the network providers, including primary care physicians, specialty physicians, hospitals and other providers.

(c) A description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized. Except to the extent specified in the policy or certificate, expenses incurred when using out-of-network providers shall not count toward the out-of-pocket annual limit contained in plans K and L.

(d) A description of coverage for emergency and urgently needed care and other out-of-service area coverage.

(e) A description of limitations on referrals to restricted network providers and to other providers.

(f) A description of the policyholder's rights to purchase any

other Medicare supplement policy or certificate offered by the insurer.

(g) A description of the Medicare Select insurer's quality assurance program and grievance procedure.

(9) Prior to the sale of a Medicare Select policy or certificate, a Medicare Select insurer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to subsection (8) of this section and that the applicant understands the restrictions of the Medicare Select policy or certificate.

(10) A Medicare Select insurer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. The procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.

(a) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.

(b) Upon issuance of the policy or certificate, the insurer shall provide detailed information to the policyholder describing how a grievance may be registered with the insurer.

(c) A grievance shall be considered in a timely manner and shall be transmitted to appropriate decision makers who have authority to fully investigate the issue and take corrective action.

(d) If a grievance is found to be valid, corrective action shall be taken promptly.

(e) All concerned parties shall be notified about the results of a grievance.

(f) The insurer shall report no later than each March 31st to the commissioner regarding its grievance procedure, including the number of grievances filed in the past year and a summary of the subject, nature, and resolution of grievances.

(11) Upon initial purchase, a Medicare Select insurer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the insurer.

(12)

(a) At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select insurer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the insurer that has comparable or lesser benefits and that does not contain a restricted network provision. The insurer shall make the policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six (6) months.

(b) For the purposes of this subsection, a Medicare supplement policy or certificate shall be considered to have comparable or lesser benefits unless it contains one (1) or more of the following significant benefits not included in the Medicare Select policy or certificate being replaced, coverage for:

1. The Medicare Part A deductible;
2. At-home recovery services; or
3. Part B excess charges.

(13) Medicare Select policies and certificates shall provide for continuation of coverage if the secretary determines that Medicare Select policies and certificates issued pursuant to this section shall be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment.

(a) Each Medicare Select insurer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the insurer that has comparable or lesser benefits and that does not contain a restricted network provision. The insurer shall make these policies and certificates available without requiring evidence of insurability.

(b) For the purposes of this subsection, a Medicare supplement policy or certificate shall be considered to have comparable or lesser benefits unless it contains one (1) or more of the following significant benefits not included in the Medicare Select policy or certificate being replaced, coverage for:

1. The Medicare Part A deductible;
2. At-home recovery services; or
3. Part B excess charges.

(14) A Medicare Select insurer shall comply with reasonable

requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select Program.

Section 13. Initial Open Enrollment.

(1)

(a) An insurer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in Kentucky, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant if:

1. The applicant is enrolled for benefits under Medicare Part B;
and

2. An initial application for a policy or certificate is submitted prior to or during the six (6) month period beginning with the first day of the first month in which an individual is:

a. Sixty-five (65) years of age or older; or~~and~~

b. A non-age eligible person, who meets the requirements of KRS 304.14-525(2)(b)2.

~~[2.] [The applicant is enrolled for benefits under Medicare Part B.]~~

(b) Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this subsection without regard to age.

(2)

(a) If an applicant qualifies under subsection (1) of this section and submits an application during the time period referenced in subsection (1) of this section and, as of the date of application, has had a continuous period of creditable coverage of at least six (6) months, the insurer shall not exclude benefits based on a preexisting condition.

(b) If the applicant qualifies under subsection (1) of this section and submits an application during the time period referenced in subsection (1) of this section and, as of the date of application, has had a continuous period of creditable coverage that is less than six (6) months, the insurer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The secretary shall specify the manner of the reduction under this subsection.

(3) Except as provided in subsection (2) of this section and Sections 14 and 25 of this administrative regulation, subsection (1) of this section shall not be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificate holder received treatment or was diagnosed during the six (6) months before the coverage became effective.

Section 14. Guaranteed Issue for Eligible Persons.

(1) Guaranteed Issue:

(a) Eligible persons are those individuals described in subsection (2) of this section who seek to enroll under the policy during the period specified in subsection (3) of this section, and who submit evidence of the date of termination, disenrollment, or Medicare Part D enrollment with the application for a Medicare supplement policy.

(b) With respect to eligible persons, an insurer shall not:

1. Deny or condition the issuance or effectiveness of a Medicare supplement policy described in subsection (5) of this section that is offered and is available for issuance to new enrollees by the insurer;

2. Discriminate in the pricing of a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition; and

3. Impose an exclusion of benefits based on a preexisting condition under a Medicare supplement policy.

(2) An eligible person shall include the following:

(a) An individual that is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan ceases to provide all the supplemental health benefits to the individual;

(b) An individual is enrolled with a Medicare Advantage organization under a Medicare Advantage plan under part C of

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Medicare, and:

1. The individual is sixty-five (65) years of age or older and is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under Section 1894 of the Social Security Act, 42 U.S.C. 1395eee, and there are circumstances similar to those described in subparagraph 2₂ of this paragraph that would permit discontinuance of the individual's enrollment with the provider if the individual were enrolled in a Medicare Advantage plan; or

2. Any of the following circumstances apply:

a. The certification of the organization or plan has been terminated;

b. The organization has terminated or discontinued providing the plan in the area in which the individual resides;

c. The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the secretary, but not including termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the federal Social Security Act, 42 U.S.C. 1395w-21(g)(3)(B), if the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856, 42 U.S.C. 1395w-26, or the plan is terminated for all individuals within a residence area; or

d. The individual demonstrates, in accordance with guidelines established by the secretary, that:

(i) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide the covered care in accordance with applicable quality standards;

(ii) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

(iii) The individual meets the other exceptional conditions as the secretary may provide;

(c)

1. An individual is enrolled with:

a. An eligible organization under a contract under Section 1876 of the Social Security Act, 42 U.S.C. 1395mm regarding Medicare cost;

b. A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

c. An organization under an agreement under Section 1833(a)(1)(A) of the Social Security Act, 42 U.S.C. 1395l(a)(1)(A), regarding health care prepayment plan; or

d. An organization under a Medicare Select policy; and

2. The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under paragraph (b) of this subsection;

(d) The individual is enrolled under a Medicare supplement policy and the enrollment ceases due to any of the following reasons:

1.

a. The insolvency of the insurer or bankruptcy of the non-insurer organization; or

b. The involuntary termination of coverage or enrollment under the policy;

2. The insurer of the policy substantially violated a material provision of the policy; or

3. The insurer, or an agent or other entity acting on the insurer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;

(e)

1. An individual that was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any of the following:

a. A Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare;

b. An eligible organization under a contract under Section 1876 of the Social Security Act, 42 U.S.C. 1395mm regarding Medicare cost;

c. A similar organization operating under demonstration project authority;

d. A PACE provider under Section 1894 of the Social Security Act, 42 U.S.C. 1395eee; or

e. A Medicare Select policy; and

2. The subsequent enrollment under subparagraph 1₁ of this paragraph is terminated by the enrollee during any period within the first twelve (12) months of subsequent enrollment during which the enrollee is permitted to terminate the subsequent enrollment under Section 1851(e) of the federal Social Security Act, 42 U.S.C. 1395w-21(e);

(f) An individual who, upon first becoming eligible for benefits under part A of Medicare at age sixty-five (65), enrolls in:

1. A Medicare Advantage plan under part C of Medicare, or with a PACE provider under Section 1894 of the Social Security Act, 42 U.S.C. 1395eee; and

2. Disenrolls from the plan or program by not later than twelve (12) months after the effective date of enrollment; ~~[-or]~~

(g) An individual that:

1. Enrolls in a Medicare Part D plan during the initial enrollment period;

2. Upon enrollment in Part D, was enrolled under a Medicare supplement policy that covers outpatient prescription drugs; and

3. Terminates enrollment in the Medicare supplement policy and submits evidence of enrollment in Medicare Part D along with the application for a policy described in subsection (5)(d) of this section; or

(h) An individual that is currently enrolled in a Medicare supplement policy who satisfies the requirements of KRS 304.14-525(2)(c).

(3) ~~[Guaranteed Issue Time Periods.]~~

(a) For an individual described in subsection (2)(a) of this section, the guaranteed issue period shall:

1. Begin on the later of the date:

a. The individual receives a notice of termination or cessation of all supplemental health benefits, or, if a notice is not received, notice that a claim has been denied because of a termination or cessation; or

b. That the applicable coverage terminates or ceases; and

2. End sixty-three (63) days thereafter;

(b) For an individual described in subsection (2)(b), (c), (e), ~~[or]~~ (f), or (h) of this section whose enrollment is terminated involuntarily, the guaranteed issue period shall begin on the date that the individual receives a notice of termination and ends sixty-three (63) days after the date the applicable coverage is terminated;

(c) For an individual described in subsection (2)(d)1₁ of this section, the guaranteed issue period shall end on the date that is sixty-three (63) days after the date the coverage is terminated and shall begin on the earlier of the date that:

1. The individual receives a notice of termination, a notice of the insurer's bankruptcy or insolvency, or other the similar notice if any; or

2. The applicable coverage is terminated;

(d) For an individual described in subsection (2)(b), (d)2₂, (d)3₃, (e), or (f) of this section who disenrolls voluntarily, the guaranteed issue period shall begin on the date that is sixty (60) days before the effective date of the disenrollment and shall end on the date that is sixty-three (63) days after the effective date;

(e) For an individual described in subsection (2)(g) of this section, the guaranteed issue period shall begin on the date the individual receives notice pursuant to Section 1882(v)(2)(B) of the Social Security Act, 42 U.S.C. 1395ss(v)(2)(B), from the Medicare supplement insurer during the sixty (60) day period immediately preceding the initial Part D enrollment period and shall end on the date that is sixty-three (63) days after the effective date of the individual's coverage under Medicare Part D; ~~[-and]~~

(f) For an individual described in subsection (2) of this section but not described in the preceding provisions of this subsection, the guaranteed issue period shall begin on the effective date of disenrollment and shall end on the date that is sixty-three (63) days after the effective date; ~~and[-]~~

(g) For an individual described in subsection (2)(h) of this section, the guaranteed issue period shall begin annually on the insured's birthday and shall end sixty (60) days after their birth date.

(4) Extended Medigap Access for Interrupted Trial Periods.

(a) For an individual described in subsection (2)(e) of this section whose enrollment with an organization or provider described in Subsection (2)(e)1₂ of this section is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls with another organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in subsection(2)(e)of this section;

(b) For an individual described in subsection (2)(f) of this section whose enrollment with a plan or in a program described in subsection (2)(f) of this section is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls in another plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in subsection (2)(f) of this section; and

(c) For purposes of subsection (2)(e) and (f) of this section, enrollment of an individual with an organization or provider described in subsection (2)(e)1₂ of this section, or with a plan or in a program described in subsection (2)(f) of this section, shall not be deemed to be an initial enrollment under this paragraph after the two (2) year period beginning on the date on which the individual first enrolled with an organization, provider, plan, or program.

(5) Products to Which Eligible Persons are Entitled. The Medicare supplement policy to which eligible persons shall be entitled under:

(a) Section 14(2)(a), (b), (c) and (d) of this administrative regulation is a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F, high deductible F, K, or L offered by any insurer;

(b)

1. Subject to subparagraph 2₂ of this paragraph, a person eligible pursuant to subsection (2)(e) of this section is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same insurer, or, if not so available, a policy described in paragraph (a) of this subsection;

2. After December 31, 2005, if the individual was most recently enrolled in a Medicare supplement policy with an outpatient prescription drug benefit, a Medicare supplement policy described in this subparagraph is:

a. The policy available from the same insurer but modified to remove outpatient prescription drug coverage; or

b. At the election of the policyholder, an A, B, C, F, high deductible F, K, or L policy that is offered by any insurer;

(c) Subsection (2)(f) of this section shall include any Medicare supplement policy offered by any insurer;

(d) Subsection (2)(g) of this section is a Medicare supplement policy that:

1. Has a benefit package classified as Plan A, B, C, F, high deductible F, K, or L; and

2. Is offered and available for issuance to new enrollees by the same insurer that issued the individual's Medicare supplement policy with outpatient prescription drug coverage.

(e) Subsection (2)(h) of this section is a Medicare supplement policy that is the same Medicare supplement plan as the individual is currently enrolled but is issued by a different insurer.

(6) Notification provisions.

(a) Upon an event described in subsection (2) of this section resulting in a loss of coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the insurer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of the individual's rights under this section, and of the obligations of insurers of Medicare supplement policies under subsection (1) of this section. This notice shall be communicated simultaneously with the notification of termination.

(b) Upon an event described in subsection (2) of this section resulting in an individual ceasing enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the insurer offering the policy, or the administrator of the plan, respectively, shall notify the individual of the individual's rights under this section, and of the obligations of insurer of Medicare

supplement policies under subsection (1) of this section. The notice shall be communicated within ten (10) working days of the insurer receiving notification of disenrollment.

Section 15. Standards for Claims Payment.

(1) An insurer shall comply with 42 U.S.C. 1395ss, section 1882(c)(3) of the Social Security Act, by:

(a) Accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form required and making a payment determination on the basis of the information contained in that notice;

(b) Notifying the participating physician or supplier and the beneficiary of the payment determination;

(c) Paying the participating physician or supplier;

(d) Upon enrollment, furnishing each enrollee with a card listing the policy name, number and a central mailing address to which notices from a Medicare carrier may be sent;

(e) Paying user fees for claim notices that are transmitted electronically or in another manner; and

(f) Providing to the secretary of, at least annually, a central mailing address to which all claims may be sent by Medicare carriers.

(2) Compliance with the requirements established in subsection (1) of this section shall be certified to the commissioner as part of the insurer's annual filing pursuant to KRS 304.3-240.

Section 16. Loss Ratio Standards and Refund or Credit of Premium.

(1) Loss Ratio Standards.

(a)

1. Pursuant to KRS 304.14-530, a Medicare Supplement policy form or certificate form shall not be delivered or issued for delivery in Kentucky unless it is expected to return to policyholders and certificate holders in the form of aggregate benefits, not including anticipated refunds or credits, provided under the policy form or certificate form which total:

a. At least seventy-five (75) percent of the aggregate amount of premiums earned in the case of group policies; or

b. At least sixty-five (65) percent of the aggregate amount of premiums earned in the case of individual policies.

2. The calculation shall be in accordance with accepted actuarial principles and practices; and

a. Based on:

(i) Incurred claims experience or incurred health care expenses if coverage is provided by a health maintenance organization on a service rather than reimbursement basis; and

(ii) Earned premiums for the period; and

b. Incurred health care expenses if coverage is provided by a health maintenance organization shall not include:

(i) Home office and overhead costs;

(ii) Advertising costs;

(iii) Commissions and other acquisition costs;

(iv) Taxes;

(v) Capital costs;

(vi) Administrative costs; and

(vii) Claims processing costs.

(b) A filing of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.

(c) For policies issued prior to October 14, 1990, expected claims in relation to premiums shall meet:

1. The originally filed anticipated loss ratio when combined with the actual experience since inception;

2. The appropriate loss ratio requirement from paragraph (a)1_a and b₂ of this subsection when combined with actual experience beginning with July 5, 1996, to date; and

3. The appropriate loss ratio requirement from paragraph (a)1_a.

and b_2 of this subsection over the entire future period for which the rates are computed to provide coverage.

(2) Refund or Credit Calculation.

(a) An insurer shall collect and file with the commissioner by May 31 of each year the data contained in the applicable reporting form contained in HL-MS-1 for each type in a standard Medicare supplement benefit plan.

(b) If on the basis of the experience as reported the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund or credit calculation shall be required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(c) For policies or certificates issued prior to October 14, 1990, the insurer shall make the refund or credit calculation separately for all individual policies, including all group policies subject to an individual loss ratio standard when issued, combined and all other group policies combined for experience after July 5, 1996.

(d) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds the level as identified on the annual refund calculation form HL-MS-1. The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services, but it shall not be less than the average rate of interest for thirteen (13) week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

(3) Annual filing of Premium Rates.

(a) An insurer of Medicare supplement policies and certificates issued before or after January 14, 1992, in this state shall file annually for approval by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner in KRS 304.14-120[304-14-120]:

1. Rates;
2. Rating schedule; and
3. Supporting documentation, including ratios of incurred losses to earned premiums by policy duration.

(b) The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration shall exclude active life reserves.

(c) An expected third-year loss ratio that is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three (3) years.

(d) As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every insurer of Medicare supplement policies or certificates in this state shall file with the commissioner, in accordance with KRS 304.14-120[304-14-120]:

1.
 - a. Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. The supporting documents necessary to justify the adjustment shall accompany the filing.
 - b. Appropriate premium adjustments necessary to produce an expected loss ratio under the policy or certificate to conform to minimum loss ratio standards for Medicare supplement policies and that are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the insurer for the Medicare supplement policies or certificates. A premium adjustment that would modify the loss ratio experience under the policy other than the adjustments described in this subsection shall not be made with respect to a policy at any time other than upon its renewal date or anniversary date.
 - c. If an insurer fails to make premium adjustments acceptable to the commissioner in accordance with this section, the commissioner may order premium adjustments, refunds or premium credits necessary to achieve the loss ratio required by this section.

2. Any appropriate riders, endorsements, or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with

Medicare. The riders, endorsements, or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

(4) Public Hearings. The commissioner may conduct a public hearing pursuant to KRS 304.2-310, to gather information concerning a request by an insurer for an increase in a rate for a policy form or certificate form issued before or after January 1, 1992, if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance shall be made without consideration of any refund or credit for the reporting period. Public notice of the hearing shall be furnished in accordance with KRS 304.2-320.

Section 17. Filing and Approval of Policies and Certificates and Premium Rates.

(1) An insurer shall not deliver or issue for delivery a policy or certificate to a resident of Kentucky unless the policy form or certificate form has been filed with and approved by the commissioner in accordance with filing requirements and procedures in KRS 304.14-120.

(2) An insurer shall file, with the commissioner, any riders or amendments to policy or certificate forms, issued in Kentucky, to delete outpatient prescription drug benefits as required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108-173.

(3) An insurer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation have been filed with and approved by the commissioner in accordance with KRS 304.14-120.

(4)

(a) Except as provided in paragraph (b) of this subsection, an insurer shall not file for approval more than one (1) form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

(b) An insurer may offer, with the approval of the commissioner, up to four (4) additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one (1) for each of the following cases:

1. The inclusion of new or innovative benefits;
2. The addition of either direct response or agent marketing methods;
3. The addition of either guaranteed issue or underwritten coverage; and
4. The offering of coverage to individuals eligible for Medicare by reason of disability.

(c) A type of a policy or certificate form shall include:

1. An individual policy;
2. A group policy;
3. An individual Medicare Select policy; or
4. A group Medicare Select policy.

(5)

(a) Except as provided in subparagraph 1_ of this paragraph, an insurer shall continue to make available for purchase any policy form or certificate form issued after January 1, 1992, that has been approved by the commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the insurer has actively offered it for sale in the previous twelve (12) months.

1. An insurer may discontinue the availability of a policy form or certificate form if the insurer provides to the commissioner in writing its decision at least thirty (30) days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the commissioner, the insurer shall not offer for sale the policy form or certificate form in Kentucky.

2. An insurer that discontinues the availability of a policy form or certificate form pursuant to subparagraph 1_ of this paragraph shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) years after the insurer provides notice to the commissioner of the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.

(b) The sale or other transfer of Medicare supplement business to another insurer shall be considered a discontinuance for the

purposes of this subsection.

(c) A change in the rating structure or methodology shall be considered a discontinuance under paragraph (a) of this subsection unless the insurer complies with the following requirements:

1. The insurer provides an actuarial memorandum, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates; and

2. The insurer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential that is in the public interest.

(6)

(a) Except as provided in paragraph (b) of this subsection, the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in Section 16 of this administrative regulation.

(b) Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

(7) An insurer shall not present for filing or approval a rate structure for its Medicare supplement policies or certificates issued after October 4, 2005, based upon a structure or methodology with any groupings of attained ages greater than one (1) year. The ratio between rates for successive ages shall increase smoothly as age increases.

(8) Any policy issued or delivered on or after January 1, 2024 to a non-age eligible individual shall not be charged more than the weighted average aged premium rate for the policy.

Section 18. Permitted Compensation Arrangements.

(1) An insurer or other entity may provide commission or other compensation to an agent or other representative for the sale of a Medicare supplement policy or certificate only if the first year commission or other first year compensation is no more than 200 percent of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

(2) The commission or other compensation provided in subsequent (renewal) years shall be the same as that provided in the second year or period and shall be provided for no fewer than five (5) renewal years.

(3) An insurer or other entity shall not provide compensation to its agents or other producers and an agent or producer shall not receive compensation greater than the renewal compensation payable by the replacing insurer on renewal policies or certificates if an existing policy or certificate is replaced.

Section 19. Required Disclosure Provisions.

(1) General Rules.

(a)

1. Medicare supplement policies and certificates shall include a renewal or continuation provision.

2. The language or specifications of a renewal or continuation provision shall be consistent with the type of contract issued.

3. The renewal or continuation provision shall:

a. Be appropriately captioned;

b. Appear on the first page of the policy; and

c. Include any reservation by the insurer of the right to change premiums and any automatic renewal premium increases based on the policyholder's age.

(b)

1. A rider or endorsement added to a Medicare supplement policy after date of issue or at reinstatement or renewal that reduces or eliminates benefits or coverage in the policy shall require a signed acceptance by the insured, except for a rider or endorsement by which an insurer:

a. Effectuates a request made in writing by the insured;

b. Exercises a specifically reserved right under a Medicare supplement policy; or

c. Is required to reduce or eliminate benefits to avoid duplication

of Medicare benefits.

2. After the date of policy or certificate issue, any rider or endorsement that increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless:

a. The benefits are required by the minimum standards for Medicare supplement policies; or

b. If the increased benefits or coverage is required by law.

3. If a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.

(c) Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import.

(d) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, these limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations."

(e) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate, or attached thereto, stating in substance that the policyholder or certificate holder shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason.

(f)

1. Insurers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis to persons eligible for Medicare shall provide to those applicants a Guide to Health Insurance for People with Medicare in the language, format, type size, type proportional spacing, bold character, and line spacing developed jointly by the National Association of Insurance Commissioners and Centers for Medicare and Medicaid Services and in a type size no smaller than twelve (12) point type.

2. Delivery of the guide described in subparagraph 1. of this paragraph shall be made:

a. Whether or not the policies or certificates are advertised, solicited, or issued as Medicare supplement policies or certificates as described in this administrative regulation.

b. To the applicant upon application and acknowledgement of receipt of the guide shall be obtained by the insurer, except that direct response insurer shall deliver the guide to the applicant upon request but not later than at policy delivery.

(2) Notice requirements.

(a) As soon as practicable, but no later than thirty (30) days prior to the annual effective date of any Medicare benefit changes, an insurer shall notify its policyholders and certificate holders of modifications it has made to Medicare supplement insurance policies or certificates. The notice shall:

1. Include a description of revisions to the Medicare Program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate; and

2. Inform each policyholder or certificate holder as to if any premium adjustment is to be made due to changes in Medicare.

(b) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(c) The notices shall not contain or be accompanied by any solicitation.

(3) Insurers shall comply with any notice requirements of the Medicare Prescription Drug, Improvement and Modernization Act of 2003, Pub.L. 108-173.

(4) Outline of Coverage Requirements for Medicare Supplement Policies.

(a) An insurer shall provide an outline of coverage to all applicants when an application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgement of receipt of the outline from the applicant.

(b) If an outline of coverage is provided at application and the Medicare supplement policy or certificate is issued on a basis that would require revision of the outline, a substitute outline of coverage

properly describing the policy or certificate shall accompany the policy or certificate when it is delivered and contain the following statement, in no less than twelve (12) point type, immediately above the company name: "NOTICE: READ THIS OUTLINE OF COVERAGE CAREFULLY. IT IS NOT IDENTICAL TO THE OUTLINE OF COVERAGE PROVIDED UPON APPLICATION AND THE COVERAGE ORIGINALLY APPLIED FOR HAS NOT BEEN ISSUED."

(c) The outline of coverage provided to applicants pursuant to this section shall consist of four (4) parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the insurer. The outline of coverage shall be in the language and format prescribed in the ~~HL-MS-09~~[~~HL-MS-4 or the Plan Benefit Chart~~] in no less than twelve (12) point type. All plans shall be shown on the cover page, and the plans that are offered by the insurer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

(5) Notice Regarding Policies or Certificates That Are Not Medicare Supplement Policies.

(a)

1. Any accident and sickness insurance policy or certificate, other than a Medicare supplement policy, a policy issued pursuant to a contract under Section 1876 of the Federal Social Security Act, 42 U.S.C. 1395 et seq., disability income policy, or other policy identified in Section 3(2) of this administrative regulation, issued for delivery in Kentucky to persons eligible for Medicare shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate.

2. The notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy, or certificate delivered to insureds.

3. The notice shall be in no less than twelve (12) point type and shall contain the following language: "THIS (POLICY OR CERTIFICATE) IS NOT A MEDICARE SUPPLEMENT (POLICY OR CONTRACT). If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the company."

(b) Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in paragraph (a) of this subsection shall disclose, using the applicable statement in HL-MS-3 the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate.

Section 20. Requirements for Application Forms and Replacement Coverage.

(1) Comparison statement.

(a) If a Medicare Advantage or Medicare supplement policy or certificate is to replace another Medicare supplement or Medicare Advantage policy or certificate, there shall be presented to the applicant, no later than the application date, HL-MS-5.

(b) Direct response insurers shall present the comparison statement to the applicant not later than when the policy is delivered.

(c) Agents shall:

1. Obtain the signature of the applicant on the comparison statement;

2. Sign the comparison statement; and

3. Send the comparison statement to the insurer and attach a copy of the comparison statement to the replacement policy.

(2)

(a) Application forms shall include the questions on HL-MS-6 designed to elicit information as to whether, as of the date of the application:

1. The applicant currently has Medicare supplement, Medicare Advantage, Medicaid coverage, or another health insurance policy or certificate in force; or

2. A Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate

presently in force.

(b) An agent shall provide the HL-MS-07 to the applicant.

(c) A supplementary application or other form to be signed by the applicant and agent containing the questions as found on the HL-MS-06 and statements on HL-MS-07 may be used.

(3) Agents shall list, on HL-MS-06 or on the supplementary form as identified in subsection (2)(c) of this section, any other health insurance policies they have sold to the applicant including:

(a) Policies sold that are still in force; and

(b) Policies sold in the past five (5) years that are no longer in force.

(4) For an insurer that uses direct response, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.

(5) Upon determining that a sale will involve replacement of Medicare supplement coverage, any insurer, other than an insurer that uses direct response, or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One (1) copy of the notice signed by the applicant and the agent, except if the coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the insurer. An insurer that uses direct response shall deliver to the applicant at issuance of the policy, the notice regarding replacement of Medicare supplement coverage. Upon receipt of the notice, the applicant or the applicant's designee shall notify the insurer who previously provided Medicare supplement coverage of the replacement coverage.

(6) The notice required by subsection (5) of this section for an insurer shall be provided as specified in HL-MS-08, in no less than twelve (12) point type or in a form developed by the insurer, which shall:

(a) Meet the requirements of this section; and

(b) Be filed with and approved by the commissioner prior to use.

Section 21. Filing Requirements for Advertising and Policy Delivery.

(1) An insurer shall provide a copy of any Medicare supplement advertisement intended for use in Kentucky whether through written, electronic, radio, or television, or any other medium to the commissioner for review prior to use. Advertisements shall not require approval prior to use, but an advertisement shall not be used if it has been disapproved by the commissioner and notice of the disapproval has been given to the insurer.

(2) Insurers and agents shall not use the names and addresses of persons purchased as "leads" unless the solicitation material used to obtain the names and addresses of the "leads" are filed as advertisement as required by this section. Insurers and agents shall not use "leads" if the solicitation materials have been disapproved by the commissioner.

(3) If a Medicare supplement policy is not delivered by mail, the agent or insurer shall obtain a signed and dated delivery receipt from the insured. If the delivery receipt is obtained by an agent, the agent shall forward the delivery receipts to the insurer.

Section 22. Standards for Marketing.

(1) An insurer, directly or through its agents or other representatives, shall:

(a) Establish marketing procedures to assure that any comparison of policies by its agents or other representatives will be fair and accurate.

(b) Establish marketing procedures to assure excessive insurance is not sold or issued.

(c) Display prominently by type, stamp or other appropriate means, on the first page of the policy the following disclosure: "Notice to buyer: This policy may not cover all of your medical expenses."

(d) Inquire and make every reasonable effort to identify if a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any insurance.

(e) Establish auditable procedures for verifying compliance with this subsection.

(2) In addition to the practices prohibited in KRS Chapter 304.12 and 806 KAR 12:092, the following acts and practices shall be prohibited:

(a) Twisting. Making any unfair or deceptive representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert an insurance policy or to take out a policy of insurance with another insurer.

(b) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(c) Cold lead advertising. Making use of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

(3) The terms "Medicare Supplement," "Medigap," "Medicare Wrap-Around" and similar words shall not be used unless the policy is issued in compliance with this administrative regulation.

Section 23. Appropriateness of Recommended Purchase and Excessive Insurance.

(1) In recommending the purchase or replacement of any Medicare supplement policy or certificate an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

(2) Any sale of a Medicare supplement policy or certificate that will provide an individual more than one (1) Medicare supplement policy or certificate shall be prohibited.

(3) An insurer shall not issue a Medicare supplement policy or certificate to an individual enrolled in Medicare Part C unless the effective date of the coverage is after the termination date of the individual's Part C coverage.

Section 24. Reporting of Multiple Policies.

(1) On or before March 1 of each year, an insurer shall report to the commissioner the following information, using HL-MS-2, for every individual resident of Kentucky for which the insurer has in force more than one (1) Medicare supplement policy or certificate:

(a) Policy and certificate number; and

(b) Date of issuance.

(2) The items set forth in subsection (1) of this section shall be grouped by individual policyholder.

Section 25. Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods, and Probationary Periods in Replacement Policies or Certificates.

(1) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods in the new Medicare supplement policy or certificate to the extent time was spent under the original policy.

(2) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six (6) months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods.

Section 26. Prohibition Against Use of Genetic Information and Requests for Genetic Testing. This section shall apply to all policies with policy years beginning on or after the effective date of this administrative regulation.

(1) An insurer of a Medicare supplement policy or certificate shall not:

(a) Deny or condition the issuance or effectiveness of the policy or certificate, including the imposition of any exclusion of benefits under the policy based on a pre-existing condition, on the basis of

the genetic information with respect to any individual; and

(b) Discriminate in the pricing of the policy or certificate, including the adjustment of premium rates, of an individual on the basis of the genetic information with respect to any individual.

(2) Subsection (1) of this section shall not be construed to limit the ability of an insurer, to the extent permitted by law, from:

(a) Denying or conditioning the issuance or effectiveness of the policy or certificate or increasing the premium for a group based on the manifestation of a disease or disorder of an insured or applicant; or

(b) Increasing the premium for any policy issued to an individual based on the manifestation of a disease or disorder of an individual who is covered under the policy, and the manifestation of a disease or disorder in one individual cannot also be used as genetic information about other group members and to further increase the premium for the group.

(3) Except as provided by subsection (6) of this section, an insurer of a Medicare supplement policy or certificate shall not request or require an individual or a family member of an individual to undergo a genetic test.

(4) Subsection (3) of this section shall not be construed to prohibit an insurer of a Medicare supplement policy or certificate from obtaining and using the results of a genetic test in making a determination regarding payment, as described for the purposes of applying the regulations promulgated under part C of title XI of the Social Security Act, 42 U.S.C. 1320d et seq., and section 264 of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d-2, and consistent with subsection (1) of this section.

(5) For purposes of carrying out subsection (4) of this section, an insurer of a Medicare supplement policy or certificate may request only the minimum amount of information necessary to accomplish the intended purpose.

(6) Notwithstanding subsection (3) of this section, an insurer of a Medicare supplement policy may request, but shall not require, that an individual or a family member of the individual undergo a genetic test if each of the following conditions is met:

(a) The request shall be made pursuant to research that complies with 45 C.F.R. part 46, or equivalent federal regulations, and any applicable state or local law, or administrative regulations, for the protection of human subjects in research.

(b) The insurer clearly indicates to each individual, or if a minor child, to the legal guardian of the child, to whom the request is made that:

1. Compliance with the request shall be voluntary; and

2. Noncompliance shall have no effect on enrollment status or premium or contribution amounts.

(c) Genetic information collected or acquired under this subsection shall not be used for underwriting, determination of eligibility to enroll or maintain enrollment status, premium rates, or the issuance, renewal, or replacement of a policy or certificate.

(d) The insurer notifies the secretary in writing that the insurer is conducting activities pursuant to the exception provided for under this subsection, including a description of the activities conducted.

(e) The insurer complies with other conditions as the secretary may by federal regulation require for activities conducted under this subsection.

(7) An insurer of a Medicare supplement policy or certificate shall not request, require, or purchase genetic information for underwriting purposes.

(8) An insurer of a Medicare supplement policy or certificate shall not request, require, or purchase genetic information with respect to any individual prior to an individual's enrollment under the policy in connection with enrollment.

(9) If an insurer of a Medicare supplement policy or certificate obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning any individual, the request, requirement, or purchase shall not be considered a violation of subsection (8) of this section if the request, requirement, or purchase is not in violation of subsection (7) of this section.

Section 27. Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) "HL-MS-1", July 2009 edition;

- (b) "HL-MS-2", July 2009 edition;
- (c) "HL-MS-3", July 2009 edition;
- (d) "HL-MS-4", October 2009 edition;
- (e) "HL-MS-5", May 2018 edition;
- (f) "HL-MS-06", July 2009 edition;
- (g) "HL-MS-07", July 2009 edition;
- (h) "HL-MS-08", October 2009 edition; and
- (i) "~~HL-MS-09", October 2023 edition~~"~~Plan Benefit Chart", April 2018 edition~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 500 Mero Street,~~[215 West Main Street,]~~ Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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

SHARON P. CLARK, Commissioner

RAY A. PERRY, Secretary

APPROVED BY AGENCY: June 12, 2024

FILED WITH LRC: June 12, 2024 at 1:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on August 22, 2024 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on August 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 below.

CONTACT PERSON: Shaun T. Orme, Executive Advisor, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 782-1698, fax +1 (502) 564-1453, email shaun.orme@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shaun T. Orme

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum standards for Medicare supplement insurance policies and certificates.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish minimum standards for Medicare supplement insurance policies and certificates in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.14-510 authorizes the Commissioner of Insurance to promulgate administrative regulations establishing minimum standards for Medicare supplement insurance policies. KRS 304.14-525 authorizes the Commissioner of Insurance to promulgate administrative regulations to implement standards for Medicare supplement policies issued to non-age eligible persons and enforce weighted average premium rate calculations for all those policies. KRS 304.32-250 authorizes the commissioner of the Department of Insurance to promulgate administrative regulations necessary for the proper administration of KRS 304.32. KRS 304.38-150 authorizes the commissioner of the Department of Insurance to promulgate administrative regulations necessary for the proper administration of KRS Chapter 304.38.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative

regulation establishes the minimum standards for Medicare Supplement insurance policies and certificate that are delivered in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amendment codifies the changes to the minimum standards laws in HB 345 (23Reg. Sess.) that set forth eligibility standards for Medicare supplement policies such as the "birthday rule", calculations to be used by regulated entities, and standards for denial or cancellation of a policy.

(b) The necessity of the amendment to this administrative regulation: The amendments to this regulation are necessary to set forth the eligibility standard processes for consumers and carriers.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.14-510 and 525 require the commissioner to promulgate administrative regulations to implement the provisions of the new statute.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation defined the "birthday rule" so that previously non-eligible persons will be afforded the opportunity for Medicare supplement coverage. As well as requires issuers to calculate premium based on the "weighted average premium" and afford guaranteed issue for non-age eligible persons.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Due to the expansion of potential enrollees the Department can not calculate this number.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Any Non-age eligible individual will be able to enroll into a Medicare supplement plan. Insurers offering Medicare supplement insurance will be required to calculate premium by using the average weighted premium calculation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation does not impose cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals who meet the definition of non-age eligible will be able to apply for Medicare supplement policy. The idea of the premium calculation is to provide "savings" for enrollees.

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

(a) Initially: No associated cost

(b) On a continuing basis: No associated cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Insurance's operational budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No, there is not a need to increase fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No, this regulation does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all individuals who are Medicare eligible and Medicare Supplement issuers.

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 304.2-110(1), 304.14-510, 304.14-525 304.32-250, 304.38-150.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Department of Insurance as the implementer.

(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? No difference.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): No local entities affected.

(a) Estimate the following for the first year:

Expenditures:

Revenues:

Cost Savings:

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No difference.

(4) Identify additional regulated entities not listed in questions (2) or (3): Insurers that offer Medicare supplement policies.

(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? No difference.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no expectation of any fiscal impact.

(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, this administrative regulation will not have a major economic impact.

(b) The methodology and resources used to reach this conclusion:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Laboratory Services
(Amendment)

902 KAR 4:030. Newborn screening program.

RELATES TO: KRS 194A.050, 211.090, 211.180(1), 214.155
 STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 214.155

NECESSITY, FUNCTION, AND CONFORMITY: KRS 214.155 requires the Cabinet for Health and Family Services to operate a newborn screening program for inborn errors of metabolism and other inherited and congenital disorders and conditions, and to establish a schedule of fees to cover the actual costs to the cabinet for the program. This administrative regulation requires that infants be tested for inborn errors of metabolism and other inherited and congenital disorders and conditions as specified in KRS 214.155, and establishes the schedule of fees to cover actual costs of the newborn screening program. The selection of screened conditions is based upon the recommended uniform screening panel as authored by the American College of Medical Genetics and commissioned by the Health Resources and Services Administration, U.S. Department of Health and Human Services.

Section 1. Definitions.

(1) "Blood spot testing" means laboratory testing that is performed on newborn infants to detect a wide variety of inherited and congenital disorders and conditions by using a laboratory-authorized filter paper specimen card.

(2) "Critical congenital heart disease" or "CCHD" means an abnormality in the structure or function of the heart that exists at birth and places an infant at significant risk of disability or death if not diagnosed and treated soon after birth.

(3) "Diagnostic echocardiogram" means a test that uses ultrasound to provide an image of the heart that is performed by a technician trained to perform pediatric echocardiograms.

(4) "Laboratory" means the Division of Laboratory Services within the Cabinet for Health and Family Services, Department for Public Health.

(5) "Pediatric cardiologist" means a pediatrician that is board-certified to provide pediatric cardiology care.

(6) "Program" means the Newborn Screening Program for inherited and congenital disorders and conditions operated by the Cabinet for Health and Family Services, Department for Public Health.

(7) "Pulse oximetry testing" means a noninvasive test that estimates the percentage of hemoglobin in blood that is saturated with oxygen.

(8) "Submitter" means a hospital, primary care provider, health department, birthing center, laboratory, or midwife submitting an infant's blood specimen for the purpose of newborn screening.

Section 2. Tests for inborn errors of metabolism or other inherited or congenital disorders and conditions for newborn infants as part of newborn screening shall be consistent with the U.S. Department of Health and Human Services' Recommended Uniform Screening Panel and include the following:

- (1) 2-Methyl-3-hydroxybutyric aciduria (2M3HBA);
- (2) 2-Methylbutyryl-CoA dehydrogenase deficiency (2MBDH);
- (3) 3-Methylcrotonyl-CoA carboxylase deficiency (3MCC);
- (4) 3-Methylglutaconic aciduria (3MGA);
- (5) 3-Hydroxy 3-Methylglutaric aciduria (HMG);
- (6) Argininemia (ARG);
- (7) Argininosuccinic acidemia (ASA);
- (8) Beta-ketothiolase deficiency (BKT);
- (9) Biotinidase disorder (BIOT);
- (10) Carnitine acylcarnitine translocase deficiency (CACT);
- (11) Carnitine palmitoyltransferase deficiency I (CPT-I);
- (12) Carnitine palmitoyltransferase deficiency II (CPT-II);
- (13) Carnitine uptake defect (CUD);
- (14) Citrullinemia type I (CIT-I);
- (15) Citrullinemia type II (CIT-II);
- (16) Congenital adrenal hyperplasia (CAH);
- (17) Congenital hypothyroidism (CH);
- (18) Critical congenital heart disease (CCHD);
- (19) Cystic fibrosis (CF);
- (20) Ethylmalonic encephalopathy (EE);
- (21) Galactosemia (GAL);
- (22) Glutaric acidemia type I (GA I);
- (23) Glutaric acidemia type II (GA-II);
- (24) Glycogen storage disease type II (GSD-II, Pompe Disease);
- (25) Guanidinoacetate methyltransferase deficiency (GAMT);
- (26) Homocystinuria (HCY);
- (27) Hypermethioninemia (MET);
- (28) Hyperphenylalaninemia (H-PHE);
- (29) Isobutyryl-CoA dehydrogenase deficiency (IBG);
- (30) Isovaleric acidemia (IVA);
- (31) Long-chain hydroxyacyl-CoA dehydrogenase deficiency (LCHAD);
- (32) Malonic acidemia (MAL);
- (33) Maple syrup urine disease (MSUD);
- (34) Medium-chain acyl-CoA dehydrogenase deficiency (MCAD);
- (35) Methylmalonic acidemia (Cbl A,B);
- (36) Methylmalonic acidemia (Cbl C,D);
- (37) Methylmalonic acidemia mutase deficiency (MUT);
- (38) Mucopolysaccharidosis type I (MPS-I, Hurler's Disease);
- (39) Mucopolysaccharidosis type II (MPS-II, Hunter's Disease);
- (40) Multiple carboxylase deficiency (MCD);
- (41) Non-ketotic Hyperglycinemia (NKHG);
- (42) Phenylketonuria (PKU);
- (43) Propionic acidemia (PA);
- (44) Severe combined immunodeficiency (SCID);
- (45) Short-chain acyl-CoA dehydrogenase deficiency (SCAD);
- (46) Sickle cell disease (Hb S/S);
- (47) Sickle cell hemoglobin C disease (Hb S/C);
- (48) Sickle cell S Beta Thalassemia (Hb S/Th);

- ~~(49)~~~~(47)~~ Spinal muscular atrophy (SMA);
- ~~(50)~~~~(48)~~ Trifunctional protein deficiency (TFP);
- ~~(51)~~~~(49)~~ Tyrosinemia type I (TYR-I);
- ~~(52)~~~~(50)~~ Tyrosinemia type II (TYR-II);
- ~~(53)~~~~(51)~~ Tyrosinemia type III (TYR-III);
- ~~(54)~~~~(52)~~ Various Hemoglobinopathies (includes Hb E);
- ~~(55)~~~~(53)~~ Very long-chain acyl-CoA deficiency (VLCAD); and
- ~~(56)~~~~(54)~~ X-linked adrenoleukodystrophy (X-ALD).

Section 3. Tests for inborn errors of metabolism or other inherited or congenital disorders and conditions for newborn infants as part of newborn screening shall include the following disorder that is not recommended by the U.S. Department of Health and Human Services, but is required by Kentucky law: Krabbe Disease (KD).

Section 4. Submitter Responsibilities.

(1) Except as provided in KRS 214.155(3) and (5), the administrative officer or other person in charge of the hospital or institution caring for newborn infants and the attending primary care provider or midwife shall administer to, or verify administration of tests to, every infant in its care prior to hospital discharge:

(a) A blood spot test to detect inborn errors of metabolism and other inherited and congenital disorders and conditions identified in Sections 2 and 3 of this administrative regulation; and

(b) Pulse oximetry testing to detect critical congenital heart disease.

(2) If a baby is not born in a hospital or institution, the attending primary care provider or midwife shall ensure that both tests required by subsection (1) of this section are:

(a) Administered between twenty-four (24) and forty-eight (48) hours of age;

(b) Acted upon if abnormal; and

(c) Reported to the program by fax or by the cabinet's web-based system.

(3) A capillary blood spot specimen shall be obtained from a newborn infant not requiring an extended stay due to illness or prematurity between twenty-four (24) and forty-eight (48) hours of age.

(4) If the infant is to remain in the hospital due to illness or prematurity, the hospital shall obtain the capillary blood spot specimen from that infant after twenty-four (24) and before seventy-two (72) hours of age.

(5) Except as provided by subsection (6) of this section, the pulse oximetry testing shall be performed when the infant is twenty-four (24) hours of age or older and shall occur prior to discharge.

(6) If the infant is discharged prior to twenty-four (24) hours of age, the blood spot and pulse oximetry testing shall be performed as close to twenty-four (24) hours of age as possible.

(7) If an infant is transferred from the birth hospital to another hospital during the newborn hospital stay, the requirements established in this subsection shall apply.

(a) The sending hospital shall obtain the capillary blood spot specimen for the newborn screening blood test and the pulse oximetry testing for CCHD if the infant is twenty-four (24) hours of age or more when the infant is transferred to another hospital.

(b) The receiving hospital shall ensure the newborn screening blood spot test and the pulse oximetry testing are performed if the infant is less than twenty-four (24) hours of age when the infant is transferred.

(8) If an infant expires before the newborn screening blood spot test and pulse oximetry test have been performed, the program shall be notified within five (5) calendar days.

(9) If the information on the filter paper specimen card obtained by the submitter and sent to the laboratory is incomplete or inadequate, then the submitter, upon request of the program, shall:

(a) Attempt to locate the infant and obtain a complete and adequate specimen within ten (10) days; and

(b) Report to the program a specimen that is unable to be obtained within ten (10) days.

(10) A submitter that is responsible for the collection of the initial blood spot specimen and pulse oximetry testing for newborn screening shall:

(a) Provide to an infant's parent or guardian educational materials regarding newborn screening and pulse oximetry testing;

(b) Designate a newborn screening coordinator and physician responsible for the coordination of the facility's newborn screening compliance by having a newborn screening protocol;

(c) Notify the program of the name of the individuals designated in paragraph (b) of this subsection each year in January and if the designated individual changes; and

(d) Develop a written protocol for tracking newborn screening compliance, which shall:

1. Be submitted to the program each year in January; and

2. Include, at a minimum:

a. A requirement that the name of the primary care provider that will be attending the infant after birth or discharge or, if known, the primary care provider who will be caring for the infant after discharge, shall be placed on the filter paper specimen card sent with the initial blood spot specimen to the laboratory. If the infant is in the neonatal intensive care unit, the name of the attending neonatologist may be placed on the filter specimen card sent with the initial blood spot specimen to the laboratory;

b. Verification that:

(i) Each infant born at that facility has had a specimen obtained for newborn screening and pulse oximetry testing on or before discharge;

(ii) All information on the specimen card has been thoroughly completed; and

(iii) The specimen has been submitted appropriately;

c. A process to ensure that final results of the pulse oximetry screening are entered into the cabinet's web-based system; and

d. A procedure to assure the hospital or facility that identifies that an infant has not had a specimen obtained for newborn screening and pulse oximetry testing prior to discharge shall:

(i) Notify the program;

(ii) Use every reasonable effort to locate the infant;

(iii) Notify the parent or guardian and the primary care provider immediately; and

(iv) Recommend that the infant present to the hospital or primary care provider immediately for a newborn screening blood spot specimen and pulse oximetry testing.

(11) A hospital or facility shall report each written refusal, in accordance with KRS 214.155(5), to the program within five (5) calendar days.

Section 5. Blood Specimen Collection.

(1) A capillary blood spot specimen required by Section 4 of this administrative regulation shall be obtained by a heel stick.

(2) Blood from the heel stick shall be applied directly to the filter paper specimen card.

(3) All circles shall be saturated completely using a drop of blood per circle on a filter paper specimen card.

(4) The specimen collector shall provide, on the filter paper specimen card, information requested by the laboratory.

(5) The capillary blood spot specimen shall be air dried for three (3) hours and then shall be mailed or sent to the laboratory:

(a) Within twenty-four (24) hours of collection of the specimen;

or

(b) The next business day in which mail or delivery service is available.

(6) A submitter sending a blood spot specimen via regular mail services shall send the specimen to the following address: Cabinet for Health and Family Services, Department for Public Health, Division of Laboratory Services, 100 Sower Boulevard, Frankfort, Kentucky 40602.

(7) A submitter sending a blood spot specimen via expedited mail services shall ensure the specimen is sent to the following address: Cabinet for Health and Family Services, Department for Public Health, Division of Laboratory Services, 100 Sower Boulevard, Suite 204, Frankfort, Kentucky 40602.

(8) Specimens processed or tracked under the newborn screening program shall be limited to specimens on infants less than six (6) months of age.

Section 6. Unsatisfactory or Inadequate Blood Specimen.

(1) If a specimen is unsatisfactory or inadequate to produce a valid result, the laboratory shall notify the submitter and the parent on the filter paper specimen card that the newborn screen needs to be repeated as soon as possible.

(2) If a requested repeat specimen has not been received within ten (10) business days from the date the repeat request was issued, the program shall notify the parent by mail of the need for a repeat screening test.

Section 7. Special Circumstances - Blood Transfusion. If a newborn infant requires a blood transfusion, the requirements for newborn screening established in this section shall apply.

(1) The hospital shall obtain a capillary blood spot specimen for newborn screening prior to the infant being transfused, except in an emergency situation.

(2) If the pre-transfusion blood spot specimen was obtained before twenty-four (24) hours of age, or if it was not obtained due to an emergency situation, then the hospital or primary care provider shall use all reasonable efforts to obtain a repeat capillary blood specimen from the transfused infant and submit it to the laboratory according to the following schedule:

(a) Seventy-two (72) hours after the last blood transfusion, rescreen for inborn errors of metabolism and inherited and congenital disorders and conditions listed in Sections 2 and 3 of this administrative regulation; and

(b) Ninety (90) days after the last blood transfusion, rescreen for any disorder that relies on red blood cell analysis such as hemoglobinopathies, galactosemia, and biotinidase deficiency.

Section 8. Reporting Results of Newborn Screening Blood Tests.

(1) Normal Results. Upon receipt of a normal lab result, the laboratory shall send the result to the primary care provider and the submitter.

(2) Abnormal Results.

(a) The laboratory shall report abnormal, presumptive positive, or equivocal results of tests for inborn errors of metabolism, inherited and congenital disorders and conditions to the program.

(b) The submitter and primary care provider shall receive a copy of all abnormal, presumptive positive, and equivocal results.

(c) In addition, a primary care provider shall be notified of an abnormal, presumptive positive, or equivocal result in the manner established in this paragraph.

1. Upon receipt of an abnormal, equivocal, or a presumptive positive lab result, the laboratory shall notify the primary care provider listed on the filter paper specimen card within two (2) business days of the result and the need for follow-up testing.

2. Upon receipt of a presumptive positive lab result, the program shall notify the primary care provider listed on the filter paper specimen card of the result and recommend immediate consultation with a university pediatric specialist.

3. If the program is unable to determine the infant's primary care provider to notify them of an abnormal, presumptive positive, or equivocal result and the need for follow-up, the program shall use every available means to notify the infant's parent.

(d) The Cabinet for Health and Family Services shall share pertinent test results with a state university-based specialty clinic or primary care provider who informs the cabinet they are treating the infant who received the test.

(e) The cabinet may share pertinent test results with the local health department in the infant's county of residence that conducts newborn screening follow-up activities.

(f) A specialty clinic or primary care provider shall report results of diagnostic testing to the program within thirty (30) days or earlier upon request.

(g) If a requested repeat specimen has not been received within ten (10) business days from the date the repeat request was issued, the program shall notify the parent by mail of the need for a repeat screening test.

Section 9. Pulse Oximetry Screening for Critical Congenital Heart Disease. Pulse oximetry screening for critical congenital heart defects required by Section 2 of this administrative regulation shall be consistent with the standard of care according to national recommendations by the American Academy of Pediatrics.

Section 10. Pulse Oximetry Screening Process.

(1) Except as provided by KRS 214.155(3) and subsections (2) and (4) of this section, pulse oximetry testing shall be performed when the infant is between twenty-four (24) and forty-eight (48) hours of age and shall occur no later than the day of discharge.

(2) If the infant is discharged prior to twenty-four (24) hours of age, the blood spot and pulse oximetry testing shall be performed as close to twenty-four (24) hours of age as possible.

(3) An infant in a neonatal intensive care unit shall be screened when medically appropriate after twenty-four (24) hours of age but prior to discharge.

(4) An infant who has been identified with critical congenital heart disease prior to birth or prior to twenty-four (24) hours of age shall be exempt from the pulse oximetry screening process.

(5) Pulse oximetry screening shall be performed by placing pediatric pulse oximetry sensors simultaneously on the infant's right hand and either foot to obtain oxygen saturation results.

(6) If using a single pediatric pulse oximetry sensor, pulse oximetry screening shall be performed on the infant's right hand and either foot, one after the other, to obtain oxygen saturation results.

Section 11. Pulse Oximetry Testing Results.

(1) A passed result shall not require further action if:

(a) The pulse oximetry reading in both extremities is greater than or equal to ninety-five (95) percent; and

(b) The difference between the readings of both the upper and lower extremity is less than or equal to three (3) percent.

(2)

(a) A pending result shall:

1. Occur if:

a. The pulse oximetry reading is between ninety (90) and ninety-four (94) percent; or

b. The difference between the readings of both the upper and lower extremity is greater than three (3) percent; and

2. Be repeated using the pulse oximetry screening in one (1) hour.

(b) If a repeated pulse oximetry screen is also interpreted as pending, it shall be performed again in one (1) hour.

(c) If the pulse oximetry result on the third screen continues to meet the criteria as pending after three (3) screenings have been performed, it shall be considered failed and the procedures established in subsection (3) of this section shall be followed.

(3) A failed result shall:

(a) Occur if:

1. The initial pulse oximetry reading is less than ninety (90) percent in the upper or lower extremity; or

2. The provisions of subsection (2)(c) of this section apply; and

(b) Require the following actions:

1. The primary care provider shall be notified immediately;

2. The infant shall be evaluated for the cause of the low saturation reading; and

3. If CCHD cannot be ruled out as the cause of the low saturation reading, the attending physician or advanced practice registered nurse shall:

a. Order a diagnostic echocardiogram to be performed without delay;

b. Ensure the diagnostic echocardiogram be interpreted as soon as possible; and

c. If the diagnostic echocardiogram results are abnormal, obtain a consultation with a pediatric cardiologist prior to hospital discharge.

Section 12. Reporting Results of Pulse Oximetry Screening.

(1) Final results of the pulse oximetry screening shall be entered

into the cabinet's web-based system.

(2) A failed result shall be immediately reported to the program by fax or by the cabinet's web-based system.

Section 13. Newborn Screening Fees.

(1)

(a) A submitter obtaining and sending a blood spot specimen to the laboratory shall be billed a fee of ~~\$200~~[150] for the initial newborn screening test.

(b) A midwife obtaining and sending a blood spot specimen to the laboratory shall be billed a fee of fifty (50) dollars for the initial newborn screening test.

(2) A submitter obtaining and sending a repeat blood spot specimen to the laboratory shall not be charged an additional fee.

(3) Fees due the Cabinet for Health and Family Services shall be collected through a monthly billing system.

STEVEN J. STACK, MD, MBA, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 23, 2024

FILED WITH LRC: June 10, 2024 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 26, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by August 19, 2024, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles or Julie Brooks

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires that infants be tested for inborn errors of metabolism and other inherited and congenital disorders and conditions as specified in KRS 214.155 and establishes the schedule of fees to cover actual costs of the newborn screening program.

(b) The necessity of this administrative regulation: The Newborn Screening Program helps determine if a baby has certain health disorders. A healthy newborn can have serious metabolic or genetic disorders that cannot be detected without specific screening. If left undetected and untreated, these disorders can lead to slow growth, blindness, brain damage or possibly death.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 214.155 requires the Cabinet for Health and Family Services to operate a newborn screening program for inborn errors of metabolism and other inherited and congenital disorders and conditions, and to establish a schedule of fees to cover the actual costs to the cabinet for the program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the identification of newborns

who have inborn errors of metabolism and other inherited and congenital disorders and conditions.

(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 adds guanidinoacetate methyltransferase deficiency and mucopolysaccharidosis type II to the list of screened conditions, increases the fee for hospitals submitting newborn screening tests to the state laboratory to \$200 and establishes a fee of fifty (50) dollars for midwives to submit newborn screening tests to the state laboratory.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary because guanidinoacetate methyltransferase deficiency and mucopolysaccharidosis type II were added to the recommended universal screening panel in 2022. The tiered fee structure is necessary to offer an incentive to midwives to submit screening tests to the state laboratory. In 2022 there were 1,027 reported home births in Kentucky. However, less than half of these newborns had a screening test submitted to the state laboratory.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 214.155 requires the Cabinet for Health and Family Services to operate a newborn screening program for inborn errors of metabolism and other inherited and congenital disorders and conditions, and to establish a schedule of fees to cover the actual costs to the cabinet for the program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will ensure all newborns have proper screening to identify genetic and metabolic conditions that may impact growth and development.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment to this administrative regulation will impact the forty-six (46) birthing hospitals and thirty (30) midwives practicing in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Hospitals will need to be aware of the increased fee amount and submit the correct reimbursement. Midwives will need to be aware of the lowered fee amount.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Hospitals will pay an additional fifty (50) dollars per initial screening test submitted. Midwives will pay a fifty (50) dollar fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Birthing hospitals will continue to submit newborn screening test. Midwives will be incentivized to submit newborn screening test to the state laboratory. This will ensure all newborns are screened in accordance with KRS 214.155.

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

(a) Initially: The total cost of the newborn screening program is \$9.7 million.

(b) On a continuing basis: Assuming program operations continue as they are, there is no anticipated increase in cost on an ongoing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds and fees collected from submitters are used for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The

amendment to this administrative regulation raises the fee for hospitals submitting newborn screening tests to the state laboratory to \$200. The fee for midwives to submit newborn screening tests to the state laboratory is lowered to \$50. The fees are only assessed on the initial tests submitted. There is no fee for submitting repeat tests.

(9) TIERING: Is tiering applied? Tiering is applied. The amendment to this administrative regulation establishes a tier fee structure by lowering the fee for midwives to submit testing to the state laboratory.

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), 211.090(3), and 214.155.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Department for Public Health, Division of Laboratory Services is the promulgating agency.

(a) Estimate the following for the first year:

Expenditures: The combined cost of the newborn screening program is approximately \$9.7 million per year. This is a combination of the state laboratory cost and the case management program cost.

Revenues: The amendment to this administrative regulation will generate approximately \$2,000,000 in the first year.

Cost Savings: The amendment to this administrative regulation does not generate cost savings for the promulgating agency.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Changes in expenditures and revenues in subsequent years will be dependent upon the number of live births and the number of newborn screening test submitted to the state laboratory.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): There are no affected local entities.

(a) Estimate the following for the first year:

Expenditures: Not applicable.

Revenues: Not applicable.

Cost Savings: Not applicable.

(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): Additional regulated entities include the forty-six (46) birthing hospitals and thirty (30) midwives practicing in Kentucky.

(a) Estimate the following for the first year:

Expenditures: Birthing hospitals will be assessed \$200 per initial newborn screening test submitted to the Division of Laboratory Services. Midwives will be assessed \$50 per initial newborn screening test submitted to the Division of Laboratory Services.

Revenues: This administrative regulation does not generate revenue for the regulated entities.

Cost Savings: Midwives will have a cost saving of \$150 per initial newborn screening test submitted.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures and cost savings will not change in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation will have minimal fiscal impact on the regulated entities.

(b) Methodology and resources used to determine the fiscal impact: There will be a fee increase of fifty (50) per initial test for hospitals. Midwives will pay a much lower fee for submitting testing to the state laboratory. The revenue generate by the change in fee structure will help offset the program operating cost resulting in budget neutrality for 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) This administrative regulation will not have an overall negative or adverse

major economic impact.

(b) The methodology and resources used to reach this conclusion: While the approximate amount of revenue exceeds \$500,000 this will not be paid by any one regulated entity.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amendment)

922 KAR 1:050. State funded adoption assistance.

RELATES TO: KRS 199.555, ~~202B.010(12)]205.639(17), 216B.450(5), 600.020(21), (54), 620.020(5)~~, Chapter 625

STATUTORY AUTHORITY: KRS 194A.050(1), 199.555(10)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the 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 199.555(10) requires the cabinet to establish and promulgate by administrative regulation criteria to be followed for the adoption of special needs children. This administrative regulation establishes guidelines for the implementation of the state-funded adoption assistance program for children who may otherwise grow up in foster care.

Section 1. Definitions.

(1) "Adoption subsidy" means a payment for a special needs child placed for adoption when an adoption assistance agreement is complete.

(2) "Extraordinary medical expenses" is defined by KRS 199.555(4).

(3) "Nonrecurring adoption expenses" is defined by KRS 199.555(3).

(4) "Secretary" means the Secretary of the Cabinet for Health and Family Services or designee.

(5) "Special needs child" is defined by KRS 199.555(1).

(6) "State-funded adoption assistance" is defined by KRS 199.555(2).

Section 2. Adoption Assistance Eligibility Criteria.

(1) The secretary shall decide whether to pay and provide adoption assistance in accordance with KRS 199.555(5).

(2) A special needs child shall include a child for whom adoptive placement without financial assistance is unlikely in accordance with KRS 199.555(1), because the child:

(a) Has a physical or mental disability;

(b) Has an emotional or behavioral disorder;

(c) Has a recognized risk of physical, mental, or emotional disorder;

(d) Is a member of a sibling group in which the siblings are placed together;

(e) Has had previous adoption disruption or multiple placements;

(f) Is a member of a racial or ethnic minority and two (2) years old or older; or

(g)

1. Is age seven (7) or older;

2. Has a significant emotional attachment or psychological tie to his or her foster family; and

3. The cabinet has determined should remain with the family because it is in the best interest of the child.

(3) To qualify for state-funded adoption assistance in accordance with KRS 199.555, a special needs child shall:

(a) Be committed to the Cabinet for Health and Family Services;

(b) Not have a parent with custody or a legal claim to the child;

(c) Be under age eighteen (18); and

(d) Not be eligible for federal Title IV-E adoption assistance in

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accordance with 922 KAR 1:060, with the exception of extraordinary medical expenses pursuant to Sections 7(1), 8, and 10(2) of this administrative regulation.

Section 3. Parental Standards. A parent receiving a child eligible for adoption assistance payments shall meet the same standards as those applied to other adoptive applicants in accordance with:

- (1) 922 KAR 1:350; or
- (2) 922 KAR 1:310.

Section 4. ~~Adoptive~~[Adoption] Placement Agreement.

(1) Prior to placing a child for adoption, the prospective adoptive parent and the cabinet shall review and sign an adoptive[~~the adoption~~] placement agreement to set forth the terms of a child's placement with the prospective adoptive parent.

(2) The ~~adoptive~~[~~adoption~~] placement agreement shall advise the prospective adoptive parent of the:

- (a) Special needs of the child;
- (b) Cabinet's expectations; and
- (c) Services offered by the cabinet to assist the prospective adoptive parent in the adoption process.

Section 5. Adoption Assistance Agreement. Prior to finalization of the adoption, the prospective adoptive parent and the cabinet shall ~~discuss~~[~~negotiate~~] and sign an adoption assistance agreement in accordance with KRS 199.555(6) that shall:

- (1) Determine the nature and amount of the adoption subsidy; and
- (2) Remain in effect until suspended, reduced, or terminated in accordance with Section 6 of this administrative regulation.

Section 6. Adoption Assistance Suspension, Reduction, and Termination.

(1) Except as provided in subsection (2) of this section, the cabinet shall temporarily suspend state-funded adoption assistance payments during the period of time the adopted child reenters the custody of the cabinet[~~;~~]

- [a.] [Resides in:]
- [a.] [Foster care as defined by KRS 620.020(5);]
- [b.] [A residential treatment facility as defined by KRS 600.020(54);]
- [c.] [A psychiatric residential treatment facility as defined by KRS 246B.450(5);]
- [d.] [A psychiatric hospital as defined by KRS 205.639(17) beyond thirty (30) consecutive calendar days; or]
- [e.] [Detention:]
- [i.] [As defined by KRS 600.020(24);]
- [ii.] [Outside the adoptive home; and]
- [iii.] [For a period of thirty (30) calendar days or more; or]
- [2.] [Is absent from the home of the adoptive parents for a period of thirty (30) consecutive calendar days or more, unless the child is absent due to medical care or school attendance; and]
- [b.] [Receives care and support for the child's special needs from a local, state, or federal public agency].

(2) State-funded adoption assistance shall be reduced[~~renegotiated~~] in accordance with 922 KAR 1:530, Section 3(2).

(3) State-funded adoption assistance shall be reduced if the adoptive parent fails to provide documentation demonstrating financial responsibility and support after the cabinet has requested the documentation from the adoptive parent at least three (3) times.

(4) The cabinet shall resume payments pursuant to this section of the administrative regulation, including any needed adjustments to the agreement, once the adoptive parent has provided the requested documentation demonstrating financial responsibility and support of the child.

(5)[(3)] State-funded adoption assistance payments shall be terminated in accordance with KRS 199.555(8) if the:

- (a) Adoptive parent:
 1. Is no longer legally responsible for the special needs child in accordance with KRS Chapter 625;

2. Becomes deceased; or
3. Requests discontinuation of the adoption assistance payments; or

(b) Special needs child:

1. Becomes deceased;
2. Marries;
3. [~~Gains full-time employment;~~]
- [4.] [~~Is considered an emancipated minor;~~]
- [5.] Is inducted into military service;
- 4.[6.] Reaches age eighteen (18); or
- 5.[7.] If the child is enrolled in high school, reaches:
 - a. Age nineteen (19); or
 - b. The month of the child's high school graduation, if the child's graduation precedes the child's 19th birthday.

Section 7. Adoption Assistance Payments.

(1) State-funded adoption assistance payments may include:

- (a) Extraordinary medical expenses in accordance with KRS 199.555;
- (b) Nonrecurring adoption expenses not to exceed \$2,000[\$4,000] incurred in the adoption of a child who is considered a special needs child; and
- (c) An adoption subsidy.

(2) An adoption assistance payment shall begin on the date agreed to[~~that the adoption placement agreement and adoption assistance agreement are signed~~] by the adoptive parent and the cabinet representative, as documented on the adoption assistance agreement.

(3) The amount of the state-funded adoption assistance payment shall not exceed the amount paid for foster care maintenance for the same child, in accordance with KRS 199.555(7), including medically complex[~~fragile~~], specialized medically complex[~~fragile~~], and care plus foster care per diem reimbursements established by the Department for Community Based Services.

(4) A child placed in therapeutic foster care, as described in 922 KAR 1:310, shall not be eligible to receive adoption assistance payments in excess of:

- (a) A care plus foster care or medically complex foster care per diem reimbursement established by the Department for Community Based Services; or
- (b) The therapeutic foster care per diem reimbursed by the child-placing agency on behalf of the child unless[~~if~~] the:
 1. Dollar amount is necessary to meet the child's needs; and
 2. Commissioner or designee approves.

Section 8. Covered Extraordinary Medical Services.

(1) (a) Copayments for covered extraordinary medical expenses shall be required using the adopted parent household's adjusted gross income in relation to Kentucky's estimated median household income established by the United States Census Bureau.

(b) To the extent state resources allow, the cabinet shall annually adjust the estimated median income used for copayment calculations concurrent with the United States Census Bureau.

(c) Unless otherwise noted in this section, copayments shall be as established in this paragraph.

1. A copayment for extraordinary medical services shall not be required from an adoptive parent whose household's adjusted gross income is at or below 100 percent of Kentucky's estimated median household income.

2. A ten (10) percent copayment for extraordinary medical services shall be required from an adoptive parent whose household's adjusted gross income is over 100 percent, but less than 150 percent, of Kentucky's estimated median household income.

3. A fifteen (15) percent copayment for extraordinary medical services shall be required from an adoptive parent whose household's adjusted gross income is over 150 percent, but less than 200 percent, of Kentucky's estimated median household income.

4. A twenty (20) percent copayment for extraordinary medical

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services shall be required from an adoptive parent whose household's adjusted gross income is over 200 percent of Kentucky's estimated median household income.

(2) A verifiable receipt and service provider contact information shall be submitted prior to reimbursement for services listed in this section.

(3) Copayments shall be deducted from each monthly receipt that is submitted for payment of a covered extraordinary medical service.

(4) Services covered by the extraordinary medical program may include:

(a) Orthodontia with a:

1. Copayment of fifty (50) percent of the cost; and

2. Dentist or physician's verification that the child's medical or dental need ~~exists~~~~existed prior to the adoption finalization~~, is medically necessary, and verification was obtained prior to the adoption finalization;

(b) Transportation if mileage for health treatment needs exceed the yearly mileage for foster care rates;

(c) Child care services:

1. For a full-time or part-time working parent who works a minimum of twenty (20) hours per week;

2. For a non-working parent with documentation from a qualified professional, as defined by KRS 202B.010(12), of the therapeutic need for the service;

3. With fees paid to the child care provider by the adoptive parent and reimbursed by the cabinet only after the cabinet receives a paid receipt as verified from the child care provider;

4. With annual employment verification provided to the cabinet by a working adoptive parent;

5. Reimbursed at a rate based on the age of the child and certification of the provider in accordance with 922 KAR 2:160; and

6. Ending upon the child reaching age thirteen (13), unless documentation from a medical or mental health professional stating the diagnosed need for continuance of the child care is:

a. Provided upon the child reaching age thirteen (13); and

b. Submitted every six (6) months to the cabinet's social service worker;

(d) Tutoring:

1. Not to exceed twenty-five (25) dollars per hour for no more than two (2) hours per week;

2. Provided by personnel other than immediate family, for which qualifications are verified by a social services worker;

3. For a child:

a. With an individual education plan (IEP); ~~or~~~~and~~

b. Two (2) or more grade level years behind chronological age;

and

4. With need and unavailability of services as documented by the child's school;

(e) Respite care:

1. Offered to a child approved for the medically complex or care plus rates prior to adoption finalization, at two (2) respite days per child per month;

2. Offered to a child approved for the specialized medically fragile rate prior to adoption finalization, at three (3) respite days per month per child;

3. That shall not be cumulative; and

4. Submitted monthly for reimbursement; and

(f) Evidence-based or evidence-informed health services after Medicaid and private health insurance have been exhausted, such as:

1. Counseling;

2. Expressive or art therapy;

3. Behavioral therapy;

4. Physical therapy;

5. Occupational therapy;

6. Speech therapy;

7. Prescribed medication, excluding over the counter medication~~[Medication]~~; or

8. Special equipment.

(5) The extraordinary medical program shall include the reimbursement of funeral and burial expenses for a medically complex child who had a terminal medical diagnosis documented by

a treating physician prior to an adoption being finalized, not to exceed \$4,500 for the cost of the funeral and burial.

Section 9. Annual Family Contact.

(1) Annual contact with the adoptive family shall be made by mail, email, phone,~~[or]~~ home visit, or other cabinet method of contact to determine that the:

(a) Child remains in the adoptive home;

(b) Parent continues to provide care and support for the child; and

(c) Adoption assistance payments continue to meet the special needs of the child.

(2) The cabinet may conduct a home visit after an adoption assistance annual contact is made by mail, email, phone, or other cabinet method of contact:

(a) If:

1. The adoptive parent requests a home visit;

2. The special needs of the child change, as indicated by the adoptive parent;

3. Attempts to update information by additional mail, email~~[or]~~ phone, or other cabinet method of contact have failed; or

4. The cabinet receives information that is contrary to the information verified by the adoptive parent during the annual contact; or

(b) In accordance with 922 KAR 1:330.

Section 10. Adoption Assistance Renegotiation.

(1) Renegotiation of an adoption assistance agreement:

(a) May be requested by the cabinet or the adoptive parent before or after the adoption is finalized; and

(b) Is contingent on compliance with Sections 2(2), 6, 9, and 12 of this administrative regulation.

(2) If conditions in KRS 199.555(6) are met, the cabinet shall reimburse extraordinary medical expenses requested by an adoptive parent of a special needs child to prevent disruption of the adoption:

(a) After the adoption is final; and

(b) Through state funded adoption assistance.

(3) A move of the special needs child or the adoptive parent of the special needs child out of the state or country shall have no effect on the child's eligibility for state funded adoption assistance payments.

(4) If an adoption assistance payment is changed through renegotiation, the cabinet and adoptive parent shall sign a new adoption assistance agreement.

Section 11. Service Appeal. An applicant for adoption assistance payments or an adoptive family aggrieved by a cabinet action shall be granted an administrative hearing in accordance with 922 KAR 1:320.

Section 12. Notice of Change.

(1) Cabinet staff shall provide notice of a reduction, suspension~~[discontinuance]~~, or termination of adoption assistance payments:

(a) Ten (10) calendar days in advance; and

(b) In accordance with 922 KAR 1:320, Section 6.

(2) An adoptive parent shall notify the cabinet of any changes in circumstances that would make the adoptive parent ineligible for adoption assistance payments or change the amount of the adoption assistance payment as described in KRS 199.555(9) and Section 6 of this administrative regulation.

Section 13. State-funded Adoption Assistance Limitation. The number of state-funded adoption assistance cases and the amount of state-funded adoption assistance payments paid per case shall be limited by available funds for the state-funded adoption assistance program.

~~[Section 14.] [Training—Contingent upon the availability of funding, the Department for Community-Based Services shall offer~~

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~~training to adoptive parents receiving state-funded adoption assistance consistent with training offered to foster home parents as specified in 922 KAR 1:495.]~~

LESA DENNIS, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 4, 2024

FILED WITH LRC: June 10, 2024 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 26, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by August 19, 2024, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles or Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the state-funded adoption assistance program for children who would otherwise grow up in foster care to the extent funds are available.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish state-funded adoption assistance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing the state-funded adoption assistance program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes through its establishment of a state-funded adoption assistance program.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation provides updated language regarding state-funded adoption assistance. It allows for a reduction in assistance payments in certain specific instances, includes reimbursement of funeral or burial expenses for a medically complex child that was adopted, increases the amount of adoption expenses the cabinet will cover for a special needs child, expands options for making annual contact, and makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is needed for consistency with 922 KAR 1:060, which is being amended for compliance with federal rules, and for consistency with the subsidized permanent custody program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes though its clarification of and update of the state-funded adoption assistance program.

(d) How the amendment will assist in the effective administration

of the statutes: This amendment will assist in the effective administration of the statutes through the establishment of clearer guidelines regarding the state-funded adoption assistance program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There were 1,096 unique children adopted from foster care in Kentucky in 2023.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation reinforces current adoption assistance agreement language between the cabinet and an adoptive parent. There is no new action anticipated for adoptive parents or their children.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation reinforces existing practice specified through the adoption assistance agreement between the cabinet and an adoptive parent. There is no new or additional cost anticipated for adoptive parents or their children.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation clarifies benefits and services for adoptive parents and children adopted through a public agency adoption.

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

(a) Initially: The amount of nonrecurring adoption expenses the cabinet will cover is increasing in this amendment, but is not projected to be substantial.

(b) On a continuing basis: The administrative body will continually monitor its costs to make any adjustments necessary to maintain state-funded adoption assistance within appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for implementation and enforcement of this administrative regulation is state general funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. The state funded adoption assistance program is implemented in a like manner statewide.

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), 199.555(10).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Cabinet for Health and Family Services will be impacted by this administrative regulation through administrative of the program.

(a) Estimate the following for the first year:

Expenditures: Expenditures will increase as a result of increasing the amount of nonrecurring adoption expenses that adoptive parents may request the cabinet cover, but that is not estimated to be a substantial increase

Revenues: This administrative regulation does not generate revenue.

Cost Savings: No cost savings to the cabinet are expected.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This is not expected to vary greatly.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None.

(a) Estimate the following for the first year:

Expenditures: No expenditures are expected.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: No cost savings are expected.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This is not expected to differ over subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): Adoptive parents are regulated entities subject to this administrative regulation, but there are no new requirements established in this administrative regulation.

(a) Estimate the following for the first year:

Expenditures: Not applicable.

Revenues: Not applicable.

Cost Savings: The amount of nonrecurring adoption expenses that the cabinet may cover is being increased from \$1,000 to \$2,000 for the adoption of a special needs child.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This is not expected to vary greatly.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: Increasing the amount of nonrecurring adoption expenses that adoptive parents may receive from the cabinet from \$1,000 to \$2,000 for the adoption of a special needs child is expected to have a minor fiscal impact.

(b) Methodology and resources used to determine the fiscal impact: The cabinet may be paying more in nonrecurring adoption expenses for children and youth meeting the special needs criteria, but it is only an increase of \$1,000 per child who meets the criteria.

(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 entities.

(b) The methodology and resources used to reach this conclusion: This amendment does not establish costs to regulated entities, it includes cost savings to regulated entities that are eligible. The cost the cabinet may pay will be increased, but this is not expected to be substantial and will offset the cost of children remaining in cabinet custody.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amendment)**

922 KAR 1:060. Federal Title IV-E adoption assistance.

RELATES TO: KRS 199.500(1), 199.502, 199.555, 199.557, Chapter 625, 45 C.F.R. 1356.40(b), 1356.41, 42 U.S.C. 673, 675(3), 1382c(a)(3)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.557(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 199.557(4) requires the cabinet to implement federal Title IV-E adoption assistance payments in accordance with the administrative regulations promulgated by the cabinet. This administrative regulation establishes guidelines for the implementation of the federal Title IV-E adoption assistance program for children who may otherwise grow up in foster care.

Section 1. Definitions.

(1) "Adoption assistance agreement" is defined by 42 U.S.C. 675(3).

(2) "Adoption subsidy" means a payment for a special needs child placed for adoption when an adoption assistance agreement is complete.

(3) "Federal Title IV-E adoption assistance" is defined by KRS 199.557(1).

(4) "Nonrecurring adoption expenses" is defined by 42 U.S.C. 673(a)(6).

(5) "Relative" means the father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, niece, great grandmother, great grandfather, great aunt, or great uncle of the child.

Section 2. Adoption Assistance Eligibility Criteria.

(1) A child shall be determined by the cabinet as a special needs child in accordance with 42 U.S.C. 673(c), if:

(a) The child is available for adoption in accordance with:

1. KRS 199.500(1);
2. KRS 199.502; or
3. KRS Chapter 625;

(b) The child has a specific factor or condition described by KRS 199.555(1) that makes the child difficult to place for adoption without adoption assistance; and

(c) Effort has been made to place the child with an appropriate adoptive parent without providing adoption assistance.

(2) If the child has a strong emotional tie with the prospective adoptive parent while in the care of the prospective adoptive parent as a foster child, an exception to subsection (1)(c) of this section shall be made.

(3) A special needs child shall:

(a) Meet the eligibility criteria established in 42 U.S.C. 673 when the adoption proceedings are initiated including:

1. Eligibility for Aid to Families with Dependent Children effective on July 16, 1996, upon the child's removal from the home of a relative;

2. Eligibility for Supplemental Security Income;

3. Status as a child:

a. Born to a minor parent who is receiving Title IV-E foster care maintenance; and

b. Who has received Title IV-E foster care maintenance;

4. Having been in foster care for sixty (60) consecutive months on or after October 1, 2009; or

5. Status as a sibling of a child described in subparagraph 1. or 4. of this paragraph to be placed in the same adoption placement as the child; and

(b) Not have a parent with custody or legal claim to the child.

(4) Eligibility for Aid for Families with Dependent Children specified in subsection (3)(a)1. of this section shall not apply to a child in accordance with 42 U.S.C. 673(e).

(5) If an adoption assistance agreement is terminated in accordance with Section 7 of this administrative regulation or ~~reduced~~~~renegotiated~~ for a period of time in accordance with 922 KAR 1:530, a child previously eligible for federal Title IV-E adoption assistance shall be treated as having the same financial circumstances as the child had when originally adopted.

Section 3. Parental Standards. A parent receiving a child eligible for adoption assistance shall meet the same standards as those applied to other adoptive applicants in accordance with:

(1) 922 KAR 1:350; or

(2) 922 KAR 1:310.

Section 4. ~~Adoptive~~~~Adoption~~ Placement Agreement.

(1) Prior to a prospective adoptive parent receiving an adoption subsidy, the prospective adoptive parent and a cabinet representative shall review and sign an ~~adoptive~~~~the adoption~~ placement agreement.

(2) The ~~adoptive~~~~adoption~~ placement agreement shall advise the prospective adoptive parent of the:

(a) Special needs of the child;

(b) Cabinet's expectations; and

(c) Services offered by the cabinet to assist the prospective adoptive parent in the adoption process.

Section 5. Adoption Assistance Agreement.

(1) ~~Prior~~~~At the time of or prior~~ to finalization of the adoption, an adoptive parent and the cabinet shall ~~discuss~~~~negotiate~~ and sign an

adoption assistance agreement that shall:

(a) Be in effect in accordance with 42 U.S.C. 675(3) and 45 C.F.R. 1356.40(b);

(b) Determine the nature and amount of the adoption subsidy; and

(c) Remain in effect until terminated, even if the adoptive parent moves out of the Commonwealth of Kentucky.

(2) If an adoption is finalized, the cabinet shall pay nonrecurring adoption expenses incurred by an adoptive parent during the adoption of a special needs child pursuant to 45 C.F.R. 1356.41.

(3) If a child is eligible for adoption assistance under 42 U.S.C. 673(a)(2)(A)(ii)(I)(bb), the requirement of Section 4(1) of this administrative regulation shall be waived.

(4) An adoption assistance payment shall begin on the date ~~agreed to~~ that the adoption assistance agreement is signed by the adoptive parent and cabinet representative, as documented on the adoption assistance agreement.

(5)

(a) The amount of federal Title IV-E adoption assistance shall not exceed the amount that would be paid for foster care maintenance for the same child, in accordance with 42 U.S.C. 673(a)(3), including medically ~~complex~~ complex ~~fragile~~, specialized medically ~~complex~~ complex ~~fragile~~, and care plus foster care per diem reimbursements established by the Department for Community Based Services.

(b) A child placed in therapeutic foster care, as described in 922 KAR 1:310, shall not be eligible to receive adoption assistance in excess of:

1. A care plus or medically complex foster care per diem reimbursement established by the Department for Community Based Services; or

2. The therapeutic foster care per diem reimbursed by the child-placing agency on behalf of the child ~~unless~~ if the:

- a. Dollar amount is necessary to meet the child's needs; and
- b. Commissioner or designee approves.

Section 6. Federal Title IV-E Adoption Assistance.

(1) Federal Title IV-E adoption assistance shall continue in accordance with KRS 199.557 and 42 U.S.C. 673(a)(4) until the child reaches age:

(a) Eighteen (18); or

(b) Twenty-one (21), if the child:

1. Has a signed adoption assistance agreement on or after his or her sixteenth birthday and 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; or

2. Is ~~is~~ determined to have a disability in accordance with subsection (2) of this section.

(2) Disability determination.

(a) In accordance with KRS 199.557 and 42 U.S.C. 673(a)(4), an adopted special needs child shall have a disability that warrants continuation of the child's federal Title IV-E adoption assistance if the child has been determined to meet the definition of permanent or total disability pursuant to 42 U.S.C. 1382c(a)(3) by either the:

1. Social Security Administration; or
2. Medical review team of the cabinet.

(b) In making a child's disability determination, the medical review team shall consider:

1. The child's medical history and subjective complaint regarding an alleged physical or mental disability, illness, or impairment; and

2. Competent medical testimony relevant to whether:

a. A physical or mental disability, illness, or impairment exists; and

b. The disability, illness, or impairment is sufficient to reduce the child's ability to gain full-time employment or pursue opportunities in a state or federal education program.

(c) Other factors to be considered by the medical review team in making a determination shall include the child's:

1. Age;

2. Employment history;

3. Educational background; and

4. Subjective complaint regarding the alleged effect of the physical or mental condition on the child's ability to support and care for self.

(d) The child shall be referred, if necessary, for further appraisal of his or her abilities.

(e) If the medical review team makes the disability determination, the medical review team shall provide a written report of the determination under this subsection to the cabinet and the:

1. Child, if the child is age eighteen (18) or older; or

2. Adoptive parent, if the child is under age eighteen (18).

(3) Federal Title IV-E adoption assistance may include:

(a) Nonrecurring adoption expenses not to exceed ~~\$2,000~~ \$4,000 incurred in the adoption of a special needs child; and

(b) An adoption subsidy.

Section 7. Termination of Adoption Assistance Payments. In accordance with KRS 199.557 and 42 U.S.C. 673(a)(4), federal Title IV-E adoption assistance payments shall be terminated if:

(1) The adoptive parent requests;

(2) The child reaches age:

(a) Eighteen (18); ~~or~~

(b) Twenty-one (21), if the child ~~has met a requirement of Section 6(1)(b)~~ is determined to have a disability in accordance with Section 6(2) of this administrative regulation; or

(c) Eighteen (18) to twenty-one (21), if the child no longer meets a requirement of Section 6(1)(b) of this administrative regulation.

(3) The cabinet determines that the:

(a) Adoptive parent is no longer legally responsible for the support of the child pursuant to KRS Chapter 625; or

(b) Child is no longer receiving support from the adoptive parent;

or

(4) ~~An~~ No adoptive parent who signed the adoption assistance agreement ~~does not remain~~ remains living.

Section 8. Adoption Assistance Reduction.

(1) Adoption assistance shall be reduced if the adoptive parent fails to provide documentation demonstrating financial responsibility and support after the cabinet has requested the documentation from the adoptive parent at least three (3) times.

(2) The cabinet shall resume payments, including any needed adjustments to the agreement, once the adoptive parent has provided the requested documentation demonstrating financial responsibility and support of the child.

~~Section 9.~~ Section 8. Adoption Assistance Renegotiation.

(1) Renegotiation of an adoption assistance agreement may be requested by the adoptive parent before or after the adoption is finalized in accordance with 42 U.S.C. 673 or 922 KAR 1:530.

(2) The renegotiated amount of federal Title IV-E adoption assistance payments shall be agreed upon by the:

(a) Adoptive parent; and

(b) Cabinet.

(3) If the adoption assistance payment is renegotiated in accordance with subsections (1) and (2) of this section, the cabinet and adoptive parent shall sign a new adoption assistance agreement.

(4) Federal Title IV-E adoption assistance payments shall not be changed by a move of the adoptive parents out of the state or country.

~~Section 10.~~ Section 9. Service Appeal. An applicant for adoption assistance payments or an adoptive family aggrieved by a cabinet action may request review through ~~shall be granted~~ an administrative hearing in accordance with 922 KAR 1:320.

~~Section 11.~~ Section 10. Notice of Change.

(1) Cabinet staff shall provide notice of a reduction or termination

of adoption assistance payments:

- (a) Ten (10) calendar days in advance; and
- (b) In accordance with 922 KAR 1:320, Section 6.

(2) In accordance with 42 U.S.C. 673, an adoptive parent shall notify the cabinet of any change in circumstance that would make the adoptive parent ineligible for adoption assistance payments or change the amount of the adoption assistance payment.

Section 12.~~[Section 44.]~~ Extraordinary Medical Expenses. In accordance with KRS 199.555(6) or 922 KAR 1:050, an adoptive child shall be eligible for assistance with extraordinary medical expenses.

Section 13. Annual Family Contact.

(1) Annual contact with the adoptive family shall be made by mail, email, phone, home visit, or other cabinet method of contact to determine that the:

- (a) Child remains in the adoptive home;
- (b) Parent continues to provide care and support for the child;
- and
- (c) Adoption assistance payments continue to meet the special needs of the child.

(2) The cabinet may conduct a home visit after an adoption assistance annual contact is made by mail, email, phone, or other cabinet method of contact:

- (a) If:
 - 1. The adoptive parent requests a home visit;
 - 2. The special needs of the child change, as indicated by the adoptive parent;
 - 3. Attempts to update information by additional mail, email, phone, or other cabinet method of contact have failed; or
 - 4. The cabinet receives information that is contrary to the information verified by the adoptive parent during the annual contact;

or
(b) In accordance with 922 KAR 1:330.

LESA DENNIS, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: June 4, 2024
FILED WITH LRC: June 10, 2024 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 26, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by August 19, 2024, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles or Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes adoption assistance supported under federal Title IV-E of the Social Security Act.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the adoption assistance program under federal Title IV-E of the Social Security Act.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the authorizing statutes through its establishment of federal Title IV-E adoption assistance.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation assists in the effective administration of the statutes through its establishment of the federal Title IV-E adoption assistance.

(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 provides updated language regarding federal Title IV-E adoption assistance and eligibility criteria for youth recipients. The amount of nonrecurring adoption expenses that the cabinet will cover is being increased from \$1,000 to \$2,000 for the adoption of a special needs child. This amendment requires that contact with the adoptive family be made on an annual basis while they continue to receive financial assistance, makes conforming amendments, and includes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reflect federal eligibility criteria changes based on the age of the child. Without this amendment, the state risks federally-imposed corrective action and possible penalty.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes through its alignment with recent changes to Title IV-E of the Social Security Act.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes through its alignment with federal law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There were 1,096 unique children adopted from foster care in Kentucky in 2023.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation provides updated language regarding federal Title IV-E adoption assistance and eligibility criteria for youth recipients. This amendment includes language regarding annual family contact and the criteria for which youth may continue to receive assistance beyond age eighteen (18).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no new or additional cost anticipated for adoptive parents or their children.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation clarifies benefits and services for adoptive parents and children adopted through a public agency adoption. In addition, the amendment protects federal funding for adoption assistance.

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

(a) Initially: The amount of nonrecurring adoption expenses the cabinet will cover is increasing in this amendment, but is not projected to be substantial. For the purpose of this administrative regulation, this cost is paid with federal funding.

(b) On a continuing basis: The administrative body will continually monitor its costs to make any adjustments necessary to maintain adoption assistance within appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for implementation and enforcement of this administrative regulation is state general funds and federal funds made available under Title IV-E of the Social Security Act.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. The federal Title IV-E adoption assistance program is implemented in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 45 C.F.R. 1356.40(b), 1356.41, 42 U.S.C. 673, 675(3), 1382c(a)(3)

(2) State compliance standards. KRS 194A.050(1), 199.557(4)

(3) Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 1356.40(b), 1356.41, 42 U.S.C. 673, 675(3), 1382c(a)(3)

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL 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), 199.557(4), 45 C.F.R. 1356.40(b), 1356.41, 42 U.S.C. 673, 675(3), 1382c(a)(3).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Cabinet for Health and Family Services will be impacted by this administrative regulation through administration of the program.

(a) Estimate the following for the first year:

Expenditures: Expenditures will increase as a result of increasing the amount of nonrecurring adoption expenses that the cabinet will cover, but that is not estimated to be a substantial increase and it is paid with federal funding.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: No cost savings to the cabinet are expected.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This is not expected to vary greatly.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None.

(a) Estimate the following for the first year:

Expenditures: No expenditures are expected.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: No cost savings are expected.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This is not expected to differ over subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): Adoptive parents are regulated entities subject to this administrative regulation, and the only new requirement established in this amendment is that they participate in communication with the cabinet once per year while they continue to receive financial support.

(a) Estimate the following for the first year:

Expenditures: Not applicable.

Revenues: Not applicable.

Cost Savings: The amount of nonrecurring adoption expenses that the cabinet will cover is being increased from \$1,000 to \$2,000 for

the adoption of a special needs child.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This is not expected to vary greatly.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: Increasing the amount of nonrecurring adoption expenses that adoptive parents receive from the cabinet from \$1,000 to \$2,000 for the adoption of a special needs child is expected to have a fiscal impact, but this is paid with federal funding.

(b) Methodology and resources used to determine the fiscal impact: The cabinet will be paying more in nonrecurring adoption expenses for children and youth meeting the special needs criteria, but it is only an increase of \$1,000 per child who meets the criteria.

(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 entities.

(b) The methodology and resources used to reach this conclusion: This amendment does not establish costs to regulated entities, it includes cost savings to regulated entities that are eligible. The cost the cabinet pays will be increased, but this is provided with federal funding and is not expected to be substantial.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(Amendment)**

922 KAR 2:090. Child-care center licensure.

RELATES TO: KRS Chapter 13B, Chapter 157, 158.030, 199.011(3), (4), (16), [~~199.892~~], 199.894(1), (3), 199.895, 199.896-199.898, 214.010, 214.036, 314.011(5), [~~600.020(4)~~], 620.020(8), 620.030, 45 C.F.R. 98.2, 98.43, 42 U.S.C. [~~604-619~~], 9831-9852[~~9857-9858~~]

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations to establish license fees and standards for a child-care center. KRS 199.896(6) requires the cabinet to establish an informal dispute resolution process. This administrative regulation establishes licensure standards for a child-care center and describes the informal dispute resolution process.

Section 1. Definitions.

(1) "Applicant" means an individual or entity applying to become a licensee or renew status as a licensee.

(2) "Cabinet" is defined by KRS 199.011(3) and 199.894(1).

(3) "Child" is defined by KRS 199.011(4).

(4) "Child care" means care of a child in a center or home that regularly provides full or part-time care, day or night, and includes developmentally appropriate play and learning activities.

(5) "Child-care center" is defined by KRS 199.894(3).

(6) "Contract substitute staff member" means a person who temporarily assumes the duties of a regular staff person, meets the requirements established in Section 12 of this administrative regulation, and receives payment from a contract entity rather than the child-care[~~child-care~~] center.

(7) "Director" means an individual who meets the education and training requirements established in Section 10 of this administrative regulation.

(8) "Finding of fraud" means a suspected intentional program violation referred in accordance with 922 KAR 2:020, Section

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4(4)(a)1, that is accepted for investigation and substantiated by the cabinet's Office of the Inspector General.

(9) "Health professional" means a person actively licensed as a:

- (a) Physician;
- (b) Physician assistant;
- (c) Advanced practice registered nurse; or
- (d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician or advanced practice registered nurse.

(10) "Infant" means a child who is less than twelve (12) months of age.

(11) "Instructional program" means a program operated by a business, educational institution, sole proprietor, or government entity that only serves school-aged children in providing specialized instruction or the continuation of learning outside the time period when school is in session.

(12) "Licensee" means the owner or operator of a child-care center to include:

- (a) Sole proprietor;
- (b) Corporation;
- (c) Limited liability company;
- (d) Partnership;
- (e) Association; or
- (f) Organization, such as:
 - 1. Board of education;
 - 2. Private school;
 - 3. Faith-based organization;
 - 4. Government agency; or
 - 5. Institution.

(13)~~(12)~~ "Nontraditional hours" means the hours of:

- (a) 7 p.m. through 5 a.m. Monday through Friday; or
- (b) 7 p.m. on Friday until 5 a.m. on Monday.

(14)~~(13)~~ "Parent" is defined by 45 C.F.R. 98.2.

(15)~~(14)~~ "Parental or family participation" means a child-care center's provision of information or inclusion of a child's parent in the child-care center's activities, including:

- (a) Distribution of a newsletter;
- (b) Distribution of a program calendar; or
- (c) A conference between the provider and a parent.

(16)~~(15)~~ "Pediatric abusive head trauma" is defined by KRS 620.020(8).

(17)~~(16)~~ "Premises" means the building and contiguous property in which child care is licensed.

(18)~~(17)~~ "Preschool-age" means a child who is older than a toddler and younger than school-age.

(19)~~(18)~~ "Qualified substitute" means a person who meets the requirements of a staff person established in Section 11 of this administrative regulation.

(20)~~(19)~~ "School-age" means a child who meets the age requirements of KRS 158.030 or who attends kindergarten, elementary, or secondary education.

(21)~~(20)~~ "Secretary" is defined by KRS 199.011(16).

(22) "Staff" means an individual who is employed by the child-care center for compensation and meets the education and training requirements established in Section 11 of this administrative regulation.

(23)~~(21)~~ "Toddler" means a child between the age of twelve (12) and thirty-six (36) months.

(24) "Visitor" means an individual who is on the premise of the child-care center, but shall not:

(a) Receive compensation from the child-care center, unless they are performing a skilled craft in which they are certified or trained to perform outside of child care program duties;

(b) Be required to meet the requirements of child-care center or contract substitute staff;

(c) Count towards staff-to-child ratios and group size; and

(d) Perform child care program duties, unless they are a direct family member participating in an activity or providing assistance for only his or her child or children.

(25) "Volunteer" means:

(a) An individual who:

1. Performs hours of service without promise or expectation of receiving compensation;

2. Performs services freely and without pressure or coercion, direct or implied;

3. Shall not be considered a volunteer if the individual is otherwise employed by the child-care center to perform the same type of services as staff; and

4. Shall only count towards staff-to-child ratios and group size when in the presence of a qualified staff member; or

(b) A student trainee enrolled in high school or a secondary education program earning educational credit.

Section 2. Child-Care Centers. The following child-care centers shall meet the requirements of this administrative regulation:

(1) A Type I child-care center. This child-care center shall be licensed to regularly provide child care services for:

- (a) Four (4) or more children in a nonresidential setting; or
- (b) Thirteen (13) or more children in a designated space separate from the primary residence of a licensee; and

(2) A Type II child-care center. This child-care center shall be the primary residence of the licensee in which child care is regularly provided for seven (7), but not more than twelve (12), children including children related to the licensee.

Section 3. Exempt Child Care Settings. The following child-care settings shall be exempt from licensure requirements of this administrative regulation, 922 KAR 2:120, and 922 KAR 2:280:

(1) Summer camps permitted by the cabinet as youth camps that serve school-age children;

(2) Kindergarten through grade 12 in private schools while school is in session;

(3) All programs and preschools regulated by the Kentucky Department of Education governed by KRS Chapter 157;

(4) Summer programs operated by a religious organization that a child attends no longer than two (2) weeks;

(5) Child care provided while parents are on the premises, other than the employment and educational site of parents;

(6) Child care programs operated by the armed services located on an armed forces base;

(7) Child care provided by educational programs that include parental involvement with the care of the child and the development of parenting skills;

(8) Facilities operated by a religious organization while religious services are being conducted;

(9) A child care program providing instructional and educational programs that:

- (a) Operates for a maximum of twenty (20) hours per week; and
- (b) A child attends for no more than ten (10) hours per week;

(10) A child-care center that meets the requirements of KRS 199.896(19) or (20); [and]

(11) An after-school program, which is:

- (a) A continuation of the school day during the academic year;
- (b) Operated and staffed by an accredited private or public school under the purview of the Kentucky Department of Education; and

(c) Not participating in the Child Care Assistance Program in accordance with 922 KAR 2:160; and

(12) An instructional program for school-age children that demonstrates to the cabinet that the requirements established in KRS 199.896(21) have been met.

Section 4. Application.

(1) An applicant for a license shall submit to the cabinet a completed OIG-DRCC-01, Initial Child-Care Center License Application.

(2) Approval of an applicant for initial licensure shall result in the issuance of a preliminary license for a probationary period not to exceed six (6) months.

(3) The issuance of a preliminary license, or the issuance or reapproval of a regular license, shall be governed under the provisions of this section and Sections 6 and 7 of this administrative regulation.

(4) If the applicant for licensure is a:

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(a) Corporation or a limited liability company, the application shall include a current certificate of existence or authorization from the Secretary of State; or

(b) Partnership, the application shall include:

1. A written statement from each partner assuring that the partnership is current and viable; and

2. Proof that each individual is twenty-one (21) years or older by photo identification or birth certificate.

(5) If the status of a corporation, partnership, or ownership of the child-care center changes, the new entity shall submit a completed OIG-DRCC-01.

(6) If ownership of a child-care center changes and the cabinet approves preliminary licensure upon inspection of the child-care center under the new ownership, the effective date on the preliminary license shall be the date of the approved inspection under the new ownership.

(7) The cabinet shall return the OIG-DRCC-01 and accompanying fee to an applicant if the applicant:

(a) Has an ownership interest in a facility that is licensed or regulated by the cabinet, and that is subject to a finding of fraud or is involved in an investigation of alleged fraud by:

1. The cabinet's Office of the Inspector General; or

2. An agency with investigative authority; and

(b) Is requesting a:

1. Change in ownership; or

2. License for a new facility.

(8) An applicant shall submit to background checks in accordance with 922 KAR 2:280.

(9) A child may include a person eighteen (18) years of age if the person has a special need for which child care is required.

Section 5. Evacuation Plan.

(1) A licensed child-care center shall have a written evacuation plan in the event of a fire, natural disaster, or other threatening situation that may pose a health or safety hazard for a child in care in accordance with KRS 199.895 and 42 U.S.C. 9858c(c)(2)(U).

(2) The cabinet shall post an online template of an evacuation plan that:

(a) Fulfills requirements of KRS 199.895;

(b) Is optional for a child-care center's use; and

(c) Is available to a licensed child-care center without charge.

Section 6. License Issuance.

(1) The cabinet shall monitor a child-care center that operates under a preliminary license issued pursuant to Section 4(2) of this administrative regulation.

(2) Upon completion of the probationary period required in Section 4(2) of this administrative regulation, the cabinet shall:

(a) Approve regular licensure for a child-care center operating under a preliminary license; or

(b) If a condition specified in Section 17 of this administrative regulation exists, deny regular licensure.

(3) A preliminary or regular license shall not be issued unless each background check required by 922 KAR 2:280 has been completed on behalf of an applicant for licensure.

(4) Background checks in accordance with 922 KAR 2:280 shall apply to:

(a) An applicant;

(b) A director;

(c) An employee who is present during the time a child is receiving care;

(d) Any person with supervisory or disciplinary control over a child in care; or

(e) A person in accordance with 42 U.S.C. 9858f and 45 C.F.R. 98.43.

(5) If an applicant for licensure has had a previous ownership interest in a child-care ~~program~~[~~provider~~] that has had a prior certification, license, or registration denied, revoked, or voluntarily relinquished as a result of an investigation or pending adverse action, the cabinet shall grant the applicant a license if:

(a) A seven (7) year period has expired from the:

1. Date of the prior denial or revocation;

2. Date the certification, license, or registration was voluntarily relinquished as a result of an investigation or pending adverse action;

3. Last day of legal remedies being exhausted; or

4. Administrative hearing decision; and

(b) The applicant has:

1. Demonstrated compliance with the provisions of this administrative regulation, 922 KAR 2:120, 922 KAR 2:280, and KRS 199.896;

2. Completed, since the time of the prior denial, revocation, or relinquishment, sixty (60) hours of training in child development and child care practice, approved by the cabinet or its designee; and

3. Not had an application, certification, license, or registration denied, revoked, or voluntarily relinquished as a result of an investigation or pending adverse action:

a. For one (1) of the reasons set forth in:

(i) KRS 199.896(19); or

(ii) 922 KAR 2:280; or

b. Due to a disqualification from:

(i) The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or

(ii) Another governmental assistance program for fraud, abuse, or criminal conviction related to that program.

(6) If a license is granted after the seven (7) year period specified in subsection (5)(a) of this section, the licensee shall serve a two (2) year probationary period during which the child-care center shall be inspected no less than semi-annually.

(7) A preliminary or regular license shall specify:

(a) A particular premises;

(b) A designated licensee;

(c) Age category of the children in care;

(d) The maximum number of children allowed under center supervision at one (1) time, including a child related to the licensee or an employee, based upon:

1. Available space as determined by the State Fire Marshal's Office in conjunction with the cabinet;

2. Adequacy of program;

3. Equipment; and

4. Staff;

(e) If provided, nontraditional hours;

(f) If provided, transportation; and

(g) A list of services to be provided by the child-care center.

(8) To qualify for a preliminary license, or maintain a regular license, a child-care center shall:

(a) Provide written documentation from the local authority showing compliance with local zoning requirements;

(b) Be approved by the Office of the State Fire Marshal or designee;

(c) Have an approved water and sewage system in accordance with local, county, and state laws;

(d) Provide written proof of liability insurance coverage of at least \$100,000 per occurrence;

(e) Comply with provisions of this administrative regulation, 922 KAR 2:120, and 922 KAR 2:280;

(f) Cooperate with the cabinet, the cabinet's designee, or another agency with regulatory authority during:

1. An investigation of an alleged complaint, including an allegation of child abuse or neglect pursuant to KRS 620.030; and

2. Unannounced inspections; and

(g) Have a director who meets the requirements listed in Section 10 of this administrative regulation.

(9) A child-care center shall allow the cabinet or its designee, another agency with regulatory authority, and a parent of an enrolled child unannounced access to the child-care center during the hours of operation.

(10) Denial of access, including any effort to delay, interfere with, or obstruct an effort by a representative of the cabinet or another agency with regulatory authority, to enter the child-care center or deny access to records relevant to the inspection shall result in the cabinet pursuing adverse action in accordance with Section 16, 17, or 18 of this administrative regulation.

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(11) A regular license shall be issued if the center has met the requirements contained in this administrative regulation, 922 KAR 2:120, 922 KAR 2:280, and KRS 199.896(3), (15), (16), (18), (19), and ~~(22)~~(24).

(12) A preliminary or regular license shall not be sold or transferred.

(13) A child-care center shall not begin operation without a preliminary license to operate from the cabinet.

(14) A child-care center operating without a preliminary or regular license shall be subject to legal action.

(15) The voluntary relinquishment of a preliminary or regular license shall not preclude the cabinet's pursuit of adverse action.

Section 7. Fees.

(1) A nonrefundable initial licensing fee of fifty (50) dollars shall be charged according to KRS 199.896(3).

(2) A nonrefundable renewal fee of twenty-five (25) dollars shall be charged in accordance with KRS 199.896(3).

(3) Licensing fees shall be:

- (a) Payable to the Kentucky State Treasurer;
- (b) Attached to the licensure application; and
- (c) Paid by:
 1. Cashier's check;
 2. Certified check;
 3. Business check; or
 4. Money order.

Section 8. General.

(1) A licensee shall:

(a) Be responsible for the operation of the child-care center pursuant to this administrative regulation, 922 KAR 2:120, and 922 KAR 2:280; and

(b) Protect and assure the health, safety, and comfort of each child.

(2) Child-care center staff shall be:

(a) Instructed by the child-care center's director regarding requirements for operation; and

(b) Provided with a copy of this administrative regulation, 922 KAR 2:120, and 922 KAR 2:280.

(3) A volunteer, visitor, or board member shall comply with the policies and procedures of the child-care center.

(4) Program policies and procedures shall:

- (a) Be in writing; and
- (b) Include:
 1. Staff policies;
 2. Job descriptions;
 3. An organization chart;
 4. Chain of command; and
 5. Other procedures necessary to ensure implementation of:
 - a. KRS 199.898, Rights for children in child-care programs and their parents, custodians, or guardians - posting and distribution requirements;

b. 922 KAR 2:120, Child-care center health and safety standards;

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

d. This administrative regulation.

(5) An activity of a person living in a child-care center that is a dwelling unit shall not interfere with the child-care center program.

(6) In addition to the posting requirement of KRS 199.898(3), a child-care center shall post the following in a conspicuous place and make available for public inspection:

- (a) The provider's preliminary or regular license;
- (b) Each statement of deficiency and civil penalty notice issued by the cabinet during the current licensure year;
- (c) Each plan of correction submitted by the child-care center to the cabinet during the current licensure year;
- (d) Information on the Kentucky Consumer Product Safety Program and the program's Web site as specified in KRS 199.897;
- (e) A description of services provided by the child-care center, including:
 1. Current rates for child care; and

2. Each service charged separately and in addition to the basic rate for child care;

(f) Minimum staff-to-child ratios and group size established in 922 KAR 2:120; and

(g) Daily planned program.

(7) If a director, employee, volunteer, or any person with supervisory or disciplinary control over, or having unsupervised contact with a child in care is named as the alleged perpetrator in a child abuse or neglect report accepted by the cabinet in accordance with 922 KAR 1:330, the individual shall be removed from direct contact with a child in care:

(a) For the duration of the assessment or investigation; and

(b) Pending completion of the administrative appeal process for a cabinet substantiation of child abuse or neglect in accordance with 922 KAR 1:320 or 922 KAR 1:480.

Section 9. Records.

(1) A child-care center shall maintain:

(a) A current immunization certificate for each child in care within thirty (30) days of the child's enrollment, unless an attending physician or the child's parent objects to the immunization of the child pursuant to KRS 214.036;

(b) A written record for each child:

1. Completed and signed by the child's parent;
2. Retained on file on the first day the child attends the child-care center; and

3. To contain:

a. Identifying information about the child, which includes, at a minimum, the child's name, address, and date of birth;

b. Contact information to enable a person in charge to contact the child's:

- (i) Parent at the parent's home or place of employment;
- (ii) Family physician; and
- (iii) Preferred hospital;

c. The name of each person who is designated in writing to pick-up the child;

d. The child's general health status and medical history including, if applicable:

- (i) Allergies;
- (ii) Restriction on the child's participation in activities with specific instructions from the child's parent or health professional; and

(iii) Permission from the parent for third-party professional services in the child-care center;

e. The name and phone number of each person to be contacted in an emergency involving or impacting the child;

f. Authorization by the parent for the child-care center to seek emergency medical care for the child in the parent's absence; and

g. A permission form for each trip off the premises, and allergy care plan if applicable, signed by the child's parent in accordance with 922 KAR 2:120, Section 14[42];

(c) Daily attendance records documenting the arrival and departure time of each child, including records that are required in accordance with 922 KAR 2:160, Section 13, if a child receives services from the child-care center through the Child Care Assistance Program;

(d) A written schedule of staff working hours;

(e) A current personnel file for each child-care center staff person to include:

1. Name, address, date of birth, and date of employment;
2. Proof of educational qualifications;
3. Record of annual performance evaluation;
4. Documentation of compliance with tuberculosis screening in accordance with Section 11(1)(b) of this administrative regulation; and

5. The results of background checks conducted in accordance with 922 KAR 2:280;

(f) A written annual plan for child[-]care staff professional development;

(g) A written evacuation plan in accordance with Section 5 of this administrative regulation;

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(h) A written record of quarterly practiced earthquake drills and tornado drills detailing the date, time, and children who participated in accordance with 922 KAR 2:120, Section 3;

(i) A written record of practiced fire drills conducted monthly detailing the date, time, and children who participated in accordance with 922 KAR 2:120, Section 3;

(j) A written plan and diagram outlining the course of action in the event of a natural or manmade disaster, posted in a prominent place;

(k) A written record of reports to the cabinet required in Section 13 of this administrative regulation; and

(l) A written record of transportation services provided in accordance with 922 KAR 2:120, Section 12.

(2) A child-care center shall:

(a) Maintain the confidentiality of a child's record and information concerning a child or the child's parent;

(b) Maintain all records for five (5) years; and

(c) Provide the cabinet access and information in the completion of the investigation pursuant to KRS 620.030.

(3) A child-care center shall not falsify records required by this section or a staff member's training record.

Section 10. Director Requirements and Responsibilities.

(1) A director shall:

(a) Be at least twenty-one (21) years of age;

(b) Have a high school diploma, a general equivalency diploma (GED), or qualifying documentation from a comparable educational entity;

(c) Not be employed in a position other than an onsite child care director, or director of multiple facilities, during the hours the child-care center is in operation;

(d) Ensure:

1. Compliance with 922 KAR 2:120, 922 KAR 2:280, and this administrative regulation; and

2. The designation of one (1) adult staff person in charge to carry out the director's duties if the director is not present in the child-care center during operating hours. The director shall be responsible for the actions of the designee during the director's absence;

(e) Manage the staff in their individual job descriptions;

(f) Assure the development, implementation, and monitoring of child-care center plans, policies, and procedures;

(g) Supervise staff conduct to ensure implementation of program policies and procedures;

(h) Post a schedule of daily activities, to include dates and times of activities to be conducted with the children in each classroom;

(i) Conduct, manage, and document in writing recurring staff meetings;

(j) Assess each staff person's interaction with children in care and classroom performance through an annual written performance evaluation;

(k) Assure that additional staff are available during cooking and cleaning hours, if necessary, to maintain staff-to-child ratios pursuant to 922 KAR 2:120;

(l) Notify the parent immediately of an accident or incident requiring medical treatment of a child;

(m) Assure that a person acting as a caregiver of a child in care shall not be left alone with a child, if the licensee has not received the results of the background checks as established in 922 KAR 2:280;

(n) Assure each mandatory record specified in Section 9 of this administrative regulation has not been altered or falsified;

(o) Coordinate at least one (1) annual activity involving parental or family participation; and

(p) Not have had previous ownership interest in a child-care program[provider] that had its certification, license, or registration denied or revoked.

(2) The director of a Type I child-care center shall meet one (1) of the following educational requirements:

(a) Master's degree in education or child development field;

(b) Bachelor's degree in education or child development field;

(c) Master's degree or a bachelor's degree in a field other than education or child development, including a degree in pastoral care

and counseling, plus twelve (12) clock hours of child development training;

(d) Associate degree in Early Childhood Education and Development;

(e) Associate degree in a field other than Early Childhood Education and Development, plus twelve (12) clock hours of child development training, and two (2) years of verifiable full-time paid experience working directly with children;

(f) A Director's Credential in Early Childhood Development and one (1) year of verifiable full-time paid experience working directly with children in:

1. A school-based program following Department of Education guidelines;

2. An early childhood development program, such as Head Start; or

3. A licensed or certified child-care program;

(g) Child development associate plus one (1) year of verifiable paid experience working directly with children in:

1. A school-based program following Department of Education guidelines;

2. An early childhood development program, such as Head Start; or

3. A licensed or certified child-care program; or

(h) Three (3) years of verifiable full-time paid experience working directly with children in:

1. A school-based program following Department of Education guidelines;

2. An early childhood development program, such as Head Start; or

3. A licensed or certified child-care program.

(3) The director of a Type II child-care center shall:

(a) Meet the requirements in subsection (2) of this section; or

(b) Meet two (2) of the following:

1. Have twelve (12) hours of orientation and child development training;

2. Have one (1) year of verifiable full-time paid experience working directly with children in:

a. A school-based program following Department of Education guidelines;

b. An early childhood development program, such as Head Start; or

c. A licensed or certified child-care program; or

3. Obtain six (6) additional hours of training in child day care program administration.

Section 11. Staff Requirements.

(1) Child-care center staff:

(a) Hired after January 1, 2009, who have supervisory power over a minor and are not enrolled in secondary education, shall have a:

1. High school diploma;

2. GED or qualifying documentation from a comparable educational entity; or

3. Commonwealth Child Care Credential as described in 922 KAR 2:250; and

(b) Shall provide, prior to employment and every two (2) years thereafter:

1. A statement from a health professional that the individual is free of active tuberculosis; or

2. A copy of negative tuberculin results.

(2)(a) A child-care center shall not employ a person:

1. With a disqualifying background check result in accordance with 922 KAR 2:280; or

2. Determined by a physician to have a health condition that renders the person unable to care for children.

(b) An individual described in Section 6(4) of this administrative regulation shall report to the licensee if the individual:

1. Meets a disqualifying criterion or has a disqualifying background check result as specified in 922 KAR 2:280;

2. Is the subject of a cabinet child abuse or neglect investigation; or

3. Is determined by a physician to have a health condition that renders the person unable to care for children.

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(3) For a child-care center licensed for infant, toddler, or preschool-age children, at least one (1) person on duty and present with the children shall be currently certified by a cabinet-approved training agency in the following skills:

- (a) Infant and child cardiopulmonary resuscitation; and
- (b) Infant and child first aid.

(4) For a child-care center licensed for school-age children, at least one (1) person on duty and present with the children shall be currently certified by a cabinet-approved training agency in the following skills:

- (a) Adult cardiopulmonary resuscitation; and
- (b) First aid.

(5) Cardiopulmonary resuscitation (CPR) and first aid training shall be in addition to the fifteen (15) clock hours requirement in subsection (16) of this section.

(6) Child-care centers shall have available in case of need:

- (a) One (1) qualified substitute staff person for a Type II child-care center; or
- (b) Two (2) qualified substitute staff persons for a Type I child-care center.

(7) Each qualified substitute staff person shall:

- (a) Meet the staff requirements of this administrative regulation; and
- (b) Provide the required documentation to verify compliance with this administrative regulation.

(8) A qualified substitute who works in more than one (1) licensed child-care center shall provide the required documentation to verify compliance with this administrative regulation at the time of employment with each child-care center.

(9) If the operator of a Type II child-care center is unable to provide care in accordance with this administrative regulation, 922 KAR 2:280, or 922 KAR 2:120, the Type II child-care center shall:

- (a) Close temporarily until the operator is able to resume compliance; and
- (b) Immediately notify parents of enrolled children of the temporary closure.

(10) The minimum number of adult workers in a child-care center shall be sufficient to ensure that:

(a) Minimum staff-to-child ratios in accordance with 922 KAR 2:120 are followed;

(b) Each staff person under eighteen (18) years of age and each student trainee are under the direct supervision of a qualified staff person who meets the requirements of this section; and

(c) Unless providing care with a qualified staff person, a person under the age of eighteen (18) shall not be counted as staff for the staff-to-child ratio.

(11) Except for medication as prescribed by a physician, a controlled substance shall not be permitted on the premises during hours of operation.

(12) Alcohol shall:

- (a) Not be consumed by any person on the licensed child-care center's premises during hours of operation; and
- (b) Be kept out of reach and sight of a child in care.

(13) Each staff person shall remain awake while on duty except as specified in 922 KAR 2:120, Section 2(11)(f).

(14) For each adult residing at a Type II child-care center, the results of the following shall be maintained on file at the center:

(a) Background checks conducted in accordance with 922 KAR 2:280; and

(b) A copy of negative tuberculin results or a health professional's statement documenting that the adult is free of tuberculosis. Every two (2) years, the adult shall provide negative tuberculin results or health professional's statement documenting that the adult is free of tuberculosis.

(15) If a new adult begins residing in a Type II child-care center, the adult shall submit to background and health checks within thirty (30) calendar days of residence within the household.

(16) In accordance with KRS 199.896(15) and (16), a staff person with supervisory authority over a child shall complete the following:

(a) Six (6) hours of cabinet-approved orientation completed within the first three (3) months of employment in a child care program covering the following topics:

1. Federal minimum health and safety requirements established in 45 C.F.R. 98.41 related to:

a. Prevention and control of infectious diseases, including immunization;

b. Prevention of sudden infant death syndrome and use of safe sleeping practices;

c. Administration of medication, consistent with standards for parental consent;

d. Prevention of and response to emergencies due to food and allergic reactions;

e. Building and physical premises safety, including identification of and protection from hazards, bodies of water, and vehicular traffic;

f. Prevention of shaken baby syndrome, abusive head trauma, and child maltreatment;

g. Emergency preparedness and response planning for emergencies resulting from a natural disaster or a human-caused event;

h. Handling and storage of hazardous materials and the appropriate disposal of biological contaminants; and

i. Precautions in transporting children;

2. Recognizing and reporting child abuse; and

3. Developmentally appropriate practices;

(b) Nine (9) hours of cabinet-approved early care and education training within the first year of employment in a child care program, including one and one-half (1 1/2) hours of cabinet-approved pediatric abusive head trauma training; and

(c) Fifteen (15) hours of cabinet-approved early care and education training completed between July 1 and the following June 30 of each subsequent year of employment in a child care program, including one and one-half (1 1/2) hours of cabinet-approved pediatric abusive head trauma training completed once every five (5) years.

(17) A staff person's compliance with training requirements of this section shall be verified through the cabinet-designated database maintained pursuant to 922 KAR 2:240.

(18) A staff person shall not repeat online training courses, including pre-service orientation, unless:

(a) Five (5) years have passed since the online training was completed; or

(b) They are required to as part of a disciplinary directive by a state agency.

(19) A staff person shall not accumulate more than fifteen (15) hours of training in a twenty-four (24) hour period.

Section 12. Contract Substitute Staff Member Requirements.

(1) A contract substitute staff member shall:

(a) Comply with the training requirements established in Section 11 of this administrative regulation;

(b) Be employed by an outside agency and provide the required documentation to verify the contractual agreement between the licensed child-care center and the outside agency;

(c) Provide a hard copy file containing all required staff records to be kept on-site at the licensed child-care center and maintained at the center for five (5) years;

(d) Be entered into the cabinet-designated database as a staff member of the outside organization in accordance with 922 KAR 2:240;

(e) Be the responsibility of the licensed child-care center while working on-site; and

(f) Have supervisory authority over a child only if the requirements of 922 KAR 2:120, 922 KAR 2:280, and this administrative regulation are met.

(2) Except for an employee of a child-care center program authorized by 42 U.S.C. 9831-9852, an owner or employee of a contract agency possessing a Kentucky Early Care and Education Trainer's Credential shall not train an employee of the same contract agency in order to meet the training requirements established in:

- (a) KRS 199.896(15) and (16), 922 KAR 2:180, 922 KAR 2:240, 922 KAR 2:250, 922 KAR 2:270, or this administrative regulation; or
- (b) A child development associate credential.

Section 13. Reports.

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(1) The following shall be reported to the cabinet or designee and other agencies specified in this section within twenty-four (24) hours from the time of discovery:

(a) Communicable disease, pursuant to 902 KAR 2:020, which shall also be reported to the local health department [pursuant to KRS 244.040];

(b) An accident or injury to a child that requires medical care initiated by the child-care center or the child's parent;

(c) An incident that results in legal action by or against the child-care center that:

1. Affects a child or staff person; or

2. Includes the center's discontinuation or disqualification from a governmental assistance program due to fraud, abuse, or criminal conviction related to that program;

(d) An incident involving fire or other emergency, including a vehicular accident when the center is transporting a child receiving child care services;

(e) A report of child abuse or neglect that:

1. Has been accepted by the cabinet in accordance with 922 KAR 1:330; and

2. Names a director, employee, volunteer, or person with supervisory or disciplinary control over, or having unsupervised contact with, a child in care as the alleged perpetrator; or

(f) An individual specified in Section 6(4) of this administrative regulation meeting a disqualifying criterion or background check result pursuant to 922 KAR 2:280.

(2) An incident of child abuse or neglect shall be reported to the cabinet pursuant to KRS 620.030.

(3) A licensee shall report to the cabinet within one (1) week:

(a) Any resignation, termination, or change of director; and

(b) The name of the acting director who satisfies the requirements of Section 10 of this administrative regulation.

(4)(a) Written notification of the following shall be:

1. Made to the cabinet, in writing, to allow for approval before implementation:

a. Change of ownership;

b. Change of location;

c. Increase in capacity;

d. Change in hours of operation;

e. Change of services in the following categories:

(i) Infant;

(ii) Toddler;

(iii) Preschool-age;

(iv) School-age;

(v) Nontraditional hours; or

(vi) Transportation; or

f. Addition to or reduction of the square footage of a child-care center's premises; and

2. Signed by each owner listed on the preliminary or regular license.

(b) The cabinet or its designee shall not charge a fee for acting upon reported changes.

(5) The death of a child in care shall be reported to the cabinet within one (1) hour.

(6) The cabinet and the parent of a child enrolled in a child-care center shall receive notice as soon as practicable, and prior to, a child-care center's temporary or permanent closure.

Section 14. Annual Renewal.

(1)(a) A regular license shall expire one (1) year from the effective date or last renewal date unless the licensee renews the regular license in accordance with this section and KRS 199.896(3).

(b) A preliminary license shall expire six (6) months from the date of issuance.

(c) A regular license that expires shall lapse and shall not be subject to appeal.

(2) A licensee seeking renewal of a regular license shall:

(a) Submit one (1) month prior to the anniversary of the regular license's effective date, an OIG-DRCC-06, Child-Care Center License Renewal Form;

(b) Meet the requirements specified in Sections 4 through 13 of this administrative regulation; and

(c) Pay the nonrefundable renewal fee in accordance with Section 7 of this administrative regulation.

(3) If requirements of subsection (1) of this section are met, the cabinet shall renew the license in the form of a validation letter.

(4) An application for renewal shall be denied in accordance with Section 17 of this administrative regulation.

Section 15. Statement of Deficiency and Corrective Action Plans.

(1) If a child-care center is found not to be in regulatory compliance, the cabinet or its designee shall complete a written statement of deficiency in accordance with KRS 199.896(5).

(2) Except for a violation posing an immediate threat as handled in accordance with KRS 199.896(5)(c), a child-care center shall submit a written corrective action plan to the cabinet or its designee within fifteen (15) calendar days of the date of the statement of deficiency to eliminate or correct the regulatory violation.

(3) A corrective action plan shall include:

(a) Specific action undertaken to correct a violation;

(b) The date action was or shall be completed;

(c) Action utilized to assure ongoing compliance;

(d) Supplemental documentation requested as a part of the plan; and

(e) Signature of the licensee or designated representative of the licensee and the date of signature.

(4) The cabinet or its designee shall review the plan and notify the child-care center within thirty (30) calendar days of receipt of the plan, in writing, of the decision to:

(a) Accept the plan;

(b) Not accept the plan; or

(c) Deny, suspend, or revoke the child-care center's license, in accordance with Section 17 of this administrative regulation.

(5) A notice of unacceptability shall state the specific reasons the plan is unacceptable.

(6) A child-care center notified of the unacceptability of its plan shall:

(a) Within fifteen (15) calendar days of the notification's date, submit an amended plan; or

(b) Have its license revoked or denied for failure to:

1. Submit an acceptable amended plan in accordance with KRS 199.896(4); or

2. Implement the corrective measures identified in the plan of correction.

(7) The cabinet shall not review or accept more than three (3) corrective action plans from a licensed child-care center in response to the same written statement of deficiency.

(8) If a licensed child-care center fails to submit an acceptable corrective action plan or does not implement corrective measures in accordance with the corrective action plan, the cabinet shall deny or revoke the center's license.

(9) The administrative regulatory violation reported on a statement of deficiency that poses an immediate threat to the health, safety, or welfare of a child shall be corrected within five (5) working days from the date of the statement of deficiency in accordance with KRS 199.896(5)(c).

Section 16. Directed Plan of Correction (DPOC). If the cabinet determines that a child-care center is in violation of this administrative regulation, 922 KAR 2:120, or 922 KAR 2:280, based on the severity of the violation, the cabinet:

(1) Shall enter into an agreement with the provider detailing the requirements for remedying a violation and achieving compliance;

(2) Shall notify or require the provider to notify a parent of a child who may be affected by the situation for which a DPOC has been imposed;

(3) Shall increase the frequency of monitoring by cabinet staff;

(4) May require the provider to participate in additional training; and

(5) May amend the agreement with the provider if the cabinet identifies an additional violation during the DPOC.

Section 17. Basis for Denial, Suspension, or Revocation.

(1)(a) The cabinet shall deny, suspend, or revoke a preliminary or regular license in accordance with KRS 199.896 if the applicant for licensure, director, employee, or a person who has supervisory authority over, or unsupervised contact with, a child fails to meet the requirements of this administrative regulation, 922 KAR 2:120, 922 KAR 2:280, or 922 KAR 2:190.

(b) A licensee whose regular license is suspended or revoked shall:

1. Receive a new license certificate indicating that the license is under adverse action; and
2. Post the new license certificate in accordance with Section 8(6) of this administrative regulation.

(2) Emergency action.

(a) The cabinet shall take emergency action in accordance with KRS 199.896(4) by issuing an emergency order that suspends a child-care center's license.

(b) An emergency order shall:

1. Be served to a licensed child-care center in accordance with KRS 13B.050(2); and
2. Specify the regulatory violation that caused the emergency condition to exist.

(c) Upon receipt of an emergency order, a child-care center shall surrender its license to the cabinet.

(d) The cabinet or its designee and the child-care center shall make reasonable efforts to:

1. Notify a parent of each child in care of the center's suspension; and
2. Refer a parent for assistance in locating alternate child care arrangements.

(e) A child-care center required to comply with an emergency order issued in accordance with this subsection may submit a written request for an emergency hearing within twenty (20) calendar days of receipt of the order to determine the propriety of the licensure's suspension in accordance with KRS 199.896(7).

(f) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing in accordance with KRS 13B.125(3).

(g)1. Within five (5) working days of completion of the hearing, the cabinet's hearing officer shall render a written decision affirming, modifying, or revoking the emergency order to suspend licensure.

2. The emergency order shall be affirmed if there is substantial evidence of an immediate threat to public health, safety, or welfare.

(h) A provider's license shall be revoked if the:

1. Provider does not request a hearing within the timeframes established in paragraph (e) of this subsection; or
2. Condition that resulted in the emergency order is not corrected within thirty (30) calendar days of service of the emergency order.

(3) Public information shall be provided in accordance with KRS 199.896(10) and (11), and 199.898(2)(d) and (e).

(4) Unless an applicant for a license meets requirements of Section 6(5) of this administrative regulation, the cabinet shall deny an applicant for a preliminary or regular license if:

(a) The applicant has had previous ownership interest in a child-care provider that had its certification, license, or registration denied or revoked;

(b) Denial, investigation, or revocation proceedings were initiated, and the licensee voluntarily relinquished the license;

(c) An appeal of a denial or revocation is pending;

(d) The applicant previously failed to comply with the requirements of KRS 199.896, 922 KAR 2:120, 922 KAR 2:280, 922 KAR 2:190, this administrative regulation, or another administrative regulation effective at the time;

(e) An individual with ownership interest in the child-care center has been discontinued or disqualified from participation in:

1. The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or

2. Another governmental assistance program due to fraud, abuse, or criminal conviction related to that program;

(f) The applicant is the parent, spouse, sibling, or child of a previous licensee whose license was denied, revoked, or voluntarily relinquished as described in paragraphs (a) through (d) of this

subsection, and the previous licensee will be involved in the child-care center in any capacity;

(g) The applicant listed as an officer, director, incorporator, or organizer of a corporation or limited liability company whose child-care center license was denied, revoked, or voluntarily relinquished as described in paragraph (a) through (d) of this subsection within the past seven (7) years;

(h) The applicant knowingly misrepresents or submits false information on a form required by the cabinet;

(i) The applicant interferes with a cabinet or other agency representative's ability to perform an official duty pursuant to Section 6(8)(f) or 6(9) of this administrative regulation;

(j) The applicant's background check reveals that the applicant is disqualified in accordance with 922 KAR 2:280;

(k) The applicant has been the subject of more than two (2) directed plans of correction during a three (3) year period; or

(l) The applicant has failed to comply with payment provisions in accordance with 922 KAR 2:190.

(5) A child-care center's license shall be revoked if:

(a) A representative of the center interferes with a cabinet or other agency representative's ability to perform an official duty pursuant to Section 6(8)(f) or 6(9) of this administrative regulation;

(b) A cabinet representative, a representative from another agency with regulatory authority, or parent is denied access during operating hours to:

1. A child;
2. The child-care center; or
3. Child-care center staff;

(c) The licensee is discontinued or disqualified from participation in:

1. The Child Care Assistance Program as a result of an intentional program violation in accordance with 922 KAR 2:020; or
2. A governmental assistance program as a result of fraud, abuse, or criminal conviction related to that program;

(d) The licensee fails to meet a condition of, or violates a requirement of a directed plan of correction pursuant to Section 16 of this administrative regulation;

(e) The applicant or licensee knowingly misrepresents or submits false information on a form required by the cabinet;

(f) The licensee is the subject of more than two (2) directed plans of correction during a three (3) year period; or

(g) The licensee has failed to comply with payment provisions in accordance with 922 KAR 2:190.

(6) The cabinet or its designee shall suspend the license if:

(a) A regulatory violation is found to pose an immediate threat to the health, safety, and welfare of the children in care as described in KRS 199.896(4); or

(b) The ~~child-care center~~ fails to comply with the approved plan of correction.

Section 18. Civil Penalty. The cabinet shall assess and enforce a civil penalty in accordance with 922 KAR 2:190.

Section 19. Right of Appeal.

(1) If an application has been denied or a licensee receives notice of suspension, revocation, or civil penalty, the cabinet shall inform the applicant for licensure or licensee by written notification of the right to appeal the notice of adverse action in accordance with KRS Chapter 13B and 199.896(7).

(2) An adverse action may be appealed by filing form OIG-DRCC-02, Licensed Provider Request for Appeal. The request shall:

(a) Be submitted to the secretary of the cabinet or designee within twenty (20) calendar days of the notice of adverse action; and

(b) Specify if an applicant for licensure or licensee requests an opportunity to informally dispute the notice of adverse action.

(3) If an applicant for licensure or a licensee files an OIG-DRCC-02 for a hearing, the cabinet shall:

(a) Appoint a hearing officer; and

(b) Proceed pursuant to KRS 13B.050.

(4) If an applicant for licensure or a licensee files a request for a hearing and a request for an informal dispute resolution, the cabinet shall:

- (a) Abate the formal hearing pending completion of the informal dispute resolution process; and
- (b) Proceed to informal dispute resolution.

Section 20. Informal Dispute Resolution.

(1) A request for informal dispute resolution shall:

- (a) Accompany the request for a hearing;
 - (b) Identify the licensure deficiency in dispute;
 - (c) Specify the reason the applicant for licensure or licensee disagrees with the deficiency; and
 - (d) Include documentation that disputes the deficiency.
- (2) Upon receipt of the written request for informal dispute resolution, the regional program manager or designee shall:
- (a) Review documentation submitted by the applicant for licensure or licensee; and
 - (b) If requested, schedule an informal dispute resolution meeting with the applicant for licensure or licensee.
- (3) The informal dispute resolution meeting shall be held within ten (10) calendar days of receipt of the request by the cabinet, unless both parties agree in writing to an extension of time.
- (4) The informal dispute resolution meeting shall be conducted by:

- (a) The regional program manager or designee; and
 - (b) A child care surveyor who did not participate in the survey resulting in the disputed deficiency.
- (5) Within ten (10) calendar days of completion of the informal dispute resolution meeting or request, the regional program manager or designee shall:
- (a) Issue a decision by written notification to the return address specified in the request for informal dispute resolution;
 - (b) If a change is made to the statement of deficiencies, issue an amended statement of deficiencies; and
 - (c) Specify whether the adverse action has been rescinded.
- (6) An applicant or a licensee may:
- (a) Accept the determination; or
 - (b) Proceed to a hearing according to KRS 13B.050.
- (7) A request for informal dispute resolution shall not:
- (a) Limit, modify, or suspend enforcement action against the applicant for licensure or licensee; or
 - (b) Delay submission of a written plan of correction.
- (8) Emergency action taken in accordance with Section 17(2) of this administrative regulation shall conform to the requirements of KRS 199.896(4). The informal dispute resolution process shall not restrict the cabinet's ability to issue an emergency order to stop, prevent, or avoid an immediate threat to public health, safety, or welfare under KRS 13B.125(2) and 199.896(4).

Section 21. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "OIG-DRCC-01, Initial Child-Care Center License Application", 8/2018;
- (b) "OIG-DRCC-02, Licensed Provider Request for Appeal", 05/2024[3/2020]; and
- (c) "OIG-DRCC-06, Child-Care Center License Renewal Form", 8/2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbx/Pages/default.aspx>.

LESA DENNIS, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: May 9, 2024

FILED WITH LRC: May 20, 2024 at 12:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 26, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by August 19, 2024, five (5) workdays prior to the

hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFRegs@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 licensure standards for child-care centers and describes an applicant's and a child-care center's appeal rights and informal dispute resolution processes.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a child-care center's licensure standards, appeal rights, and informal dispute resolution process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of licensure standards for a child-care center and related due process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for a child-care center license and related due process.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation exempts instructional programs that meet the requirements of KRS 199.896(21) from child-care center licensure as a result of the passage of House Bill 491 from the 2024 Regular Session. This amendment also addresses non-compliance issues identified during a recent federal monitoring visit. The necessary amendments are requirements associated with the federal Child Care and Development Fund (CCDF). The amendment clarifies requirements around pre-service/orientation training for providers in accordance with 45 C.F.R. 98.44(b)(1) that addresses all required health and safety topics. The amendment also clarifies the differences between staff, visitors, and volunteers. The appeals form is revised to remove a reference to a second level appeal.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with state law because of legislation that passed in the 2024 Regular Session (House Bill 491) and to address federal non-compliance issues mentioned above and avoid federal financial penalties.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the recent amendment of KRS 199.896(21) and the federal Child Care and Development Fund (CCDF) program, 45 C.F.R. Part 98.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will ensure Kentucky is consistent with state law and meeting federal requirements identified in a non-compliance letter received as a result of a federal monitoring visit.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of April 2024, there were 1,807 licensed child-care centers in Kentucky regulated by this administrative regulation. The Cabinet for Health and Family Services Office of the Inspector General, Division of Regulated Child Care, and Department

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for Community Based Services, Division of Child Care, administer this program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Instructional programs meeting the definition of this administrative regulation and the requirements of KRS 199.896(21) shall submit documentation to the cabinet to demonstrate meeting licensure exemption requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities meeting the requirements will be exempt from licensure requirements and may realize reduced costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities meeting statutory requirements will be exempt from child-care licensure and oversight.

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

(a) Initially: The amendment to this administrative regulation will not result in any new costs to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation will not result in any new costs for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match, and maintenance of effort funds for the block grant, and limited agency funds support the overall implementation of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Entities demonstrating compliance with KRS 199.896(21) will be exempt from the child care licensure requirements of this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98.2, 98.43

(2) State compliance standards. KRS 194A.050(1), 199.896(2), (6), (21)

(3) Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 98.2

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.

FISCAL 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), 199.896(2), (6), (21), 45 C.F.R. 98.2

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Cabinet for Health and Family Services is impacted by this administrative regulation.

(a) Estimate the following for the first year:

Expenditures: No expenditures are expected.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: No cost savings are expected.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this administrative regulation will not generate revenue in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Licensed child-care centers and instructional programs for school-age children.

(a) Estimate the following for the first year:

Expenditures: No expenditures are expected.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: This administrative regulation exempts instructional programs that meet the requirements of KRS 199.896(21) from child-care center licensure as a result of the passage of House Bill 491 from the 2024 Regular Session. This may result in some cost savings for these programs.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This is not expected to differ over subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): None.

(a) Estimate the following for the first year:

Expenditures: Not applicable.

Revenues: Not applicable.

Cost Savings: Not applicable.

(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: This administrative regulation does not have a fiscal impact other than possibly reducing the cost of instructional programs that are now exempt from child care licensure.

(b) Methodology and resources used to determine the fiscal impact: There is not a 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 will not have an overall negative or adverse major economic impact to entities.

(b) The methodology and resources used to reach this conclusion: This amendment does not include new requirements on regulated entities.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(Amendment)

922 KAR 2:120. Child-care center health and safety standards.

RELATES TO: KRS Chapter 151, 158.030, Chapter 186, 189.125, 199.011(3), 199.894(1), 199.8951, 199.896(2), (18), (19), 199.8962, [199.898,]211.350-211.380, Chapter 217, 311.646, 314.011(5), Chapter 318, 527.070(1), 620.030, [7 C.F.R., 226.20,]16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213[20 U.S.C. 6081-6084, 42 U.S.C. 9857-9858g]

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2), 199.8962(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary[Secretary] of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations and standards for child-care centers. KRS 199.8962(2) requires the Cabinet for Health and Family Services to promulgate administrative regulations to establish the requirements and

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procedures for the implementation of standards contained therein. This administrative regulation establishes health and safety standards for child-care centers.

Section 1. Definitions.

- (1) "Cabinet" is defined by KRS 199.011(3) and 199.894(1).
- (2) "Corporal physical discipline" is defined by KRS 199.896(18).
- (3) "Developmentally appropriate" means suitable for the specific age range and abilities of a child.
- (4) "Director" means an individual:
 - (a) Who meets the education and training requirements as specified in 922 KAR 2:090, Section 10;
 - (b) Whose primary full-time job responsibilities are to ensure compliance with 922 KAR 2:090, 922 KAR 2:280, and this administrative regulation; and
 - (c) Who is responsible for directing the program and managing the staff at the child-care center.
- (5) "Health professional" means a person currently licensed as a:
 - (a) Physician;
 - (b) Physician assistant;
 - (c) Advanced practice registered nurse; or
 - (d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician or advanced practice registered nurse.
- (6) "Infant" means a child who is less than twelve (12) months of age.
- (7) "Licensee" means the owner or operator of a child-care center to include:
 - (a) Sole proprietor;
 - (b) Corporation;
 - (c) Limited liability company;
 - (d) Partnership;
 - (e) Association; or
 - (f) Organization, such as:
 - 1. Board of education;
 - 2. Private school;
 - 3. Faith-based organization;
 - 4. Government agency; or
 - 5. Institution.
 - (8) "Nontraditional hours" means the hours of:
 - (a) 7 p.m. through 5 a.m. Monday through Friday; or
 - (b) 7 p.m. on Friday until 5 a.m. on Monday.
 - (9) "Parent" is defined by 45 C.F.R. 98.2.
 - (10) "Premises" means the building and contiguous property in which child care is licensed.
 - (11) "Preschool-age" means a child who is older than a toddler and younger than school-age.
 - (12) "Protective surface" means loose surfacing material not installed over concrete, which includes:
 - (a) Wood mulch;
 - (b) Double shredded bark mulch;
 - (c) Uniform wood chips;
 - (d) Fine sand;
 - (e) Coarse sand;
 - (f) Pea gravel, except for areas used by children under three (3) years of age;
 - (g) Certified shock absorbing resilient material; or
 - (h) Other material approved by the cabinet or designee, based on recommendation from a nationally recognized source.
 - (13) "Related" means having one (1) of the following relationships with the operator of the child-care center:
 - (a) Child;
 - (b) Grandchild;
 - (c) Niece;
 - (d) Nephew;
 - (e) Sibling;
 - (f) Stepchild; or
 - (g) Child in legal custody of the operator.
 - (14) "School-age" means a child who meets the age requirements of KRS 158.030 or who attends kindergarten, elementary, or secondary education.
 - (15) "Toddler" means a child between the age of twelve (12) months and thirty-six (36) months.

(16) "Transition" means the changing from one (1) child care arrangement to another.

(17) "Transition plan" means a document outlining the process to be used in moving a child from one (1) child care arrangement to another.

(18) "Type I child-care center" means a child-care center licensed to regularly provide child care services for:

- (a) Four (4) or more children in a nonresidential setting; or
- (b) Thirteen (13) or more children in a residential setting with designated space separate from the primary residence of a licensee.

(19) "Type II child-care center" means the primary residence of the licensee in which child care is regularly provided for at least seven (7), but not more than twelve (12), children including children related to the licensee.

Section 2. Child Care Services.

(1) Services established in this administrative regulation shall be maintained during all hours of operation that child care is provided.

(2) For an operating child-care center, minimum staff-to-child ratios and group size shall be maintained as established in the table established in this subsection.

Age of Children	Ratio	Maximum Group Size*
Infant	1 staff for 5 children	10
Toddler 12 to 24 months	1 staff for 6 children	12
Toddler 24 to 36 months	1 staff for 10 children	20
Preschool-age 3 to 4 years	1 staff for 12 children	24
Preschool-age 4 to 5 years	1 staff for 14 children	28
School-age 5 to 7 years	1 staff for 15 children	30
School-age 7 and older	1 staff for 25 children (for before and after school)	30
	1 staff for 20 children (full day of care)	30

*Maximum Group Size shall be applicable only to Type I child-care centers.

- (a) In a Type I child-care center, a group size shall:
 - 1. Be separately maintained in a defined area unique to the group; and
 - 2. Have specific staff assigned to, and responsible for, the group.
- (b) The age of the youngest child in the group shall determine the:
 - 1. Staff-to-child ratio; and
 - 2. Maximum group size.
- (c) This subsection and subsection (10) of this section shall not apply during traditional school hours to a center:
 - 1. Providing early childhood education to mixed-age groups of children whose ages range from thirty (30) months to six (6) years; and
 - 2. Accredited by or affiliated with a nationally-recognized education association that has criteria for group size and staff-to-child ratios contrary to the requirements of this subsection.
- (d) If a child related to the director, employee, or person under the supervision of the licensee is receiving care in the center, the child shall be included in the staff-to-child ratio.
- (e) A child-care center shall develop a written procedure to always maintain supervision, ratios, and group size including during:
 - 1. The beginning of the day;
 - 2. Staff breaks; and
 - 3. Movement from the classroom to another location.
 - (3)
 - (a) Each center shall maintain a child-care program that assures each child shall be:
 - 1. Provided with adequate supervision at all times by a qualified staff person who ensures the child is:

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- a. Within scope of vision and range of voice;[-œ]
- b. For a school-age child, within scope of vision or range of voice; and

c. Accounted for during movement from one location to another using name-to-face recognition by visually identifying each child; and

2. Protected from abuse and neglect.

(b) The program shall include:

1. A procedure to ensure compliance with and inform child care staff of the laws of the ~~commonwealth~~[Commonwealth] pertaining to child abuse or neglect set forth in KRS 620.030; and

2. Written policy that states that the procedures that were taught at the orientation training shall be implemented by each child-care center staff member.

(4) The child-care center shall provide a daily planned program:

(a) Posted in writing in a conspicuous location with each age group and followed;

(b) Of activities that are individualized and developmentally appropriate for each child served;

(c) That provides experience to promote the individual child's physical, emotional, social, and intellectual growth and well-being; and

(d) Unless the child-care center is a before- or after-school program that operates part day or less, that offers a variety of creative activities including:

- 1. Art or music;
- 2. Math or numbers;
- 3. Dramatic play;
- 4. Stories and books;
- 5. Science or nature;
- 6. Block building or stacking;
- 7. Tactile or sensory activity;
- 8. Multi-cultural exposure;
- 9. Indoor and outdoor play in which a child makes use of both small and large muscles;

10. A balance of active and quiet play, including group and individual activity;

11. An opportunity for a child to:

- a. Have some free choice of activities;
- b. If desired, play apart from the group at times; and
- c. Practice developmentally appropriate self-help procedures in respect to:

- (i) Clothing;
- (ii) Toileting;
- (iii) Hand-washing; and
- (iv) Eating; and

12. The use of screen time, electronic viewing, and listening devices if the:

a. Material is developmentally appropriate to the child using the equipment;

b. Material is not a replacement for active play or a substitute for engagement and interaction with other children and adults;

c. Material does not include any violence, adult content viewing, or inappropriate language;

d. Child is over twenty-four (24) months of age;

e. Viewing or listening is discussed with parents beforehand; and

f. Viewing or listening is designed as an educational tool used to help children explore, create, problem solve, interact, and learn with and from one another.

(5) Screen time shall be:

(a) Utilized for:

1. A maximum of thirty (30) minutes per day in a half-day program;

2. A maximum of sixty (60) minutes per day in a full-day program; or

3. The time needed for school-age children to complete assigned non-traditional instruction; and

(b) Prohibited for a child under twenty-four (24) months of age.

(6) A child who does not wish to use an electronic device during the planned program shall be offered other appropriate activities.

(7) Regularity of routines shall be implemented to afford the child familiarity with the daily schedule of activity.

(8) Sufficient time shall be allowed for an activity so that a child may progress at his or her own developmental rate.

(9) A child shall not be required to stand or sit for a prolonged period of time:

(a) During an activity;

(b) While waiting for an activity to start; or

(c) As discipline.

(10) If school-age care is provided:

(a) A separate area or room shall be provided in a Type I child-care center; and

(b) Each child shall be provided a snack after school.

(11) A child shall not be subjected to:

(a) Corporal physical discipline pursuant to KRS 199.896(18);

(b) Loud, profane, threatening, frightening, humiliating, or abusive language; or

(c) Discipline that is associated with:

- 1. Rest;
- 2. Toileting;
- 3. Play time; or
- 4. Food.

(12) If nontraditional hours of care are provided:

(a) Including time spent in school, a child shall not be permitted to spend more than sixteen (16) hours in the child-care center during one (1) twenty-four (24) hour period;

(b) At least one (1) staff member shall be assigned responsibility for each sleeping room;

(c) A child present for an extended period of time during waking hours shall receive a program of well-balanced and constructive activity that is developmentally appropriate for the child;

(d) A child sleeping three (3) hours or more shall sleep in:

- 1. Pajamas; or
- 2. A nightgown;

(e) A child who attends school from the child-care center shall be offered breakfast prior to leaving for school; and

(f) Staff shall:

1. If employed by a Type I child-care center, remain awake while on duty; or

2. If employed by or is the operator of a Type II child-care center, remain awake until every child in care is asleep.

(13)

(a) Care for a child with a special need shall be consistent with the nature of the need as documented by the child's health professional.

(b) A child may include a person eighteen (18) years of age if the person has a special need for which child care is required.

(14) A child-care center shall ensure all staff members ensure precautions are taken to prevent shaken baby syndrome, abusive head trauma, and child maltreatment.

Section 3. General Requirements.

(1) Screen time, electronic viewing, and listening devices shall only be used in the center as a part of the child's planned program of activity as established in Section 2(4) and (5) of this administrative regulation.

(2) Activity areas, equipment, and materials shall be arranged so that the child's activity is adequately supervised by staff.

(3) Computer equipment shall be equipped with a monitoring device that limits access by a child to items inappropriate for a child to view or hear.

(4) A child shall:

(a) Be helped with personal care and cleanliness based upon his or her developmental skills;

(b) Except as established in paragraph (c) of this subsection, wash his or her hands with liquid soap and warm running water:

- 1.
 - a. Upon arrival at the center; or
 - b. Within thirty (30) minutes of arrival for school-age children;
- 2. Before and after eating or handling food;
- 3. After toileting or diaper change;
- 4. After handling animals;
- 5. After touching an item or an area of the body soiled with body fluids or wastes; and
- 6. After outdoor or indoor play time; and

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(c) Use hand sanitizer or hand-sanitizing wipes if liquid soap and warm running water are not available in accordance with paragraph (b) of this subsection. The child shall wash the child's hands as soon as practicable once liquid soap and warm running water are available.

(5) Staff shall:

(a) Maintain personal cleanliness;

(b) Conform to hygienic practices while on duty;

(c) Except as established in paragraph (d) of this subsection, wash their hands with liquid soap and running water:

1. Upon arrival at the center;
2. After toileting or assisting a child in toileting;
3. Before and after diapering each child;
4. After wiping or blowing a child's or own nose;
5. After handling animals;
6. After caring for a sick child;
7. Before and after feeding a child or eating;
8. Before dispensing medication;
9. After smoking or vaping; and
10. If possible, before administering first aid; and

(d) Use hand sanitizer or hand-sanitizing wipes if liquid soap and warm running water are not available in accordance with paragraph (c) of this subsection. The staff shall wash the staff's hands as soon as practicable once liquid soap and warm running water are available.

(6) A staff person suspected of being infected with a communicable disease shall:

(a) Not perform duties that could allow for the transmission of the disease until the infectious condition can no longer be transmitted; and

(b) Provide a statement of fitness to return to work from a health professional, if requested.

(7) The following shall be inaccessible to a child in care:

(a) Toxic cleaning supplies, poisons, and insecticides;

(b) Matches, cigarettes, lighters, and flammable liquids; and

(c) Personal belongings and medications of staff.

(8) The following shall be inaccessible to a child in care unless under direct supervision and part of planned program of instruction:

(a) Knives and sharp objects;

(b) Litter and rubbish;

(c) Bar soap; and

(d) Plastic bags not used for personal belongings.

(9) In accordance with KRS 527.070(1), firearms and ammunition shall be stored separately from each other in a locked area outside of the designated child care area.

(10) Smoking or vaping shall:

(a) Be permitted in accordance with local ordinances;

(b) Be allowed only in outside designated areas; and

(c) Not be permitted in the presence of a child.

(11) While bottle feeding a child, the:

(a) Child shall be held; and

(b) Bottle or beverage container shall not be:

1. Propped;

2. Left in the mouth of a sleeping child; or

3. Heated in a microwave.

(12) A fire drill shall be:

(a) Conducted during hours of operation at least monthly; and

(b) Documented, detailing the date and time.

(13) An earthquake drill, shelter-in-place drill,~~[or]~~ lockdown drill, and tornado drill shall be:

(a) Conducted during hours of operation at least quarterly; and

(b) Documented, detailing the date and time.

(14) A written plan shall be in place to communicate reunification with families and accommodations in the event of a natural disaster, fire, shelter-in-place, lockdown, or other emergency for:

(a) Infants and toddlers;

(b) Children with disabilities; and

(c) Children with chronic medical conditions.

Section 4. Premises Requirements.

(1) The premises shall be:

(a) Suitable for the purpose intended;

(b) Kept clean and in good repair; and

(c) Equipped with:

1. A working telephone accessible to a room used by a child; and

2. A list of emergency numbers posted by the telephone or maintained in the telephone's contact, including numbers for the:

a. Police department;

b. Fire department;

c. Emergency medical care and rescue squad; and

d. Poison control center.

(2) A child-care center shall be in compliance with the codes administered by the Kentucky Fire Marshal and the local zoning laws.

(3) Fire and emergency exits shall be kept clear of debris.

(4) A working carbon monoxide detector shall be required in a licensed child-care center that is in a home if the home:

(a) Uses fuel burning appliances; or

(b) Has an attached garage.

(5) The building shall be constructed to ensure the:

(a) Building is:

1. Dry;

2. Ventilated; and

3. Well lit, including clean light fixtures that are:

a. In good repair in all areas; and

b. Shielded or have shatter-proof bulbs installed; and

(b) Following are protected:

1. Windows;

2. Doors;

3. Stoves;

4. Heaters;

5. Furnaces;

6. Pipes; and

7. Stairs.

(6)

(a) A minimum of thirty-five (35) square feet of indoor space is required per child, exclusive of the:

1. Kitchen;

2. Bathroom;

3. Hallways; and

4. Storage areas; and

(b) The final total capacity of the center shall be calculated and approved by the cabinet. ~~Exclusive of the kitchen, bathroom, hallway, and storage area, there shall be a minimum of thirty-five (35) square feet of space per child.~~

(7) Measures shall be utilized to control the presence of:

(a) Rodents;

(b) Flies;

(c) Roaches; and

(d) Other vermin.

(8) An opening to the outside shall be effectively protected against the entrance of vermin by:

(a) Self-closing doors;

(b) Closed windows;

(c) Screening;

(d) Controlled air current; or

(e) Other effective means.

(9) Floors, walls, and ceilings shall be smooth, in good repair, and constructed to be easily cleaned.

(10) The water supply shall be:

(a) Potable;

(b) Protected from contamination;

(c) Adequate in quality and volume;

(d) Under sufficient pressure to permit unrestricted use; and

(e) Obtained from an approved public water supply or a source approved by the local health department.

(11) Groundwater supplies for a child-care center caring for:

(a) More than twenty-five (25) children shall comply with requirements of the Energy and Environment Cabinet, Division of Water, established in KRS Chapter 151 and 401 KAR Chapter 8, as applicable; or

(b) Twenty-five (25) children or less shall secure approval from the:

1. Energy and Environment Cabinet; or

2. Local health department.

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(12) Sewage shall be properly disposed by a method approved by the:

- (a) Energy and Environment Cabinet; or
- (b) Cabinet.

(13) All plumbing shall comply with the State Plumbing Code established in KRS Chapter 318.

(14) Solid waste shall be kept in a suitable receptacle in accordance with local, county, and state law, as governed by KRS 211.350 to 211.380.

(15) If a portion of the building is used for a purpose other than child care:

(a) Necessary provisions shall be made to avoid interference with the child-care program; and

(b) A separate restroom shall be provided for use only by those using the building for its child care purpose.

(16) The temperature of the indoor area of the premises shall be sixty-five (65) to eighty-two (82) degrees Fahrenheit.

(17) Outdoor activity shall be restricted based upon:

- (a) Temperature;
- (b) Weather conditions;
- (c) Weather alerts, advisories, and warnings issued by the National Weather Service; or
- (d) Age or temperament of the child.

(18) A kitchen shall not be required if:

(a) The only food served is an afternoon snack to school-age children; and

(b) Adequate refrigeration is maintained.

(19) The Department of Housing, Buildings and Construction, the Kentucky Fire Marshal's Office, and cabinet shall be contacted concerning a planned new building, addition, or major renovation prior to construction.

(20) An outdoor play area shall have constant and active supervision and shall be:

(a) Except for an after-school child-care program, located on the premises of a public or state-accredited nonpublic school, fenced for the safety of the children;

(b) A minimum of sixty (60) square feet per child, separate from and in addition to the thirty-five (35) square feet minimum pursuant to subsection (6) of this section;

(c) Free from:

- 1. Litter;
- 2. Glass;
- 3. Rubbish; and
- 4. Flammable materials;
- (d) Safe from foreseeable hazard;
- (e) Well drained;
- (f) Well maintained;
- (g) In good repair; ~~and~~
- (h) Visible to staff at all times; and

(i) Protected by physical or natural barriers from:

- 1. Traffic;
- 2. Gullies; and
- 3. Other hazards.

(21) A protective surface shall:

(a) Be provided for outdoor play equipment used to:

- 1. Climb;
- 2. Swing; and
- 3. Slide; and

(b) Have a fall zone equal to the height of the equipment.

(22) If a child-care center does not have access to an outdoor play area, an indoor space shall:

(a) Be used as a play area;

(b) Have a minimum of sixty (60) square feet per child, separate from and in addition to the thirty-five (35) square feet minimum pursuant to subsection (6) of this section;

(c) Include equipment for gross motor skills; and

(d) Have a protective surface of at least two (2) inches thick around equipment intended for climbing.

(23) While attending, a child shall:

(a) Have moderate to vigorous activity each day, including active play that:

1. Includes outdoor play unless unavailable pursuant to subsections (17) or (22) of this section;

2. Shall occur for a minimum of;

- a. Thirty (30) minutes per day in a half-day program; or
- b. Sixty (60) minutes per day in a full-day program; and

3. May be broken into smaller increments of time throughout a day; and

(b) Not be punished or rewarded in regards to play time.

(24) Fences shall be:

- (a) Constructed of safe material;
- (b) Stable; and
- (c) In good condition.

(25) Supports for climbing apparatus and large equipment shall be securely fastened to the ground.

(26) Crawl spaces, such as tunnels, shall be short and wide enough to permit access by adults.

(27) A sandbox shall be:

- (a) Constructed to allow for drainage;
- (b) Covered while not in use;
- (c) Kept clean; and
- (d) Checked for vermin prior to use.

(28) Constant and active supervision shall be maintained around any body of water and shall be inaccessible by secured physical or natural barriers of adequate height and appropriately secured.

(29) Bodies of water that shall not be utilized include:

- (a) Portable wading pools;
- (b) Natural bodies of water; and
- (c) Unfiltered, nondisinfected containers.

(30)[(29)] A child-care center shall have enough toys, play apparatus, and developmentally appropriate materials to provide each child with a variety of activities during the day, as specified in Section 2 of this administrative regulation.

(31)[(30)] Storage space shall be provided:

(a) In the form of:

- 1. Shelves; or
- 2. Other storage device accessible to the children; and

(b) In sufficient quantity for each child's personal belongings.

(32)[(31)] Supplies shall be stored so that the adult can reach them without leaving a child unattended.

Section 5. Infant and Toddler Play Requirements.

(1) Indoor areas for infants and toddlers under twenty-four (24) months of age shall:

(a) Be separate from an area used by an older child;

(b) Not be an exit or entrance; and

(c) Have adequate crawling space for an infant or toddler away from general traffic patterns of the center.

(2) While awake, an infant shall have short periods of supervised tummy time throughout each day.

(3) Except in accordance with subsection (4) of this section or Section 2(2)(c) of this administrative regulation, an infant or toddler under twenty-four (24) months of age shall not participate in an activity with an older child for more than one (1) hour per day.

(4) If a toddler is developmentally appropriate for a transition to a preschool age group, a toddler may participate in an activity with an older child for more than one (1) hour per day if:

(a) Space for the toddler is available in the preschool-age group;

(b) The staff-to-child ratios and group sizes are maintained based on the age of the youngest child;

(c) The center has a procedure for listing a transitioning toddler on attendance records, including a specific day and time the toddler is with either age group; and

(d) The child-care~~[child-care]~~ center has obtained the signature and approval of the toddler's parent on the toddler's transition plan.

(5) If a child-care center provides an outdoor play area for an infant or toddler under twenty-four (24) months of age, the outdoor area shall be:

(a) Shaded; and

(b) In a separate area or scheduled at a different time than an older child.

(6) Playpens and play yards shall:

(a) Meet federal standards as issued by the Consumer Product Safety Commission, including 16 C.F.R. 1221;

(b) Be manufactured for commercial use; and

(c) Not be used for sleeping or napping.

Section 6. Sleeping and Napping Requirements.

(1) An infant shall sleep or nap on the infant's back unless the infant's health professional signs a waiver that states the infant requires an alternate sleeping position.

(2) Rest time shall be provided for each child who is not school-age and who is in care for more than four (4) hours.

(3) Rest time shall occur in an adequate space according to the child's age as follows:

(a) For an infant:

1. An individual non-tiered crib that meets Consumer Product Safety Commission standards established in 16 C.F.R. 1219-1220;

2. A firm crib mattress in good repair with a clean tight-fitted sheet that shall be changed:

- a. Weekly; or
- b. Immediately if it is soiled or wet;
3. No bedding other than a clean tight-fitted sheet; and
4. No toys or other items except the infant's pacifier; or

(b) For a toddler or preschool-age child:

1. An individual bed, a two (2) inch thick waterproof mat, or cot in good repair; and

2. Bedding that is in good repair and is changed:

- a. Weekly; or
- b. Immediately if it is soiled or wet.

(4) Rest time shall not exceed two (2) hours for a preschool-age child unless the child is attending the child-care center during nontraditional hours.

(5) A child who does not sleep shall be permitted to play quietly and shall be visually supervised.

(6) Cots, equipment, and furnishings used for sleeping and napping shall be spaced twelve (12) inches apart to allow free and safe movement by a person.

(7) If cots or mats are used, floors shall be free from:

- (a) Drafts;
- (b) Liquid substances;
- (c) Dirt; and
- (d) Dampness.

(8)

(a) Cots or mats not labeled for individual use by a child shall be cleaned after each use.

(b) Cots or mats labeled for individual use by a child shall be:

1. Cleaned at least weekly; and
2. Disinfected immediately if it is soiled or wet.

(9) Individual bedding shall be stored in a sanitary manner.

Section 7. First Aid and Medicine.

(1) First aid supplies shall:

(a) Be available to provide prompt and proper first aid treatment;

(b) Be stored out of reach of a child;

(c) Be periodically inventoried to ensure the supplies have not expired;

(d) If reusable, be:

1. Sanitized; and
2. Maintained in a sanitary manner; and

(e) Include:

1. Liquid soap;
2. Adhesive bandages;
3. Sterile gauze;
4. Medical tape;
5. Scissors;
6. A thermometer;
7. Flashlight;
8. Cold pack;
9. First aid book;
10. Disposable gloves; and
11. A cardiopulmonary resuscitation mouthpiece protector.

(2) A child showing signs of an illness or condition that could be communicable shall not be admitted to the regular child-care program.

(3) If a child becomes ill while at the child-care center:

(a) The child shall be placed in a supervised area isolated from the rest of the children;

(b) The parent shall be contacted immediately; ~~and~~

(c) Arrangements shall be made to remove the child from the

child-care center as soon as practicable;

(d) Biological contaminants, such as bodily fluids, blood, or excretions, shall be handled with disposable gloves;

(e) Contaminated clothing or other absorbent materials shall be placed in a sealed plastic container or bag labeled with the child's name and returned to the parent; and

(f) Soiled surfaces shall be cleaned and disinfected.

(4) Prescription and nonprescription medication shall be administered to a child in care:

(a)

1. With a written request of the child's parent or the child's prescribing health professional; and

2. According to the directions or instructions on the medication's label; or

(b) For epinephrine, in accordance with KRS 199.8951 and 311.646.

(5) The child-care center shall keep a written record of the administration of medication, including:

(a) Time of each dosage;

(b) Date;

(c) Amount;

(d) Name of staff person giving the medication;

(e) Name of the child; and

(f) Name of the medication.

(6) Medication, including refrigerated medication, shall be:

(a) Stored in a separate and locked place, out of the reach of a child unless the medication is:

1. A first aid supply and is maintained in accordance with subsection (1) of this section;

2. Diaper cream, sunscreen, or toothpaste. Diaper cream, sunscreen, or toothpaste shall be inaccessible to a child;

3. An epinephrine auto-injector. A licensed child-care center shall comply with KRS 199.8951 and 311.646, including:

a. An epinephrine auto-injector shall be inaccessible to a child;

b. A child-care center shall have at least one (1) person onsite who has received training on the administration of an epinephrine auto-injector if the child-care center maintains an epinephrine auto-injector;

c. A child-care center shall seek emergency medical care for a child if an auto-injector is administered to the child; and

d. A child-care center shall report to the child's parent and the cabinet in accordance with 922 KAR 2:090, Section 13(1)(b), if an epinephrine auto-injector is administered to a child; or

4. An emergency or rescue medication for a child in care, such as medication to respond to diabetic or asthmatic condition, as prescribed by the child's physician. Emergency or rescue medication shall be inaccessible to a child in care;

(b) Kept in the original bottle; and

(c) Properly labeled.

(7) Medication shall not be given to a child if the medication's expiration date has passed.

(8) Each center shall ensure that every staff member has received training on first aid and cardiopulmonary resuscitation (CPR).

(9) Waste and biological contaminants, such as bodily fluids, blood, or excretions, shall be:

(a) Disposed of in a manner that prevents exposure to children;

(b) Inaccessible to children; and

(c) In a covered plastic-lined receptacle with a close-fitting lid.

(10) The child-care center shall ensure each child's food or other allergies and allergy care plan are posted prominently where food is served with the permission of the parent or guardian, including:

(a) Instructions regarding the allergy, including identifying symptoms;

(b) Steps taken to avoid and prevent the allergen; and

(c) A plan of treatment in the event of an allergic reaction, including medication and doses, and that all epinephrine pens shall be administered in accordance with subsection (6)(a)3. of this section.

Section 8. Kitchen Requirements.

(1) The kitchen shall:

(a) Be clean;

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- (b) Be equipped for proper food:
 - 1. Preservation;
 - 2. Storage;
 - 3. Preparation; and
 - 4. Service;
- (c) Be adequately ventilated[~~to the outside air~~]; and
- (d) Except in a Type II child-care center when a meal is not being prepared, not be used for the activity of a child.
- (2) A child-care center required to have a food service permit shall be in compliance with 902 KAR 45:005 and this administrative regulation.
- (3) Convenient and suitable sanitized utensils shall be:
 - (a) Provided; and
 - (b) Used to minimize handling of food during preparation.
- (4) A cold-storage facility used for storage of perishable food in a nonfrozen state shall:
 - (a) Have an indicating thermometer or other appropriate temperature measuring device;
 - (b) Be in a safe environment for preservation; and
 - (c) Be forty (40) degrees Fahrenheit or below.
- (5) Frozen food shall be:
 - (a) Kept at a temperature of zero degrees Fahrenheit or below; and
 - (b) Thawed:
 - 1. At refrigerator temperatures;
 - 2. Under cool, potable running water;
 - 3. As part of the cooking process; or
 - 4. By another method in accordance with the Department for Public Health's food safety standards and permits, established in KRS Chapter 217.
- (6) Equipment, utensils, and surfaces contacting food shall be:
 - (a) Smooth;
 - (b) Free of breaks, open seams, cracks, and chips;
 - (c) Accessible for cleaning; and
 - (d) Nontoxic.
- (7) The following shall be clean and sanitary:
 - (a) Eating and drinking utensils;
 - (b) Kitchenware;
 - (c) Food contact surfaces of equipment;
 - (d) Food storage utensils;
 - (e) Food storage containers;
 - (f) Cooking surfaces of equipment; and
 - (g) Nonfood contact surfaces of equipment.
- (8) A single-service item shall be:
 - (a) Stored;
 - (b) Handled and dispensed in a sanitary manner; and
 - (c) Used only once.
- (9) Bottles shall be:
 - (a) Individually labeled;
 - (b) Promptly refrigerated;
 - (c) Covered while not in use; and
 - (d) Consumed within one (1) hour of being heated or removed from the refrigerator.

Section 9. Food and Drink Requirements for All Child-Care Centers.

- (1) Food shall be:
 - (a) Clean;
 - (b) Free from:
 - 1. Spoilage;
 - 2. Adulteration; and
 - 3. Misbranding;
 - (c) Safe for human consumption;
 - (d) Withheld from service or discarded if the food is hermetically sealed, nonacidic, or low-acidic food that has been processed in a place other than a commercial food-processing establishment;
 - (e) Obtained from a source that is in compliance with the Department for Public Health's food safety standards and permits, established in KRS Chapter 217;
 - (f) Acceptable if from an established commercial food store;
 - (g) Served in a quantity that is developmentally appropriate for the child with additional portions provided upon request of the child; and

- (h) Protected against contamination from:
 - 1. Dust;
 - 2. Flies;
 - 3. Rodents and other vermin;
 - 4. Unclean utensils and work surfaces;
 - 5. Unnecessary handling;
 - 6. Coughs and sneezes;
 - 7. Cuts in skin;
 - 8. Communicable disease;
 - 9. Flooding;
 - 10. Drainage; and
 - 11. Overhead leakage.
- (2) Food shall not be:
 - (a) Used for reward;
 - (b) Used for discipline;
 - (c) Withheld until all other foods are consumed; or
 - (d) Served while viewing electronic devices.
- (3) A serving of milk shall consist of:
 - (a) Breast milk or iron-fortified formula for a child:
 - 1. Age birth to twelve (12) months; or
 - 2. Beyond twelve (12) months of age as documented by the parent or the child's physician;
 - (b) Pasteurized unflavored whole milk for children ages twelve (12) months to twenty-four (24) months; or
 - (c) Pasteurized unflavored low fat one (1) percent or fat-free skim milk for children ages twenty-four (24) months to school-age.
 - (4) Formula or breast milk provided by the parent shall be prepared and labeled.
 - (5) A child-care center may participate in the Child and Adult Care Food Program (CACFP).
 - (6) A serving of bread shall only consist of whole or enriched grain.
 - (7) Drinking water shall be freely available to a child throughout the day.
 - (8) Food shall be stored on:
 - (a) Clean racks;
 - (b) Clean shelves;
 - (c) Other clean surfaces; or
 - (d) If maintained in a sanitary condition, in nonabsorbent labeled containers a minimum of six (6) inches off the floor.
 - (9) Fruits and vegetables shall be washed before cooking or serving.
 - (10) Children shall not be served food that has been deep-fried on-site.
 - (11) Meat salads, poultry salads, and cream-filled pastries shall be:
 - (a) Prepared with utensils that are clean; and
 - (b) Refrigerated unless served immediately.
 - (12) An individual portion of food served to a child or adult shall not be served again.
 - (13) Wrapped food that is still wholesome and has not been unwrapped may be reserved.
 - (14) Meals shall be:
 - (a) Served every two (2) to three (3) hours; and
 - (b) Served to a child:
 - 1. Seated with sufficient room to manage food and tableware; and
 - 2. Supplied with individual eating utensils designed for use by a child.
 - (15) Drinks served to children shall not have added sugar. Children shall drink water, milk, or 100% juice with meals.
 - (16) Juice shall:
 - (a) Not include added sugar;
 - (b) Not be served more than once per day;
 - (c) Not be served to children under the age of twelve (12) months; and
 - (d) Serve as a fruit or vegetable meal component replacement.
 - (17) A meat alternative shall include:
 - (a) Tofu;
 - (b) Soy products;
 - (c) Cheese, including cottage or ricotta cheese;
 - (d) Eggs;
 - (e) Cooked dry beans;

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- (f) Peanut butter or soy nut butter;
- (g) Yogurt, plain or flavored; or
- (h) Peanuts, soy nuts, tree nuts, or seeds.

(18) Cheese shall be natural and pasteurized processed cheese. Children shall not be served cheese product, imitation cheese, cheese food, or cheese spread as a meat alternative.

(19) For food provided by the center, all children in the center shall be offered the same food items unless:

- (a) A parent provides written authorization to substitute the food with an alternative that meets the same component requirement; or
- (b) A physician provides written authorization to substitute the food or the food component and includes the food that the child shall not have and the food substitution that the child shall have.

(20) Children shall be served all daily food components required by Section 10 or 11 of this administrative regulation.

Section 10. Meal Planning Requirements for a Center that Provides Meals.

(1) Breakfast shall include the following three (3) components:

- (a) Milk;
- (b) Bread or grain, which may:

1. Be exchanged for a meat or meat alternative up to three (3) times per week; and

2. Include ready-to-eat cereal with six (6) grams of sugar or less per dry ounce; and

- (c)
 1. Fruit;
 2. Vegetable; or
 3. 100 percent juice.

(2) A snack shall include two (2) of the following components:

- (a) Milk;
- (b) Meat or meat alternative;
- (c) Bread or grain; or
- (d)

1. Fruit;
2. Vegetable; or
3. 100 percent juice.

(3) Lunch, and dinner if served, shall include the following components:

- (a) Milk;
- (b) Meat or meat alternative;
- (c) Bread or grain; and
- (d)

1. Two (2) different vegetables; or
2. One (1) fruit and one (1) vegetable.

(4) A grain-based dessert shall not replace the bread or grain component of a meal.

(5) Yogurt served to children shall have twenty-three (23) grams of sugar or less per six (6) ounces.

(6) The serving size for milk shall be:

- (a) Four (4) ounces for one (1) or two (2) year old children;
- (b) Six (6) ounces for three (3) to five (5) year old children; or
- (c) Eight (8) ounces for school-age children.

(7) At least one (1) whole grain bread or grain shall be served daily.

(8) A component shall be considered "whole grain" if:

(a) The product is listed by any state agency's Special Supplemental Nutrition Program for Women, Infants, and Children as whole grain;

(b) The product is labeled as "whole wheat" and has a Standard of Identity issued by the U.S. Food and Drug Administration (FDA);

(c) The product includes one of the FDA-approved whole grain health claims on its packaging, exactly as written;

(d) The product meets the whole grain-rich criteria under the National School Lunch Program (NSLP);

(e) The product is identified on the package as "whole grain," "whole wheat," or "whole grain-rich"; or

(f) Proper documentation from a manufacturer or standardized recipe demonstrates that whole grains are the primary grain ingredient by weight.

(9) A weekly menu shall be:

- (a) Prepared;
- (b) Dated;

- (c) Posted in advance in a conspicuous place;
- (d) Kept on file for thirty (30) days; and
- (e) Amended in writing with any substitutions on the day the meal is served.

Section 11. Meal Planning Requirements for a Center that Does Not Provide Meals.

(1) A child-care center that does not provide meals shall serve:

- (a)
 1. Breakfast; or
 2. A mid-morning snack;
- (b)
 1. Lunch; or
 2. A mid-afternoon snack; and
- (c) Dinner, if appropriate.

(2) Breakfast shall include three (3) of the following components:

- (a) Milk;
- (b) Bread or grain;
- (c) Meat or meat alternative; or
- (d)
 1. Fruit;
 2. Vegetable; or
 3. 100 percent juice.

(3) A snack shall include two (2) of the following components:

- (a) Milk;
- (b) Bread or grain;
- (c) Meat or meat alternative; or
- (d)
 1. Fruit;
 2. Vegetable; or
 3. 100 percent juice.

(4) Lunch, and dinner if served, shall include:

- (a) Milk;
- (b) Bread or grain;
- (c) Meat or meat alternative; and
- (d)
 1. Two (2) different vegetables; or
 2. One (1) fruit and one (1) vegetable.

Section 12. Toilet, Diapering, and Toiletry Requirements.

(1) A child-care center, per building, shall have a minimum of one (1) toilet and one (1) lavatory for each twenty (20) children. Urinals may be substituted for up to one-half (1/2) of the number of toilets required for a male toilet room.

(2) A toilet room shall:

- (a)
 1. Be provided for each gender; or
 2. A plan shall be implemented to use the same toilet room at separate times;
- (b) Have a supply of toilet paper; and
- (c) Be cleaned and disinfected daily.

(3) A sink shall be:

- (a) Located in or immediately adjacent to toilet rooms;
- (b) Equipped with hot and cold running water that allows for hand washing;
- (c) Equipped with hot water at a minimum temperature of ninety (90) degrees Fahrenheit and a maximum of 120 degrees Fahrenheit;

(90) degrees Fahrenheit and a maximum of 120 degrees Fahrenheit;

- (d) Equipped with liquid soap;
- (e) Equipped with hand-drying blower or single use disposable hand drying material;
- (f) Equipped with an easily cleanable waste receptacle; and
- (g) Immediately adjacent to a changing area used for infants and toddlers.

(4) Each toilet shall:

- (a) Be kept in clean condition;
- (b) Be kept in good repair;
- (c) Be in a lighted room; and
- (d) Have ventilation to outside air.

(5) Toilet training shall be coordinated with the child's parent.

(6) An adequate quantity of freshly laundered or disposable diapers and clean clothing shall be available.

(7) If a toilet training chair is used, the chair shall be:

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- (a) Used over a surface that is impervious to moisture;
 - (b) Out of reach of other toilets or toilet training chairs;
 - (c) Emptied promptly; and
 - (d) Disinfected after each use.
- (8) Diapers or clothing shall be:
- (a) Changed when soiled or wet;
 - (b) Stored in a covered container temporarily; and
 - (c) Washed or disposed of at least once a day.
- (9) The proper methods of diapering and hand-washing shall be posted at each diaper changing area.
- (10) When a child is diapered, the child shall:
- (a) Not be left unattended; and
 - (b) Be placed on a surface that is:
 1. Clean;
 2. Padded;
 3. Free of holes, rips, tears, or other damage;
 4. Nonabsorbent;
 5. Easily cleaned; and
 6. Free of any items not used for diaper changing.
- (11) Unless the child is allergic, individual disposable washcloths shall be used to thoroughly clean the affected area of the child.
- (12) Staff shall disinfect the diapering surface after each child is diapered.
- (13) If staff wears disposable gloves, the gloves shall be changed and disposed after each child is diapered.
- (14) Combs, towels or washcloths, brushes, and toothbrushes used by a child shall be:
- (a) Individually stored in separate containers; and
 - (b) Plainly labeled with the child's name.
- (15) Toothbrushes shall be:
- (a) Individually identified;
 - (b) Allowed to air dry; and
 - (c) Protected from contamination.
- (16) Toothpaste used by multiple children shall be dispensed onto an intermediate surface, such as waxed paper, to avoid cross contamination.

Section 13. Toys and Furnishings.

- (1) All toys and furniture contacted by a child shall be:
- (a) Kept clean and in good repair; and
 - (b) Free of peeling, flaking, or chalking paint.
- (2) Indoor and outdoor equipment shall:
- (a) Be clean, safe, and in good repair;
 - (b) Meet the physical, developmental needs, and interests of children of different age groups;
 - (c) Be free from sharp points or corners, splinters, protruding nails or bolts, loose or rusty parts, hazardous small parts, lead-based paint, poisonous material, and flaking or chalking paint; and
 - (d) Be designed to guard against entrapment or situations that may cause strangulation.
- (3) Toys shall be:
- (a) Used according to the manufacturer's safety specifications;
 - (b) Durable; and
 - (c) Without sharp points or edges.
- (4) A toy or another item that is considered a mouth contact surface by a child not toilet trained shall be sanitized daily by:
- (a)
 1. Scrubbing in warm, soapy water using a brush to reach into crevices;
 2. Rinsing in clean water;
 3. Submerging in a sanitizing solution for at least two (2) minutes; and
 4. Air dried; or
 - (b) Cleaning in a dishwasher if the toy or other item is dishwasher safe.
- (5) Tables and chairs shall be of suitable size for children.
- (6) Chairs appropriate for staff shall be provided to use while feeding, holding, or playing with a child.

Section 14. Transportation.

- (1) A center shall document compliance with KRS Chapter 186

and 603 KAR 5:072 pertaining to:

- (a) Vehicles;
 - (b) Drivers; and
 - (c) Insurance.
- (2) A center providing or arranging transportation service shall:
- (a) Be licensed and approved by the cabinet or its designee prior to transporting a child;
 - (b) Have a written plan that details the type of transportation, staff schedule, transportation schedule, and transportation route; and
 - (c) Have written policies and procedures, including emergency procedures practiced monthly by staff who transports children.
- (3) Prior to transporting a child, a center providing transportation services of a child shall notify the cabinet or its designee in writing of the:
- (a) Type of transportation offered;
 - (b) Type of vehicle used for transportation;
 - (c) Plan for ensuring staff perform duties relating to transportation properly;
 - (d) Full insurance coverage for each vehicle;
 - (e) Agency policy and procedures relating to an emergency plan for evacuating the vehicle;
 - (f) Contracts, agreements, or documents detailing arrangements with any third party for services; and
 - (g) Safety procedures for:
 1. Transporting a child;
 2. Loading and unloading a child; and
 3. Providing adequate supervision of a child.
- (4) A vehicle used to transport children shall be equipped with:
- (a) A fire extinguisher;
 - (b) First aid supplies as established in Section 7 of this administrative regulation;
 - (c) Emergency reflective triangles; and
 - (d) A device to cut the restraint system, if necessary.
- (5) Transportation provided by licensed public transportation or a school bus shall comply with subsections (1) and (2) of this section.
- (6) A vehicle used to transport children shall comply with the requirements established in paragraphs (a) through (d) of this subsection.
- (a) For a twelve (12) or more passenger vehicle, the child-care center shall maintain a current certification of inspection from the Transportation Cabinet.
- (b) A vehicle that requires traffic to stop while loading and unloading a child shall be equipped with a system of:
- 1. Signal lamps;
 - 2. Identifying colors; and
 - 3. Cautionary words.
- (c) A vehicle shall be equipped with seat belts for each occupant to be individually secured.
- (d) A vehicle shall not transport children and hazardous materials at the same time.
- (7) The appropriate car safety seat meeting federal and state motor vehicle safety standards in 49 C.F.R. 571.213 and KRS 189.125 shall be used for each child.
- (8) A daily inspection of the vehicle shall be performed prior to the vehicle's use and documented for:
- (a) Tire inflation consistent with tire manufacturer's recommended air pressure;
 - (b) Working lights, signals, mirrors, gauges, and wiper blades;
 - (c) Working safety restraints;
 - (d) Adequate fuel level; and
 - (e) Cleanliness and good repair.
- (9)
 - (a) The staff-to-child ratios set forth in Section 2(2) of this administrative regulation shall apply to vehicle transport, if not inconsistent with special requirements or exceptions in this section.
 - (b) An individual who is driving with a child in the vehicle shall supervise no more than four (4) children under the age of five (5).
- (10) Each child shall:
- (a) Have a seat;
 - (b) Be individually belted or harnessed in the seat; and
 - (c) Remain seated while the vehicle is in motion.

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- (11) A child shall not be left unattended:
 - (a) At the site of aftercare delivery; or
 - (b) In a vehicle.
 - (12) If the parent or designee is unavailable, a prearranged written plan shall be completed to designate where the child can be picked up.
 - (13) A child shall not be picked up or delivered to a location that requires crossing the street or highway unless accompanied by an adult.
 - (14) A vehicle transporting a child shall have the headlamps on.
 - (15) If a vehicle needs to be refueled, it shall be refueled only while not being used to transport a child. If emergency refueling or repair is necessary during transporting, all children shall be removed and supervised by an adequate number of adults while refueling or repair is occurring.
 - (16) If the driver is not in the driver's seat, the:
 - (a) Engine shall be turned off;
 - (b) Keys shall be removed; and
 - (c) Emergency brake shall be set.
 - (17) Transportation services provided shall:
 - (a) Be recorded in writing and include:
 1. The first and last name of the child transported; and
 2. The time each child gets on and the time each child gets off;
 - (b) Be completed by a staff member other than the driver; and
 - (c) Be kept for five (5) years.
 - (18) A driver of a vehicle transporting a child for a center shall:
 - (a) Be at least twenty-one (21) years old;
 - (b) Complete:
 1. The background checks as described in 922 KAR 2:280; and
 2. An annual check of the:
 - a. Kentucky driver history records in accordance with KRS 186.018; or
 - b. Driver history records through the state transportation agency that issued the driver's license;
 - c. Hold a current driver's license that has not been suspended or revoked during the last five (5) years; and
 - d. Not caused an accident that resulted in the death of a person.
 - (19) Firearms, ammunition, alcohol, or illegal substances shall not be transported in a vehicle transporting children.
 - (20)
 - (a) Based on the harm, threat, or danger to a child's health, safety, and welfare, the cabinet shall revoke a center's privilege to transport a child or pursue an adverse action in accordance with Section 15, 16, 17, or 18 of 922 KAR 2:090:
 1. For a violation of this section; or
 2. If the center:
 - a. Fails to report an accident in accordance with 922 KAR 2:090, Section 13; or
 - b. Transports more passengers than the vehicle's seating capacity and safety restraints can accommodate.
 - (b) Revocation of a center's privilege to provide transportation services in accordance with paragraph (a) of this subsection shall:
 1. Apply to each site listed under the licensee; and
 2. Remain effective for no less than a twelve (12) month period.
 - (21) A parent may use the parent's vehicle to transport the parent's child during a field trip.
- Section 15. Animals.
- (1) An animal shall not be allowed in the presence of a child in care:
 - (a) Unless:
 1. The animal is under the supervision and control of an adult;
 2. Written parental consent has been obtained; and
 3. The animal is certified as vaccinated against rabies; or
 - (b) Except in accordance with subsection (3) of this section.
 - (2) A parent shall be notified in writing if a child has been bitten or scratched by an animal.
 - (3) An animal that is considered undomesticated, wild, or exotic shall not be allowed at a child-care center unless the animal is:
 - (a) A part of a planned program activity led by an animal specialist affiliated with a zoo or nature conservatory; and
 - (b) In accordance with 301 KAR 2:081 and 301 KAR 2:082.
 - (4) This section shall not apply to wild animals on the outer

- property of the child-care center that are expected to be found outdoors, such as squirrels and birds, if they are not:
 - (a) Disturbed; or
 - (b) Brought indoors.

LESA DENNIS, Commissioner
ERIC C. FRIEDLANDER, Secretary
APPROVED BY AGENCY: May 9, 2024
FILED WITH LRC: May 20, 2024 at 12:45 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 26, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by August 19, 2024, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until August 31, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.
CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles or Laura Begin
(1) Provide a brief summary of:

- (a) What this administrative regulation does: This administrative regulation establishes health and safety standards for child-care centers.
- (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards regarding health and safety in child-care centers.
- (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 minimum health and safety standards for child-care centers as conditions of their licensure.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 199.896 authorizes the cabinet to establish standards of care and service for child-care centers. This administrative regulation assists in the effective administration of the statutes by establishing health and safety standards in those facilities.

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

- (a) How the amendment will change this existing administrative regulation: This amendment addresses non-compliance issues identified during a recent federal monitoring visit. The necessary amendments are requirements associated with the federal Child Care and Development Fund (CCDF). The amendment adds requirements for the prevention and response to emergencies due to food and allergic reactions and response planning in accordance with 45 C.F.R. 98.41(a)(1)(vii); adds requirements for the identification of and protection from vehicular traffic in accordance with 45 C.F.R. 98.41(a)(1)(v); shaken baby syndrome, head trauma, and child maltreatment prevention training in accordance with 45 C.F.R. 98.41(a)(1)(vi); emergency and response planning in accordance with 45 C.F.R. 98.41(a)(1)(vii); and handling and storage of hazardous materials and biocontaminants disposal in accordance with 45 C.F.R.

98.41(a)(1)(viii).

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to address federal non-compliance issues mentioned above and to avoid federal financial penalties.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the Child Care and Development Fund (CCDF) program, 45 C.F.R. Part 98, and authorizing statutes in KRS Chapter 199.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will ensure Kentucky is meeting federal requirements identified in a non-compliance letter received as a result of a federal monitoring visit.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of April 2024, there were 1,807 licensed child-care programs in Kentucky regulated by this administrative regulation. The Department for Community Based Services, Division of Child Care, and the Office of the Inspector General, Division of Regulated Child Care, will be impacted as the child care regulating and monitoring agencies, respectively.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment adds requirements that are federally required to further protect children from vehicular traffic, shaken baby syndrome, head trauma, child maltreatment, hazardous materials, and biocontaminants. These requirements are already in place for certified family child-care homes that provide care for children.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Many providers already have these measures in place as best practices. Additional training may be required. No expenditures are expected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Child-care providers and the children in their care will benefit from the health and safety measures.

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

(a) Initially: The amendment to this administrative regulation will not result in new initial costs to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation will not result in ongoing costs to the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match, and maintenance of effort for the block grant, and limited agency funds support the implementation of this administrative regulation and program.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as all licensed child-care centers are regulated by this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213

(2) State compliance standards. KRS 194A.050(1), 199.896(2), 199.8962(2)

(3) Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.

FISCAL 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), 199.896(2), 199.8962(2), 16 C.F.R. 1219, 1220, 1221, 45 C.F.R. 98.2, 49 C.F.R. 571.213

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Cabinet for Health and Family Services is impacted by this administrative regulation and administers this program.

(a) Estimate the following for the first year:

Expenditures: No expenditures are expected.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: No cost savings are expected.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The amendment to this administrative regulation will not generate revenue in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Licensed child-care centers.

(a) Estimate the following for the first year:

Expenditures: No expenditures are expected. Additional training may be required.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: No cost savings are expected.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures, revenues, and cost savings will not differ in 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: Not applicable.

Revenues: Not applicable.

Cost Savings: Not applicable.

(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: The amendment adds requirements that are federally required to further protect children from vehicular traffic, shaken baby syndrome, head trauma, child maltreatment, hazardous materials, and biocontaminants. Many providers already have these measures in place as best practices and these requirements are already in place for certified family child-care homes that provide child care.

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(b) Methodology and resources used to determine the fiscal impact: These entities are already regulated and inspected by the cabinet.

(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 entities.

(b) The methodology and resources used to reach this conclusion: Child-care providers are generally already protecting children in their care from these dangers as best practices.

NEW ADMINISTRATIVE REGULATIONS

Public comment periods ordinary, non-emergency regulations are at least two months long. For other regulations with open comment periods, please also see last month's *Administrative Register of Kentucky*.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board
(Repealer)**

16 KAR 7:011. Repeal of 16 KAR 7:010.

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 13A.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires a certificate of legal credentials for any public-school position for which a certificate is issued, and KRS 161.028(1)(a) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 13A.310 allows repeal of administrative regulations if the promulgating body desires. This administrative regulation repeals the administrative regulation establishing the standards and procedures for the Kentucky Teacher Internship Program, which was removed from statute by Senate Bill 265 of the 2024 Legislative Session.

Section 1. 16 KAR 7:010, Kentucky Teacher Internship Program, is hereby repealed.

JUSTIN MITCHELL, Board Chair

APPROVED BY AGENCY: June 4, 2024

FILED WITH LRC: June 14, 2024 at 11:25 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on August 27, 2024, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 16 KAR 7:010 which establishes the standards for the Kentucky Teacher Internship Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal 16 KAR 7:010 which establishes the standards for the Kentucky Teacher Internship Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 13A.310 allows the EPSB to repeal regulations that it wishes to no longer be effective. This regulation repeals 16 KAR 7:010 because Senate Bill 265 of the 2024 Legislative Session amended KRS 161.030 to delete the Kentucky Teacher Internship Program from statute.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation repeals 16 KAR 7:010 to conform with Senate Bill 265 from the 2024 Legislative Session.

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

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

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

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

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

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will be needed to comply with this repeal of 16 KAR 7:010.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance will result in alignment with KRS 161.030 as amended by Senate Bill 265 from the 2024 Legislative Session which removed the Kentucky Teacher Internship Program from statute.

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

(a) Initially: There are no costs expected to implement this repealer.

(b) On a continuing basis: There are no expected continuing costs with this repealer.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is needed as it is simply a repeal of 16 KAR 7:010.

(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: An increase in fees or funding will not be necessary for the Education Professional Standards Board to repeal 16 KAR 7:010.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by this repealer.

(9) TIERING: Is tiering applied? Tiering is not applicable as this is simply a repeal of 16 KAR 7:010.

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 13A.310

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Education Professional Standards Board.

(a) Estimate the following for the first year:

Expenditures: No additional expenditures are expected to be needed since this repeals a program that has been unfunded since 2018.

Revenues: The amendment to this administrative regulation is not expected to generate any revenue.

Cost Savings: No cost savings are expected with this amendment as the Kentucky Teacher Internship Program was only operational if there was an appropriation. The program has been unfunded since 2018, and has not been in operation since that time.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures, revenues and cost savings are not expected to differ in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Public-school districts.

(a) Estimate the following for the first year:

Expenditures: There are no expected expenditures for districts as this is a repeal of 16 KAR 7:010.

Revenues: This regulation repeals 16 KAR 7:010. It will not generate revenue for districts.

Cost Savings: There are no cost savings expected with this amendment.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures, revenues and cost savings are not expected to differ in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): Applicants for initial teacher certification.

(a) Estimate the following for the first year:

Expenditures: There are no expected expenditures for applicants to comply with this repealer.

Revenues: This regulation repeals 16 KAR 7:010. It will not generate revenue for applicants.

Cost Savings: There is no expected cost savings since there are no fees created or reduced by this regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The expenditures, revenues and cost savings are not expected to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no fiscal impact as a result of the proposed repealer. This is simply repealing the Kentucky Teacher Internship Program which previously had an appropriation for operation and has been unfunded and not operational since the Spring of 2018.

(b) Methodology and resources used to determine the fiscal impact: The methodology and resources used to determine that there is no fiscal impact, is this is simply repealing the Kentucky Teacher Internship Program which previously had an appropriation for operation and has been unfunded and not operational since the Spring of 2018.

(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 not an expected major economic impact from this regulation as it does not create costs for the Education Professional Standards Board or the regulated entities, and simply repeals 16 KAR 7:010.

(b) The methodology and resources used to reach this conclusion: The methodology and resources used to determine this is that it's simply repealing the Kentucky Teacher Internship Program which previously had an appropriation for operation and has been unfunded and not operational since the Spring of 2018.

BOARD AND COMMISSIONS
Board of Pharmacy
(New Administrative Regulation)

201 KAR 2:470. Change of ownership.

RELATES TO: KRS 315.035, 315.036(1), 315.340(6), 315.350(4), 315.405(5), 315.4104(1)

STATUTORY AUTHORITY: 315.191(1)

NECESSITY, FUNCTION, AND CONFORMITY: 315.191(1) authorizes the board to promulgate administrative regulations to regulate pharmacists, pharmacies, wholesalers and manufacturers. KRS 315.035 discusses changes of ownership of a pharmacy and requires notice to be provided no fewer than five (5) days before the transaction occurs and authorizes a buyer to operate under a seller's

permit pending the application. Due to the nature of business structures, it is not clear when a change of ownership of a regulated entity is considered to occur, and therefore this administrative regulation provides clarity for making those determinations.

Section 1. Change of entity ownership requiring a new license or permit means:

(1) Partnership. In the case of a partnership, the removal, addition, or substitution of a partner.

(2) Unincorporated sole proprietorship. In the case of an unincorporated sole proprietorship, the transfer of title and property to another party.

(3) Corporation.

(a) In the case of a corporation, the merger of the licensed corporation into another corporation or the consolidation of two (2) or more corporations, resulting in the creation of a new corporation.

(b) Transfer of corporate stock or the merger of another corporation into the licensed corporation does not constitute change of entity ownership; however, notification pursuant to Section 2 of this administrative regulation shall be provided within thirty (30) days of the transaction occurring.

(4) Limited liability company (LLC).

(a) In the case of an LLC, the merger of the licensed LLC into another LLC or the consolidation of two (2) or more LLCs, resulting in the creation of a new LLC.

(b) Transfer of company stock or the merger of another LLC into the licensed LLC does not constitute change of ownership; however, notification pursuant to Section 2 of this administrative regulation shall be provided within thirty (30) days of the transaction occurring.

Section 2. Procedure.

(1) Written notice of the following shall be provided to the board no more than thirty (30) calendar days after the transaction occurs:

(a) A transfer of stock of greater than ten (10) percent in a non-publicly traded corporation which is the direct owner of an entity;

(b) A transfer of membership interest in a limited liability company which is the direct owner of an entity; and

(c) A change of corporate officer.

(2) Written notification shall include providing a copy of the purchase agreement in the case of a stock or membership interest transfer. Purchase amounts and proprietary information may be redacted.

Section 3. Responsibility. A permit or license which has been served with a complaint and notice of hearing pursuant to KRS Chapter 13B for a pending disciplinary proceeding with the Board of Pharmacy may not change ownership until the issuance of a final order by the board or upon the agreement of all parties to the terms of a settlement.

CHRISTOPHER HARLOW, Pharm.D., Executive Director

APPROVED BY AGENCY: June 4, 2024

FILED WITH LRC: June 4, 2024 at 11:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 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 August 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: Christopher Harlow, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-

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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 regulation provides rules around changes of ownership when a facility regulated by the Board of Pharmacy changes owners.

(b) The necessity of this administrative regulation: To codify the process the board already utilizes to ensure regulated parties know when a change of ownership application is needed and when simple notice is needed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 315.191(1)(a) authorizes the Board of Pharmacy to make rules to govern any matter related to pharmacies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: 315.191(1) authorizes the board to promulgate administrative regulations to regulate pharmacists, pharmacies, wholesalers and manufacturers. KRS 315.035 discusses changes of ownership of a pharmacy and requires notice to be provided no fewer than five days before the transaction occurs and authorizes a buyer to operate under a seller's permit pending the application. Due to the nature of business structures, it is not clear when a change of ownership of a regulated entity is considered to occur, and therefore this regulation provides clarity for making those determinations.

(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: Pharmacies, wholesalers, manufacturers, third party logistics providers and outsourcing facilities are affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Board is not changing the process we currently utilize, we are simply placing it in rule so that it's easier for regulated parties to find it and know what to do should an ownership change arise.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): nothing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will have greater clarity about what is required to provide the board if they are going through an ownership change. (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.

(b) On a continuing basis: There is no cost.

(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 fee increase will be needed.

(8) State whether or not this administrative regulation establishes

any fees or directly or indirectly increases any fees: No fees are established directly or indirectly by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all pharmacists and pharmacies equally.

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

(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

(New Administrative Regulation)

201 KAR 2:480. Telework and electronic supervision for remote prescription processing.

RELATES TO: KRS 315.020(5), 315.310

STATUTORY AUTHORITY: KRS 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) authorizes the board to promulgate regulations to regulate and control all matters prescribed in KRS Chapter 315. KRS 315.020(5) authorizes order entry, order entry verification and drug regimen review as tasks that can be performed outside of the permitted space of the pharmacy. The purpose of this administrative regulation is to provide minimum requirements for pharmacies located in Kentucky engaged in remote prescription processing conducted via telework and to establish rules for electronic supervision.

Section 1. Definitions.

(1) "Electronic Supervision" shall mean the oversight provided by a pharmacist licensed in Kentucky and supervising, by means of real-time electronic communication system, a pharmacist intern or registered pharmacy technician who is working for a permitted pharmacy.

(2) "Telework" means the practice or assistance in the practice of pharmacy by a contractor or an employee of the pharmacy from a remote location outside of the permitted pharmacy.

(3) "Telework Functions" of a pharmacist include:

(a) Receiving, interpreting, or clarifying medical orders or prescription drug orders;

(b) Order entry and order entry verification;

(c) Transfer of prescription information;

(d) Prospective drug utilization reviews;

(e) Interpretation of clinical data;

(f) Refill authorizations;

(g) Performing therapeutic intervention;

(h) Patient counseling;

(4) "Telework Functions" of a pharmacy technician are limited to tasks authorized under KRS 315.020.

(5) "Telework Site" means a location within the United States where a pharmacy technician may assist in the practice of pharmacy or a pharmacist or pharmacist intern engages in the practice of pharmacy as contractors or employees outside of the pharmacy located and permitted in Kentucky.

Section 2. Registration. The pharmacy and the pharmacist-in-charge of the pharmacy are responsible for ensuring individuals at telework sites are licensed or registered with the board.

Section 3. Requirements.

(1) The pharmacy and pharmacist-in-charge or the designee appointed by the pharmacist in charge shall ensure that interns and pharmacy technicians working under electronic supervision are supervised by a Kentucky licensed pharmacist.

(2) A pharmacist or intern that engages in the practice of pharmacy and a pharmacy technician that assists in the practice of pharmacy at a telework site shall be licensed or registered by the board and shall comply with all applicable federal and state laws and rules.

(3) Prescription drugs and related devices shall not be at a telework site.

(4) The pharmacy utilizing telework functions shall:

(a) Possess a written agreement with the licensee or registrant that includes all conditions, duties and policies governing the licensee or registrant engaged in telework activities;

(b) Maintain a continuously updated, readily retrievable, list of all licensees and registrants engaged in telework and the:

1. Address and phone number for each telework site;

2. Functions being performed by licensees or registrants engaged in telework; and

3. The name of the pharmacist providing supervision for each non-pharmacist registrant.

(5) The pharmacist-in-charge or the designee appointed by the pharmacist in charge of a pharmacy utilizing telework functions shall:

(a) Develop, implement and enforce a continuous quality improvement program designed to objectively and systematically:

1. Monitor, evaluate, document the quality and appropriateness of patient care;

2. Improve patient care;

3. Identify, resolve and establish the root cause of dispensing and drug utilization review errors; and

4. Implement measures to prevent recurrence;

(b) Develop, implement and enforce a procedure for identifying the pharmacist, intern, and pharmacy technician responsible for telework functions;

(c) Develop, implement and enforce a process for a virtual inspection of each telework site where a pharmacist technician is assisting in the practice of pharmacy or a pharmacist intern is engaged in the practice of pharmacy by a pharmacist at least once every twelve (12) months or more frequently as deemed necessary

by the pharmacist. The inspection shall be documented and records retained. Board staff are authorized to request and participate in virtual inspections;

Section 4. Electronic Supervision Requirements. The pharmacy, pharmacist-in-charge or the designee appointed by the pharmacist in charge and the supervising pharmacist from the pharmacy shall:

(1) Utilize an electronic communication system and have appropriate technology or interface to allow access to information required to complete assigned duties;

(2) Ensure a pharmacist is supervising and directing each intern and pharmacy technician and that the electronic communication system is operational;

(3) Ensure that a pharmacist, using professional judgment, determines the frequency of check-ins with registrants to ensure patient safety, competent practice and compliance with federal and state laws.

(4) Ensure that a pharmacist is readily available to answer questions and be fully responsible for the practice and accuracy of the registrant; and

(5) Ensure the intern or pharmacy technician knows the identity of the pharmacist who is providing supervision and direction.

Section 5. Confidentiality. The Kentucky permitted pharmacy, pharmacist-in-charge of the pharmacy or the designee appointed by the pharmacist in charge, and the pharmacist, intern and pharmacy technician shall:

(1) Ensure patient and prescription information is managed in compliance with current state and federal law;

(2) Ensure the security and confidentiality of patient information and pharmacy records;

(3) Document in writing and report to the board within ten (10) days of discovery any confirmed breach in the security of the system or breach of confidentiality.

(4) Report any breach of security or confidentiality to the Kentucky permitted pharmacy within twenty-four (24) hours of discovery and to the board within ten (10) days.

Section 6. Technology. The pharmacist-in-charge or the designee appointed by the pharmacist in charge shall:

(1) Test the electronic communication system with the telework site and document that it operates properly before the intern or pharmacy technician engages in telework at the telework site.

(2) Develop, implement, and enforce a plan for responding to and recovering from an interruption of service which prevents a pharmacist from supervising and directing the intern and pharmacy technician at the telework site.

(3) Ensure access to appropriate and current pharmaceutical references based on the services offered and shall include Kentucky Revised Statutes, Kentucky Administrative Regulations, United States Code, Code of Federal Regulations, standards adopted by reference and the Board of Pharmacy quarterly newsletters.

(4) Train the pharmacists, interns, and pharmacy technicians in the operation of the electronic communication system.

Section 7. Security.

(1) The pharmacist-in-charge or the designee appointed by the pharmacist in charge and each pharmacist supervising a telework site is responsible for ensuring the telework site has a designated work area that is secure and has been approved by a pharmacist prior to utilization.

(2) Confidentiality shall be maintained such that patient information cannot be viewed or overheard by anyone other than the pharmacist, intern, or pharmacy technician.

(3) All computer equipment used for telework shall:

(a) Establish and maintain a secure connection to the pharmacy and patient information;

(b) Utilize a program that prevents unauthorized access to the pharmacy and patient information; and

(c) Ensure the pharmacy and patient information is not accessed when:

1. There is no pharmacist actively supervising the intern or

pharmacy technician at a telework site;

2. There is no intern or pharmacy technician present at the electronically supervised telework site; or

3. Any component of the electronic communication system is not functioning; or

(d) Be configured so information from any patient or pharmacy records are not duplicated, downloaded, or removed from the electronic database when an electronic database is accessed remotely.

(4) A record shall be maintained with the date, time and identification of the licensee or registrant accessing patient or pharmacy records at a telework site.

(5) All records shall be stored in a secure manner that prevents access by unauthorized persons.

Section 8. Policies and Procedures.

(1) The pharmacy and the pharmacist-in-charge or the designee appointed by the pharmacist in charge are accountable for establishing, maintaining, and enforcing written policies and procedures for the licensees working via telework. The written policies and procedures shall be maintained at the pharmacy and shall be available to the board upon request.

(2) The written policies and procedures shall include the services and responsibilities of the licensee or registrant engaging in telework including:

(a) Security;

(b) Operation, testing, training and maintenance of the electronic communication system;

(c) Detailed description of work performed;

(d) Pharmacist supervision and direction of interns and pharmacy technicians;

(e) Recordkeeping;

(f) Patient confidentiality;

(g) Continuous quality improvement;

(h) Plan for discontinuing and recovering services if the electronic communication system is disrupted;

(i) Confirmation of secure telework sites;

(j) Documenting the identity, function, location, date and time of the licensees engaging in telework at a telework site;

(k) Written agreement with contracted licensees engaging in telework outlining the specific functions performed and requirement to comply with telework policies and procedures; and

(l) Equipment.

Section 9. Records.

(1) The recordkeeping requirements of this administrative regulation are in addition to 201 KAR 2:171.

(2) A pharmacy utilizing registrants or licensees via telework shall be able to produce a record of each pharmacist, pharmacist intern, or pharmacy technician involved in each order entry function. The record shall include the date and time when each step function was completed.

(3) Physical records shall not be stored at the telework site.

(4) Records shall not be duplicated, downloaded, or removed when accessed via telework.

(5) Records shall be stored in a manner that prevents unauthorized access.

(6) Records shall include, but are not limited to:

(a) Patient profiles and records;

(b) Patient contact and services provided;

(c) Date, time, and identification of the licensee or registrant accessing patient or pharmacy records;

(d) If processing prescriptions, date, time and identification of the licensee or registrant and the specific activity or function of the person performing each step in the process;

(e) Training records;

(f) Virtual inspections; and

(g) List of employees performing telework that includes:

1. Name;

2. License or registration number and expiration date;

3. Address of telework site; and

4. Name of the Kentucky licensed pharmacist who:

a. Supervised the intern or pharmacy technician;

b. Approved licensee to telework; and

c. Approved each telework site.

(h) Electronic communication system testing and training;

Section 10. Prohibited Practices. Final product verification and dispensing from a location outside of or other than a permitted pharmacy are prohibited in telework.

CHRISTOPHER HARLOW, Pharm.D., Executive Director

APPROVED BY AGENCY: June 13, 2024

FILED WITH LRC: June 10, 2024 at 11:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28, 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 August 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: 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: The purpose is to provide minimum requirements for pharmacies located in Kentucky engaged in remote prescription processing conducted via telework and to establish rules for electronic supervision.

(b) The necessity of this administrative regulation: To codify the process referenced in KRS 315.020(5) regarding remote order entry and electronic supervision.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes rules regarding telework and electronic supervision for remote prescription processing as KRS 315.020(5) authorizes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: 315.191(1) authorizes the board to promulgate administrative regulations to regulate pharmacists, pharmacies, wholesalers and manufacturers. KRS 315.020(5) authorized remote prescription processing under electronic supervision. This regulation outlines what electronic supervision is and how it is to be utilized.

(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: Pharmacies, pharmacists, technicians, and interns are affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will need to familiarize themselves with this regulation and ensure compliance with the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): nothing unless they have to modify internal processes to ensure compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will have greater clarity about the rules concerning telework and remote prescription processing, including electronic supervision.

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

(a) Initially: There is no cost.

(b) On a continuing basis: There is no cost.

(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 fee increase will be needed.

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

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all pharmacists and pharmacies equally.

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

(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 Interpreters for the Deaf and Hard of Hearing (New Administrative Regulation)

201 KAR 39:075. Supervision.

RELATES TO: KRS 309.304(3), 309.312(3)

STATUTORY AUTHORITY: KRS 309.304(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.304(3) requires the Kentucky Board of Interpreters for the Deaf and Hard of Hearing to promulgate necessary and reasonable administrative regulations to effectively carry out and enforce the provisions of KRS 309.300 to 309.319, pertaining to the practice and licensure of a deaf or hearing interpreter. This administrative regulation establishes regulations relating to the supervision of temporary licensees, or a licensee under discipline with supervisory conditions, as referenced in KRS 309.312(3) and 309.316(3).

Section 1. Qualification for Supervision Status. To qualify as a board-approved supervisor of record for a temporary licensee or a licensee under discipline, a licensed interpreter shall:

(1) Complete an application to become a board-approved supervisor;

(2) Meet the requirements for licensure in Kentucky as set forth in KRS 309.300 to 309.319 and 201 KAR Chapter 39;

(3) Hold a valid certificate meeting the requirements for full licensure for a minimum of three (3) years prior to application to serve as a supervisor, with the exception of those who are fully licensed who do not have a nationally recognized certification and who shall not be eligible to serve as a supervisor;

(4) Have completed forty-five (45) hours of continuing education since obtaining certification; and

(5) Be approved by the board as a board-approved supervisor pursuant to the requirements of this section.

Section 2. Supervision Requirements.

(1) General obligations.

(a) An interpreter who has applied and been approved as a supervisor by the board as required in Section 1 of this administrative regulation, shall supervise a temporary licensee or a licensee under discipline.

(b) During the period of supervision, the board-approved supervisor shall meet with the temporary licensee or licensee under discipline on a quarterly basis. One (1) of the meetings shall be face-to-face between the supervisor and temporary licensee or the licensee under discipline. The remaining meetings may be through the use of video or video conferencing or any other method outlined in the approved plan of supervision.

(c) The board-approved supervisor shall direct and oversee each supervisee who holds a temporary licensee or who is a licensee under discipline with supervisory conditions imposed as the result of an investigation of a complaint, taking responsibility for the professional interpreting practice of the supervisee.

(d) The supervisor shall have access to, and shall review, the supervisee's documentation, and when needed:

1. Review the supervisee's documentation and records;

2. View the supervisee's services in face-to-face format, recorded format, or both, if available; and

3. Communicate with the supervisee's clients, if applicable, regarding the supervisee's performance.

(e) The supervisor shall use observations from the supervisee's documentation, client sessions, and communications with any third parties, including the administrative supervisor, if applicable, to inform supervision and shall document these observations in his or her supervisory notes.

(2) Extension of Temporary License. The board-approved supervisor shall provide the board with the following information

upon the request by a supervisee applying for extension of a temporary license:

- (a) A letter recommending extension which describes the progress achieved by the supervisee; and
- (b) For supervision of a temporary licensee, a revised plan of supervision for the upcoming licensure year.

Section 3. Plan of Supervision.

(1) A temporary licensee shall enter into a written plan of supervision with an approved supervisor which shall be submitted with the application for temporary licensure as provided in 201 KAR 39:070. The plan of supervision shall contain:

- (a) The name and address of the supervisee;
 - (b) The name, address, license or certification number, and number of years of practice of the supervisor of record;
 - (c) The name, address, license or certification number, and number of years of practice of other supervisors;
 - (d) The nature, duration, and frequency of the supervision, including the:
 - 1. Number of hours of supervision per quarter;
 - 2. Number of hours of individual supervision;
 - 3. Methodology for transmission of information; and
 - 4. Number of hours of face-to-face supervision;
 - (e) The conditions or procedures for termination of the supervision;
 - (f) A statement that:
 - 1. The supervisor of record understands that the supervisor shall be held accountable to the board for the interpreting services given to the supervisee's clients; and
 - 2. The supervisor of record meets the criteria established in Section 1 of this administrative regulation;
 - (g) The signatures of both the supervisor and the supervisee.
- (2) If a supervisee changes his or her supervisor of record, the supervisee shall submit a new plan of supervision, which sets forth the information required by this section.
- (3) The supervisee may begin the practice of interpreting services upon the board's approval of the plan.
- (4) A supervisee shall not continue to practice interpreting services if:
- (a) The conditions for supervision set forth in the plan of supervision are not followed; or
 - (b) The plan of supervision is terminated for any reason other than the extenuating circumstances as authorized by the board.
- (5) If the terms of the plan of supervision are not being met by the supervisee, the supervisor shall immediately notify this board in writing.

Section 4. A supervisor of record shall assume responsibility for the practice of the supervisee. A supervisor shall not serve as a supervisor of record for more than six (6) persons obtaining experience for licensure at the same time. Any supervisor with more than six (6) supervisees on or before January 1, 2025, shall reduce the number of supervisees to six (6) or less through attrition and shall not accept new supervisees until the supervisor has fewer than six (6) supervisees of record.

Section 5. A supervisor who is placed under discipline shall be ineligible to act as a supervisor and shall not become eligible to apply for reinstatement as a supervisor earlier than two (2) years following the completion of any disciplinary action, including completion of any suspension or probationary period. Further, a board-approved supervision training shall be required prior to reinstatement.

Section 6. Incorporation by Reference.

- (1) "Application for Board Approved Supervisor", DPL-KBI-007, April 2024, is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Interpreters for the Deaf and Hard of Hearing, 500 Mero St, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:00 p.m. This material is also available on the board's Web site at www.kbi.ky.gov.

MARVA JOHNSON, Chair

APPROVED BY AGENCY: June 12, 2024

FILED WITH LRC: June 12, 2024 at 4:20 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2024, at 11:00 a.m., at the Mayo-Underwood Building, Room 127CW, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 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 by using the PPC public comment portal at the address listed below.

CONTACT PERSON: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov, link to PPC public comment portal: https://ppc.ky.gov/reg_comment.aspx.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the requirements of supervision.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS 309.312(3) provides for supervision of a temporary licensee under circumstances defined by the board in administrative regulation. Currently, supervision requirements are housed in multiple regulations. This new administrative regulation will house all supervision requirements in one regulation providing ease in administration and compliance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the specific requirements of the authorizing statute, KRS 309.304(3) which authorizes the Board of Interpreters for the Deaf and Hard of Hearing to promulgate administrative regulations pursuant to KRS Chapter 13A, and KRS 309.312(3) which provides for supervision of a temporary licensee under circumstances defined by the board in administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation will house all supervision requirements in one regulation providing ease in administration and compliance.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect any of the 533 fully licensed interpreters who wish to provide supervision services and 45 temporary licensed interpreters, and will also affect new applicants for temporary licensure.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

(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 for the licensees and applicants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, the Board will have more effective administration over supervision which will also assist with public protection.

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

(a) Initially: There is no additional cost for the implementation of this administrative regulation.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

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

(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 was not applied as the changes apply to all equally.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. 309.304(3), 309.312(3).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Board of Interpreters for the Deaf and Hard of Hearing is the promulgating agency and the only other affected state unit, part or division.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: Unknown.

(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 anticipated.

(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 difference in expenditures, revenues or cost savings to local entities in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): There are no other regulated entities not otherwise listed.

(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: There is no anticipated fiscal impact to this administrative regulation in the first year.

(b) Methodology and resources used to determine the fiscal impact: Methodology and resources used were a determination by the fiscal administrator that this new administrative regulation will be absorbed since these services are already required. This new administrative regulation will provide more efficiency and ease in

administration and for licensee compliance.

(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: Methodology and resources used were a determination by the fiscal administrator that this new administrative regulation will be absorbed since these services are already required. This new administrative regulation will provide more efficiency and ease in administration and for licensee compliance.

BOARDS AND COMMISSIONS

Board of Interpreters for the Deaf and Hard of Hearing (New Administrative Regulation)

201 KAR 39:130. Registration for nonresident interpreters.

RELATES TO: KRS 309.301(2)(a)

STATUTORY AUTHORITY: KRS 309.301(2)(a), 309.304(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.301(2)(a) provides the provisions of KRS 309.300 to 309.319 shall not apply to nonresident interpreters working in the Commonwealth less than twenty (20) days per year. Nonresident interpreters are exempt from licensure so long as they provide interpreting services in this state for less than twenty (20) days per year. This regulation is necessary to ensure nonresident interpreting services do not exceed the number of days authorized by statute.

Section 1. Registration.

(1) A nonresident interpreter providing interpreting services in the state shall:

(a) Register with the Board of Interpreters for the Deaf and Hard of Hearing before providing nonresident interpreting services using the form provided in Section 2(1) of this administrative regulation; and

(b) Report each date of nonresident interpreting service being provided in the state to the Board of Interpreters for the Deaf and Hard of Hearing using the form provided in Section 2(2) of this administrative regulation.

(2) For purposes of the duty to register and report, each partial day of interpreting by a nonresident interpreter shall be counted as a full day.

(3) Nonresident interpreting services shall be less than twenty (20) days per calendar year.

(4) A registration number shall be provided by the board and the nonresident interpreter shall include the registration number on any report of services for purposes of record keeping.

Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form "Registration of Nonresident Interpreter", DPL-KBI-010, April 2024; and

(b) Form "Report of Service by Nonresident Interpreter", DPL-KBI-011, April 2024.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Interpreters for the Deaf and Hard of Hearing, 500 Mero St., Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. and on the board's Web site at www.kbi.ky.gov.

MARVA JOHNSON, Chair

APPROVED BY AGENCY: June 12, 2024

FILED WITH LRC: June 12, 2024 at 4:20 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2024, at 11:00 a.m., at the Mayo-Underwood Building, Room 127CW, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5)

workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 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 by using the PPC public comment portal at the address listed below.

CONTACT PERSON: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov, link to PPC public comment portal: https://ppc.ky.gov/reg_comment.aspx.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes a registry for nonresident interpreters who are authorized to provide interpreting services in Kentucky for less than twenty (2) days without having a Kentucky licensure.

(b) The necessity of this administrative regulation: This regulation is necessary to ensure nonresident interpreters provide less than twenty (20) days of interpreting services in Kentucky per year in compliance with KRS 309.30. Without a registry, there is no ability to track compliance with this exemption and therefore protect the public from an interpreter providing ongoing and continuous services without the Kentucky license which ensure quality and standards for the interpreting service.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with KRS 309.304(3), the authorizing statute which gives the board the ability to promulgate regulations generally.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in the effective administration of the statutes by providing a registry for services rendered by an unlicensed nonresident interpreter, to ensure they do not exceed the limited number of services authorized.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 533 full and 45 temporarily licensed interpreters, and an unknown number of nonresident interpreters in Kentucky who may be providing services for less than twenty (20) days per year in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Nonresident interpreters without a Kentucky license and will be required to register with the Kentucky board as someone providing services in Kentucky without a license under the KRS 309.304(3) exemption; and, the nonresident interpreter will be required to register each day of interpreting services being provided so the Board is able to track services to ensure the exemption is not exceeded.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This

regulation does not impose any cost for registrants. However, if a registrant exceeds the exempted service limits, the registrant may apply for licensure and pay the required fees for application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky will have a way to track the number of days a nonresident interpreter provides unlicensed services in Kentucky. This will benefit licensees identified in question (3) to ensure that others are not given an unfair advantage to provide unlicensed services in excess of the statutory restriction, and further benefit nonresident interpreters by providing a resource and accountability for the number of days services is being rendered to ensure the statutory restrictions are not exceeded.

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

(a) Initially: No new costs will be incurred.

(b) On a continuing basis: No new costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees will be required 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 regulation does not establish any fee directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation.

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 309.304, KRS 309.312.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Board of Interpreters for the Deaf and Hard of Hearing is an administrative body created by KRS 309.302 and the promulgating agency.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: Unknown.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no difference in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None anticipated.

(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 difference in expenditures, revenues or cost savings to local entities in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): There are no other regulated entities not otherwise listed.

(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: There is no anticipated fiscal impact to this administrative regulation.

(b) Methodology and resources used to determine the fiscal impact: Methodology and resources was a review of the existing budget by the board's fiscal administrator as well as consideration of the amendment and whether staff time and costs will be increased.

(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: Methodology and resources was a review of the existing budget by the board's fiscal administrator as well as consideration of the amendment and whether staff time and costs will be increased.

EDUCATION AND LABOR CABINET
Board of Education
Department of Education
(Repealer)

704 KAR 3:313. Repeal of 704 KAR 3:303.

RELATES TO: KRS 156.070, 156.160, 158.645, 158.6451, 158.6453, 160.290

STATUTORY AUTHORITY: KRS 156.070, 156.160, 158.6453, 160.290

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451, and 158.6453. KRS 158.6453 requires the revision of academic content standards. 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 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education. This administrative regulation repeals the required academic standards, which contain the general courses of study and academic content standards for use in Kentucky's common schools. This repeal is necessary as the content standards have been incorporated in administrative regulations in 704 KAR Chapter 8. This repeal is necessary to change the remaining required academic standards for visual and performing arts and relocate them to a new regulation in 704 KAR Chapter 8.

Section 1. 704 KAR 3:303, Required academic standards, 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 KINNEY, Interim Commissioner of Education
 SHARON PORTER ROBINSON, Chairperson

APPROVED BY AGENCY: June 11, 2024

FILED WITH LRC: June 13, 2024 at 12:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held August 28, 2024 at 10:00 a.m., in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this 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 August 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: 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 704 KAR 3:303, Required academic standards, as the required academic standards for all content areas are now provided under 704 KAR Chapter 8.

(b) The necessity of this administrative regulation: The repeal of 704 KAR 3:303 is necessary as the content standards that were once incorporated have been established under 704 KAR Chapter 8. This repeal is necessary to change the remaining required academic standards for visual and performing arts and relocate them to a new regulation, 704 KAR 8:130.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451, and 158.6453. KRS 158.6453 requires the revision of academic content standards. 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 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education. This administrative regulation repeals 704 KAR 3:303 as the required academic standards have been incorporated into other administrative regulations under 704 KAR Chapter 8.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of 704 KAR 3:303 is necessary as the document incorporated by reference is no longer needed due to the content area standards being established in separate regulations under 704 KAR Chapter 8.

(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: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The repeal of 704 KAR 3:303 does not require action of the entities identified.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is associated with the repeal of 704 KAR 3:303.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This is a repeal of 704 KAR 3:303. Regulated entities can access each content area under 704 KAR Chapter 8 and will no longer need to reference 704 KAR 3:303.

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

(a) Initially: No cost associated with the repeal of this administrative regulation.

(b) On a continuing basis: No cost associated with the repeal of this administrative regulation.

(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 704 KAR 3:303.

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

increase in fees and funding is not necessary for the repeal of 704 KAR 3:303.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate as the repeal of 704 KAR 3:303 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 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451 and 158.6453. 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 158.6453 requires the revision of academic content standards. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Board of Education is the promulgating agency. Kentucky Department of Education will provide guidance to local school districts as needed.

(a) Estimate the following for the first year:

Expenditures: No expenditures associated with the repeal of 704 KAR 3:303.

Revenues: No revenue.

Cost Savings: The repeal of 704 KAR 3:303 will not generate cost savings in the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The repeal of 704 KAR 3:303 will not create expenditures, revenues, or cost savings in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Local schools and districts.

(a) Estimate the following for the first year:

Expenditures: No expenditures associated with the repeal of 704 KAR 3:303.

Revenues: No revenue associated with the repeal of 704 KAR 3:303.

Cost Savings: No cost savings associated with the repeal of 704 KAR 3:303.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There are no expenditures, revenues, 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: There is no fiscal impact associated with the repeal of 704 KAR 3:303.

(b) Methodology and resources used to determine the fiscal impact: This is a repeal of 704 KAR 3:303. The required academic standards are provided under 704 KAR Chapter 8. A new regulation, 704 KAR 8:130, is being simultaneously promulgated for the academic standards for visual and performing arts.

(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 704 KAR 3:303 does not have an overall negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion: This is a repeal of 704 KAR 3:303. The required academic standards are provided under 704 KAR Chapter. A new regulation, 704 KAR 8:130, is being simultaneously promulgated for the academic standards for visual and performing arts.

EDUCATION AND LABOR CABINET
Board of Education
Department of Education
(New Administrative Regulation)

704 KAR 8:130. Required Kentucky Academic Standards for Visual and Performing Arts.

RELATES TO: KRS 156.070, 156.160, 158.645, 158.6451, 158.6453, 160.290

STATUTORY AUTHORITY: 156.070(1), 156.160(1)(a), 158.6453(18)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160(1)(a) requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools with the courses of study to comply with the expected goals, outcomes, and assessments developed under KRS 158.645, 158.6451, and 158.6453. 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 158.6453(18)(a) requires the Kentucky Department of Education to implement a comprehensive process for reviewing and revising the academic standards in visual and performing arts for all levels. This administrative regulation incorporates by reference the Kentucky Academic Standards for Visual and Performing Arts, which contain the general courses of study and academic content standards of visual and performing arts, for use in Kentucky's common schools.

Section 1. Before graduating from a Kentucky public high school, a student shall meet the minimum content requirements established in the Kentucky Academic Standards for Visual and Performing Arts.

Section 2. Incorporation by Reference.

(1) The "Kentucky Academic Standards for Visual and Performing Arts", June 2024, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Fifth floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be viewed at: <https://www.education.ky.gov/districts/legal/Pages/Kentucky-Revised-Statutes.aspx>.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

ROBIN KINNEY, Interim Commissioner of Education
SHARON PORTER ROBINSON, Chairperson

APPROVED BY AGENCY: June 11, 2024

FILED WITH LRC: June 13, 2024 at 12:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held August 28, 2024 at 10:00 a.m., in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this 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 August 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: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, Fifth Floor, Frankfort, KY 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 incorporates by reference the Kentucky Academic Standards (KAS) for Visual and Performing Arts (VPA), which contain the general courses of study and academic content standards of visual and performing arts, for use in Kentucky's common schools.

(b) The necessity of this administrative regulation: KRS 156.160(1) requires the Kentucky Board of Education (KBE) to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451, and 158.6453. This administrative regulation incorporates by reference the Kentucky Academic Standards (KAS) for Visual and Performing Arts (VPA), which contain the general courses of study and academic content standards of visual and performing arts, for use in Kentucky's common schools.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS 158.6453(18)(a) which requires the Kentucky Department of Education (KDE) to implement a comprehensive process for reviewing and revising the academic standards in visual and performing arts for all levels with the advice of a review committee assigned to focus on visual and performing arts. 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 (KBE) to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451, and 158.6453. This administrative regulation incorporates by reference the Kentucky Academic Standards (KAS) for Visual and Performing Arts (VPA), which contain the general courses of study and academic content standards of visual and performing arts, for use in Kentucky's common schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates by reference the Kentucky Academic Standards (KAS) for Visual and Performing Arts (VPA), which contain the general courses of study and academic content standards of visual and performing arts, for use in Kentucky's common schools. KRS 156.160(1) requires the Kentucky Board of Education (KBE) to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451, and 158.6453. This regulation also conforms to KRS 158.6453(18)(a) which requires the Kentucky Department of Education to implement a comprehensive process for reviewing and revising academic standards in visual and performing arts for all levels.

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

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

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

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

(d) How the amendment will assist in the effective administration

of the statutes: This is a new regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local schools and districts are affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The standards outlined in 704 KAR 8:130 are the standards for visual and performing arts. The regulated entities must use these outlined standards when making local choices regarding curriculum and instruction.

(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 schools and districts during the first year is unknown and dependent upon the size, needs and materials available which varies among the 171 school districts.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The compliance of local schools and school districts will ensure that each student will be qualified for graduation as they will have met the minimum content requirements for visual and performing arts as provided in 704 KAR 3:305.

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

(a) Initially: The Kentucky Department of Education (KDE) spent approximately \$248,500.00 in administrative costs for the development of the visual and performing arts standards that are incorporated by reference in 704 KAR 8:130, in addition to staff time to oversee its administration. KDE anticipates spending approximately \$150,000 in the first year on staff costs to support schools and districts in the implementation of the KAS for VPA.

(b) On a continuing basis: KDE anticipates spending approximately \$150,000 each year on staff costs to support schools and districts in the implementation of the KAS for VPA.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The KDE will not be able to use the research-based model of leadership networks to provide support to districts as they implement new standards without an increase in funding.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and districts.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.160(1) requires the Kentucky Board of Education (KBE) to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451 and 158.6453. KRS 156.070(1) requires the KBE to manage and control the common schools and all programs operated in the schools.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The KBE is the promulgating agency. The Kentucky Department of Education (KDE) will support local schools and districts in implementing the Kentucky Academic Standards (KAS) for Visual and Performing Arts (VPA) incorporated by reference in 704 KAR 8:130.

(a) Estimate the following for the first year:

Expenditures: The KDE spent approximately \$248,500.00 in administrative costs for the development of the visual and performing

arts standards that are incorporated by reference in 704 KAR 8:130, in addition to staff time to oversee its administration. KDE anticipates spending approximately \$150,000 in the first year on staff costs to support schools and districts in the implementation of the KAS for VPA.

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? KDE anticipates spending approximately \$150,000 each year on staff costs to support schools and districts in implementing the KAS for VPA. There is no revenue or cost savings in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Local schools and districts

(a) Estimate the following for the first year:

Expenditures: The cost to local schools and districts during the first year is unknown and dependent upon the size, needs and materials available which varies among the 171 school districts.

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? Once curriculum documents are revised, the cost for local schools and districts in subsequent years will decrease. 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: The fiscal impact to local schools and districts is unknown and depends on the size, needs, and materials available to individual schools and districts. The KDE spent approximately \$248,500.00 in administrative costs for the development of the visual and performing arts standards that are incorporated by reference in 704 KAR 8:130, in addition to staff time to oversee its administration. KDE anticipates spending approximately \$150,000 each year on staff costs to support schools and districts in the implementation of the KAS for VPA.

(b) Methodology and resources used to determine the fiscal impact: The KDE has already spent approximately \$248,500.00 in administrative costs for the development of the visual and performing arts standards that are incorporated by reference in 704 KAR 8:130, in addition to staff time to oversee its administration. The average cost for contracted staff is \$150,000. For local schools and districts, the costs are dependent upon the size, needs, and materials of the individual 171 school districts which varies making the fiscal impact difficult to estimate.

(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) It is unknown whether this administrative regulation will have a major economic impact to the entities identified in questions (2) – (4).

(b) The methodology and resources used to reach this conclusion: The KDE spent approximately \$248,500.00 in administrative costs for the development of the visual and performing arts standards that are incorporated by reference in 704 KAR 8:130, in addition to staff time to oversee its administration. KDE anticipates spending approximately \$150,000, which is the average cost for contracted staff, each year on staff costs to support schools and districts in the implementation of the KAS for VPA. For local schools and districts, the costs are dependent upon the size, needs, and materials of the individual 171 school districts which varies making the cost to schools and districts difficult

to estimate.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of June 11, 2024

Call to Order and Roll Call

The June meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, June 11, 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; Senators Julie Raque Adams, Damon Thayer, and David Yates; and Representatives Randy Bridges and Deanna Frazier Gordon.

LRC Staff: Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Anna Latek, and Carrie Nichols.

Guests: Cassie Trueblood, Education Professional Standards Board; Tamara Reid-McIntosh, Kelsey Sanders, Silas Session, Department of Veterans' Affairs; Jennifer Scutchfield, Michael Wilson, Secretary of State; Sana Abhari, Colt Sells, Commission on Human Rights; Kelly Jenkins, Jeff Prather, Board of Nursing; Dave Dreves, Steven Fields, Jenny Gilbert, Department of Fish and Wildlife Resources; Jon Johnson, Godwin Onodu, Transportation Cabinet; Bruce Roberts, John Wood, Commission on Fire Protection Personnel Standards and Education; John E.B. Pinney, Public Service Commission; Drew Conners, Jennifer Wolsing, Kentucky Horse Racing Commission; and Laura Begin, David Lovely, Valerie Moore, Cabinet for Health and Family Services.

The Administrative Regulation Review Subcommittee met on Tuesday, June 11, 2024, and submits this report:

EDUCATION AND LABOR CABINET: Education Professional Standards Board: Teaching Certificates

016 KAR 002:120. Emergency certification and out-of-field teaching. Cassie Trueblood, counsel, represented the board.

In response to questions by Senator Thayer, Ms. Trueblood stated that GPA requirements were being lowered from 3.0 to 2.75 to align with GPA requirements for other certifications and to ease districts' ability to hire teachers when qualified candidates were not available. Emergency certification was necessary to fill certain, full-time teaching vacancies. Candidates were often in the process of working toward raising their GPAs to attain full teaching certification status.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

OFFICE OF THE GOVERNOR: Department of Veterans' Affairs: Office of Kentucky Veterans Services

017 KAR 006:020. Kentucky Women Veterans Program and coordinating committee, administrative procedures. Tamara Reid-McIntosh, counsel; Kelsey Sanders, legislative liaison; and Silas Session, executive director, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend the STATUTORY AUTHORITY paragraph to add "KRS 45A.097"; (3) to amend Section 2(1) to: (a) require Women Veterans Program funds to be used solely for the purposes and functions described in KRS 40.600; and (b) delete existing language; (4) to add a new Section 2(3) to establish reporting requirements for the Women Veterans Coordinating Committee; and (5) to delete Sections 3 and 4. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 2(2) to: (a) require Wounded or Disabled Veterans Program funds to be used for the purposes and functions described in KRS 40.350; and (b) delete existing language. Without objection, and with agreement of the agency, the amendments were approved.

SECRETARY OF STATE: Department of State: Occupational License Fees

030 KAR 007:011. Standard form for occupational license fee return. Jennifer Scutchfield, assistant secretary of state, and Michael Wilson, director of business services, represented the department.

KENTUCKY COMMISSION ON HUMAN RIGHTS

104 KAR 001:010. Posting, distribution and availability of notices and pamphlets. Sana Abhari, staff attorney, and Colt Sells, counsel, represented the commission.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 2, 4, and 5 to comply with the drafting requirements of KRS Chapter 13A, including to update material incorporated by reference to meet accessibility standards. Without objection, and with agreement of the agency, the amendments were approved.

104 KAR 001:040. Guidelines for advertising employment or licensing opportunities.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 2, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

104 KAR 001:050. Standards and procedures for providing equal employment opportunities.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

104 KAR 001:080. Guidelines on fair housing.

In response to questions by Co-Chair West, Mr. Sells stated that this administrative regulation established guidelines for compliance with state and federal fair housing practices, as required by the Kentucky Civil Rights Act.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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 Nursing

201 KAR 020:360. Continuing approval and periodic evaluation of prelicensure registered nursing and licensed practical nursing programs. Kelly Jenkins, executive director, and Jeffrey Prather, general counsel, represented the board.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Fish

301 KAR 001:150. Waters open to commercial fishing. Dave Dreves, fisheries director; Steven Fields, staff attorney; and Jenny Gilbert, legislative liaison, represented the department.

In response to questions by Co-Chair West, Mr. Dreves stated that there had been no reports of invasive carp in Lake Cumberland. This administrative regulation was being amended to close off the upper branch of the lake to commercial fishing due to conflicts between recreational and commercial users. The area to be closed represented approximately 1,000 acres of the 52,000-acre area. Some recreational users had been tangled in trotlines left behind in the area. A decreased paddlefish population in the area was also a concern. Trotlines could be for commercial or recreational use; however, lines with fifty (50) or more hooks were considered to constitute commercial trotlines.

In response to a question by Senator Thayer, Mr. Dreves stated that recreational fishers that troll had gotten their lines tangled in the discarded commercial trotlines. Additionally, recreational boaters and other visitors to the lake could potentially become entangled too if water levels dropped and exposed the lines. A lake sturgeon stocking project had been implemented in the area. Lake sturgeon were particularly susceptible to becoming trapped in discarded trot lines, stalling repopulation efforts.

Game

301 KAR 002:122. Seasons, methods, and limits for small game.

Licensing

301 KAR 005:040. Migratory Bird Harvest Information Program.

A motion was made and seconded to approve the following amendment: to amend Section 3 to add a Web address link. Without objection, and with agreement of the agency, the amendment was approved.

301 KAR 005:210. Special agency fundraising permits.

In response to questions by Co-Chair Lewis, Ms. Gilbert stated that this new permit program was created to provide an opportunity for the public to have another chance, if chosen in a special draw, to hunt big game. The program was also expected to provide the agency with a new social, recreational, and economic benefit. A recipient, if chosen, would have an opportunity to hunt elk, bear, deer, and turkey during assigned seasons and in compliance with zone requirements. A second permit would include bear, deer, and turkey. Mr. Fields stated that the new permit would allow the holder to hunt on any elk hunting unit if used on private property.

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 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.

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. Jon Johnson, assistant general counsel, and Godwin Onodu, director, Division of Motor Vehicle Licensing, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 3 to add language pertaining to document scanners. Without objection, and with agreement of the agency, the amendments were approved.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Kentucky Fire Commission: Commission on Fire Protection Personnel Standards and Education

739 KAR 002:160. Reimbursement for line-of-duty stress injury treatment. Bruce Roberts, deputy director, and John Wood, counsel, represented the commission.

In response to a question by Co-Chair West, Mr. Roberts stated that the amendment would make claiming benefits easier because it more thoroughly clarified the differences between a career and volunteer firefighter and more clearly established the procedures to apply for benefits. Mr. Wood stated that this administrative regulation implemented recent legislation.

Senator Yates and Co-Chair Lewis thanked the commission for the important work they do for the citizens of Kentucky.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify the definition for "volunteer firefighter"; and (2) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT CABINET: Public Service Commission: Utilities

807 KAR 005:078. Alternative rate adjustment for electric cooperatives. John E.B. Pinney, executive advisor, represented the commission.

In response to a question by Co-Chair West, Mr. Pinney stated that this administrative regulation only applied to electric cooperatives.

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 2 through 9 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 10 to include the commission's criteria for exceptions. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Incentive and Development Funds

810 KAR 007:040. Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund. Drew Conners, division director, Incentives and Development, and Jennifer Wolsing, general counsel, represented the commission.

In response to a question by Senator Thayer, Mr. Conners stated that this administrative regulation allowed for expanding breeding practices to other states and the Southern Hemisphere.

In response to a question by Senator Yates, Mr. Conners stated that the breeding practices addressed in the amendment had already been in use; this change codified those practices.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Health Services and Facilities

902 KAR 020:036. Operation and services; personal care homes. Laura Begin, regulation coordinator, Department for Community Based Services; David Lovely, interim inspector general; and Valerie Moore, policy specialist, Office of Inspector General, represented the cabinet.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 1, 2, and 4 through 7 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Sections 5 and

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6: (a) for compliance with House Bill 493 from the 2024 Regular Session of the General Assembly; and (b) to make technical conforming amendments. Without objection, and with agreement of the agency, the amendments were approved.

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.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4, 7, 8, 10, and 13 through 15 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 13(1)(a), related to personal care homes that qualify for supplemental funds for participating in the Mental Illness or Intellectual Disability Supplement Program (limited by the availability of funds), to change the supplement payment from \$25,000 per quarter to \$1.00 per diem, per recipient, as of the first calendar day of the qualifying month. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred or removed from the June 11, 2024, subcommittee agenda:

EDUCATION AND LABOR CABINET: Education Professional Standards Board: Teaching Certificates

016 KAR 002:160. Probationary certificate for teachers of exceptional children.

STATE BOARD OF ELECTIONS: Electronic Voting Systems

031 KAR 002:010E. Preparation of ballots and voting systems prior to election day.

Statewide Voter Registration

031 KAR 003:041E. Electronic Voter Registration System.

Forms and Procedures

031 KAR 004:031E. Reporting.

031 KAR 004:220E. Recount procedures.

Voting

031 KAR 005:026E. Ballot standards and election security.

031 KAR 005:040E. Questions regarding voter eligibility.

OFFICE OF THE ATTORNEY GENERAL: Department of Law: Criminal Investigations

040 KAR 010:010. Uniform procedure and timeline for conducting independent election inquiries.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 002:220. Collaborative care agreements.

Board of Nursing

201 KAR 020:320. Standards for curriculum of prelicensure registered nurse and practical nurse programs.

INDEPENDENT ADMINISTRATIVE BODIES: Office of Homeland Security: 911 Services Board

202 KAR 006:090. Permitted uses by PSAPs for CMRS funds.

JUSTICE AND SAFETY CABINET: Department of Corrections: Jail Standards for Life Safety Facilities

501 KAR 013:010. Life safety issues.

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

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.

Department for Aging and Independent Living: Aging Services

910 KAR 001:270. Hart-Supported Living grant program.

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.

Office of the Secretary: Patients, Caregivers, and Practitioners

915 KAR 002:001. Definitions for 915 KAR Chapter 2.

915 KAR 002:010. Procedures for registry identification cards.

915 KAR 002:020. Supply limits and equivalency formula.

915 KAR 002:030. Written certifications.

915 KAR 002:040. Procedures to publish list of varieties of medicinal cannabis.

The subcommittee adjourned at 1:35 p.m. The next meeting of this subcommittee was tentatively scheduled for July 9, 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.

INTERIM JOINT COMMITTEE ON NATURAL RESOURCES AND ENERGY
Meeting of June 6, 2024

The Interim Joint Committee on Natural Resources and Energy met on June 6, 2024, and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on April 3, 2024, May 1, 2024, and June 5, 2024, pursuant to KRS 13A.290(6):

401 KAR 103:030
401 KAR 103:020
401 KAR 103:010
401 KAR 103:005
401 KAR 045:250
401 KAR 045:160
401 KAR 045:140
401 KAR 045:105
401 KAR 045:100
401 KAR 045:080
401 KAR 045:050
401 KAR 045:040
401 KAR 045:030
401 KAR 045:025
401 KAR 045:020
401 KAR 045:010
416 KAR 001:020
416 KAR 001:010
416 KAR 001:001
301 KAR 002:178
301 KAR 001:201
301 KAR 001:155
301 KAR 001:146
301 KAR 001:140
301 KAR 002:132
301 KAR 003:030
301 KAR 003:130

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(8) and 13A.030(2):

none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

none

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 6, 2024, meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON TRANSPORTATION
Meeting of June 4, 2024

The IJC on Transportation met on 06/04/2024 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on 04/03/2024, pursuant to KRS 13A.290(6):

601 KAR 012:080

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(8) and 13A.030(2):

none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

601 KAR 012:080

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the 06/04/2024 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Unless otherwise noted, information contained in these indexes relates only to administrative regulations printed in this, the 51st year of the *Administrative Register of Kentucky*, from July 2024 through June 2025.

Locator Index - Effective Dates

A - 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 “50 Ky.R.” notation are regulations that were originally published in previous years’ issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the last *Register* year ended.

KRS Index

A - 6

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

A - 8

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year.

Technical Amendment Index

A - 9

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

A - 10

A general index of administrative regulations published during this *Register* year, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Administrative regulations published in previous Register years may appear in this index if a regulation had not completed the KRS Chapter 13A review process by the beginning of *Register* year 49. The "Register number" or "Ky.R. number" is listed the first time a regulation is published during that Register year. Once the regulation has been published in another *Register* year, the new Ky.R. number will appear next to the page number entry. To view versions of regulations published in prior *Registers*, please visit our online [Administrative Registers of Kentucky](#).

SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- *** Withdrawn before being printed in Register
- IJC Interim Joint Committee
- (r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS

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

013 KAR 002:120E	50 Ky.R. 2349	4-30-2024
013 KAR 002:130E	50 Ky.R. 2352	4-30-2024
031 KAR 002:010E	50 Ky.R. 2147	4-15-2024
031 KAR 003:041E	50 Ky.R. 2150	4-15-2024
031 KAR 004:030E	50 Ky.R. 2152	4-15-2024
031 KAR 004:220E	50 Ky.R. 2154	4-15-2024
031 KAR 005:026E	50 Ky.R. 2158	4-15-2024
031 KAR 005:040E	50 Ky.R. 2161	4-15-2024
016 KAR 009:030E	51 Ky.R. 10	5-31-2024
200 KAR 005:021E	51 Ky.R. 12	5-16-2024
201 KAR 028:240E	50 Ky.R. 2354	5-14-2024
201 KAR 036:100E	50 Ky.R. 1649	9-14-2024
Am Comments	2002	3-5-2024
501 KAR 006:330E	50 Ky.R. 2356	5-15-2024
501 KAR 006:430E	50 Ky.R. 2358	5-15-2024
803 KAR 025:089E	50 Ky.R. 2360	5-14-2024
807 KAR 005:015E	51 Ky.R. 14	5-31-2024
902 KAR 045:001E	50 Ky.R. 2362	4-24-2024
902 KAR 045:012E	50 Ky.R. 2364	4-24-2024
902 KAR 045:021E	50 Ky.R. 2368	4-24-2024
902 KAR 045:031E	50 Ky.R. 2373	4-24-2024
915 KAR 001:010E	50 Ky.R. 2378	4-18-2024
915 KAR 001:020E	50 Ky.R. 2383	4-18-2024
922 KAR 002:090E	51 Ky.R. 22	5-20-2024

ORDINARY ADMINISTRATIVE REGULATIONS

011 KAR 004:080		
Amended	50 Ky.R. 2238	
011 KAR 015:090		
Amended	50 Ky.R. 2240	
011 KAR 015:110		
Amended	50 Ky.R. 2245	
013 KAR 002:120	50 Ky.R. 2459	
013 KAR 002:130	50 Ky.R. 2461	
016 KAR 002:110	50 Ky.R. 2464	
016 KAR 002:120		
Amended	50 Ky.R. 1930	
Am Comments	2409	
As Amended	51 Ky.R. 33	
016 KAR 002:140	50 Ky.R. 2466	
016 KAR 002:160		
Amended	50 Ky.R. 1934	
016 KAR 002:170	50 Ky.R. 2469	

016 KAR 002:200	50 Ky.R. 2471
016 KAR 004:020	
Amended	50 Ky.R. 1557
As Amended	2004
016 KAR 004:030	
Amended	50 Ky.R. 1937
016 KAR 007:011(r)	51 Ky.R. 170
016 KAR 009:030	
Amended	51 Ky.R. 77
017 KAR 004:030	
Amended	51 Ky.R. 79
017 KAR 006:020	50 Ky.R. 984
Am Comments	1700
As Amended	51 Ky.R. 35
017 KAR 006:030	50 Ky.R. 986
Am Comments	1702
As Amended	51 Ky.R. 37
030 KAR 007:011	50 Ky.R. 2110
031 KAR 002:010	
Amended	50 Ky.R. 2247
031 KAR 003:041	50 Ky.R. 2319
031 KAR 004:031	50 Ky.R. 2321
031 KAR 004:220	50 Ky.R. 2323
031 KAR 005:026	
Amended	50 Ky.R. 2250
031 KAR 005:040	50 Ky.R. 2326
040 KAR 010:010	50 Ky.R. 2111
101 KAR 001:325	
Amended	50 Ky.R. 1736
101 KAR 001:335	
Amended	50 Ky.R. 2253
101 KAR 001:345	
Amended	50 Ky.R. 2255
101 KAR 001:375	
Amended	50 Ky.R. 2257
101 KAR 001:396(r)	50 Ky.R. 2328
104 KAR 001:010	
Amended	50 Ky.R. 78
As Amended	51 Ky.R. 37
104 KAR 001:040	
Amended	50 Ky.R. 80
As Amended	51 Ky.R. 38
104 KAR 001:050	
Amended	50 Ky.R. 82
As Amended	51 Ky.R. 39
104 KAR 001:080	
Amended	50 Ky.R. 84
As Amended	51 Ky.R. 40
104 KAR 001:100	
Amended	50 Ky.R. 86
Amended	50 Ky.R. 2259
105 KAR 001:001	
Amended	50 Ky.R. 2259
105 KAR 001:120	
Amended	50 Ky.R. 2262
105 KAR 001:190	
Amended	50 Ky.R. 2265
105 KAR 001:215	
Amended	50 Ky.R. 1168
Am Comments	1704
As Amended	1865
105 KAR 001:390	
Amended	50 Ky.R. 1558
As Amended	2004
105 KAR 001:411	

6-4-2024

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Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
Amended	50 Ky.R. 2276		201 KAR 039:075	51 Ky.R. 175	
105 KAR 001:455	50 Ky.R. 1614		201 KAR 039:090		
As Amended	2008		Amended	51 Ky.R. 102	
105 KAR 001:470	50 Ky.R. 1622		201 KAR 039:100		
As Amended	2015		Amended	51 Ky.R. 105	
106 KAR 001:131			201 KAR 039:120		
Amended	50 Ky.R. 1563		Amended	51 Ky.R. 107	
As Amended	2017		201 KAR 039:130	51 Ky.R. 177	
200 KAR 005:021			202 KAR 006:090		
Amended	51 Ky.R. 82		Amended	50 Ky.R. 2098	
201 KAR 001:190			301 KAR 001:001		
Amended	1360		Amended	50 Ky.R. 2289	
As Amended	1869		301 KAR 001:140		
201 KAR 001:200	50 Ky.R. 1625	6-4-2024	Amended	50 Ky.R. 1756	6-6-2024
As Amended	2020		301 KAR 001:146		
201 KAR 002:015			Amended	50 Ky.R. 1758	6-6-2024
Amended	50 Ky.R. 2282		301 KAR 001:150		
201 KAR 002:030			Amended	50 Ky.R. 1761	
Amended	50 Ky.R. 2284		301 KAR 001:152		
201 KAR 002:050			Amended	50 Ky.R. 2292	
Amended	50 Ky.R. 2287		301 KAR 001:155		
201 KAR 002:210			Amended	50 Ky.R. 1568	6-6-2024
Amended	51 Ky.R. 83		301 KAR 001:201		
201 KAR 002:220			Amended	50 Ky.R. 1768	6-6-2024
Amended	50 Ky.R. 2091		301 KAR 001:410		
201 KAR 002:370			Amended	51 Ky.R. 109	
Amended	51 Ky.R. 87		301 KAR 002:122		
201 KAR 002:465	50 Ky.R. 2330		Amended	50 Ky.R. 2101	
201 KAR 002:470	51 Ky.R. 171		301 KAR 002:132		
201 KAR 002:480	51 Ky.R. 172		Amended	50 Ky.R. 1939	
201 KAR 008:533			As Amended	2397	6-6-2024
Amended	50 Ky.R. 1739		301 KAR 002:178		
As Amended	2393		Amended	50 Ky.R. 1768	
201 KAR 010:030			301 KAR 003:030		
Amended	50 Ky.R. 1744		Amended	50 Ky.R. 1944	
201 KAR 010:040			As Amended	2400	6-6-2024
Amended	50 Ky.R. 1745		301 KAR 003:130	50 Ky.R. 1986	
201 KAR 010:050			As Amended	2401	6-6-2024
Amended	50 Ky.R. 1748		301 KAR 004:020		
201 KAR 010:070			Repealed	50 Ky.R. 1437	6-4-2024
Amended	50 Ky.R. 1749		301 KAR 004:021(r)	50 Ky.R. 1437	6-4-2024
201 KAR 010:080			301 KAR 004:050		
Amended	50 Ky.R. 1750		Repealed	50 Ky.R. 1437	6-4-2024
201 KAR 020:320			301 KAR 005:001		
Amended	50 Ky.R. 2092		Amended	50 Ky.R. 1365	
201 KAR 20:360			As Amended	1885	6-4-2024
Amended	50 Ky.R. 2095		301 KAR 005:010		
201 KAR 020:370			Amended	50 Ky.R. 1367	
Amended	50 Ky.R. 1753		As Amended	1885	6-4-2024
201 KAR 020:506			301 KAR 005:020		
Amended	50 Ky.R. 1754		Amended	50 Ky.R. 1368	
201 KAR 023:160	50 Ky.R. 524		As Amended	1886	6-4-2024
201 KAR 027:006	50 Ky.R. 2481		301 KAR 005:022		
201 KAR 027:023	50 Ky.R. 2482		Amended	50 Ky.R. 2296	
201 KAR 027:041	50 Ky.R. 2485		301 KAR 005:040		
201 KAR 027:106	50 Ky.R. 2486		Amended	50 Ky.R. 2103	
201 KAR 028:240	50 Ky.R. 2488		As Amended	51 Ky.R. 40	
201 KAR 036:100	50 Ky.R. 1798		301 KAR 005:200		
201 KAR 039:001			Amended	50 Ky.R. 1371	
Amended	51 Ky.R. 89		As Amended	1887	6-4-2024
201 KAR 039:030			301 KAR 005:210	50 Ky.R. 2113	
Amended	51 Ky.R. 92		As Amended	51 Ky.R. 41	
201 KAR 039:040			302 KAR 045:020	50 Ky.R. 1627	
Amended	51 Ky.R. 94		As Amended	2022	
201 KAR 039:050			401 KAR 045:010		
Amended	51 Ky.R. 96		Amended	50 Ky.R. 914	
201 KAR 039:060			As Amended	2023	6-6-2024
Amended	51 Ky.R. 98		401 KAR 045:020		
201 KAR 039:070			Amended	50 Ky.R. 916	
Amended	51 Ky.R. 100		As Amended	2024	6-6-2024

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401 KAR 045:025			501 KAR 006:280	50 Ky.R. 2477	
Amended	50 Ky.R. 919		501 KAR 006:300	50 Ky.R. 2491	
As Amended	2025	6-6-2024	501 KAR 006:310	50 Ky.R. 2493	
401 KAR 045:030			501 KAR 006:320	50 Ky.R. 2495	
Amended	50 Ky.R. 921		501 KAR 006:330	50 Ky.R. 2496	
As Amended	2026	6-6-2024	501 KAR 006:340	50 Ky.R. 2498	
401 KAR 045:040			501 KAR 006:350	50 Ky.R. 2499	
Amended	50 Ky.R. 926		501 KAR 006:360	50 Ky.R. 2501	
As Amended	2030	6-6-2024	501 KAR 006:370	50 Ky.R. 2503	
401 KAR 045:050			501 KAR 006:380	50 Ky.R. 2504	
Amended	50 Ky.R. 929		501 KAR 006:390	50 Ky.R. 2506	
As Amended	2032	6-6-2024	501 KAR 006:400	50 Ky.R. 2507	
401 KAR 045:080			501 KAR 006:410	50 Ky.R. 2509	
Amended	50 Ky.R. 932		501 KAR 006:420	50 Ky.R. 2510	
As Amended	2034	6-6-2024	501 KAR 006:430	50 Ky.R. 2512	
401 KAR 045:100			501 KAR 006:440	50 Ky.R. 2513	
Amended	50 Ky.R. 935		501 KAR 006:450	50 Ky.R. 2515	
As Amended	2035	6-6-2024	501 KAR 006:460	50 Ky.R. 2516	
401 KAR 045:105			501 KAR 006:470	50 Ky.R. 2518	
Am Comments	1721		501 KAR 006:480	50 Ky.R. 2519	
As Amended	2040	6-6-2024	501 KAR 006:490	50 Ky.R. 2521	
401 KAR 045:140			501 KAR 006:500	50 Ky.R. 2522	
Amended	50 Ky.R. 942		501 KAR 006:510	50 Ky.R. 2526	
As Amended	2043	6-6-2024	501 KAR 006:520	50 Ky.R. 2527	
401 KAR 045:160			501 KAR 006:530	50 Ky.R. 2530	
Amended	50 Ky.R. 944		501 KAR 006:540	50 Ky.R. 2532	
Am Comments	1725		501 KAR 007:010		
As Amended	2044	6-6-2024	Amended	50 Ky.R. 1962	
401 KAR 045:250			501 KAR 007:040		
Amended	50 Ky.R. 948		Amended	50 Ky.R. 1964	
As Amended	2047	6-6-2024	501 KAR 007:080		
401 KAR 050:038	50 Ky.R. 2473		Amended	50 Ky.R. 1966	
401 KAR 103:005	50 Ky.R. 1212		501 KAR 007:090		
Am Comments	1908		Amended	50 Ky.R. 1967	
As Amended	2047	6-6-2024	501 KAR 013:010		
401 KAR 103:010	50 Ky.R. 1215		Amended	50 Ky.R. 1969	
Am Comments	1910		601 KAR 012:080	50 Ky.R. 1628	
As Amended	2048	6-6-2024	As Amended	2053	
401 KAR 103:020	50 Ky.R. 1218		As Amended IJC	51 Ky.R. 42	
Am Comments	1914		601 KAR 009:220		
As Amended	2050	6-6-2024	Amended	51 Ky.R. 114	
401 KAR 103:030	50 Ky.R. 1221		601 KAR 023:040	50 Ky.R. 1988	
Am Comments	1917		As Amended	51 Ky.R. 42	
As Amended	2051	6-6-2024	702 KAR 003:320		
416 KAR 001:001	50 Ky.R. 1799	6-6-2024	Amended	51 Ky.R. 116	
416 KAR 001:010			704 KAR 003:095		
Amended	50 Ky.R. 1775	6-6-2024	Amended	50 Ky.R. 1572	
416 KAR 001:020	50 Ky.R. 1801	6-6-2024	704 KAR 003:313(r)	51 Ky.R. 179	
500 KAR 013:020			704 KAR 003:550	50 Ky.R. 2332	
Amended	50 Ky.R. 1185		704 KAR 007:140		
Am Comments	1729		Amended	50 Ky.R. 2300	
501 KAR 001:080			704 KAR 008:130	51 Ky.R. 180	
Amended	51 Ky.R. 113		739 KAR 002:160	50 Ky.R. 2115	
501 KAR 002:060			As Amended	51 Ky.R. 43	
Amended	50 Ky.R. 1946		780 KAR 002:031(r)	50 Ky.R. 2333	
501 KAR 003:010			780 KAR 003:030		
Amended	50 Ky.R. 1948		Amended	50 Ky.R. 2302	
501 KAR 003:040			780 KAR 003:035		
Amended	50 Ky.R. 1950		Amended	50 Ky.R. 2304	
501 KAR 003:060			780 KAR 003:100		
Amended	50 Ky.R. 1952		Amended	50 Ky.R. 2305	
501 KAR 003:080			780 KAR 003:120		
Amended	50 Ky.R. 1954		Amended	50 Ky.R. 2308	
501 KAR 003:090			780 KAR 003:130		
Amended	50 Ky.R. 1956		Amended	50 Ky.R. 2310	
501 KAR 003:100			780 KAR 006:010		
Amended	50 Ky.R. 1958		Amended	50 Ky.R. 2312	
501 KAR 003:140			780 KAR 006:020		
Amended	50 Ky.R. 1960		Amended	50 Ky.R. 2314	
501 KAR 006:021(r)	50 Ky.R. 2490		803 KAR 025:089	50 Ky.R. 2478	

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806 KAR 017:570			Am Comments		2416
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807 KAR 005:078			Am Comments		2423
Amended	50 Ky.R. 2118		915 KAR 001:050	50 Ky.R. 1821	
As Amended	51 Ky.R. 44		915 KAR 001:060	50 Ky.R. 1823	
808 KAR 010:260			Am Comments		2430
Amended	50 Ky.R. 2316		915 KAR 001:070	50 Ky.R. 1829	
810 KAR 004:070			Am Comments		2437
Amended	50 Ky.R. 1374		915 KAR 001:080	50 Ky.R. 1836	
As Amended	1890	6-4-2024	Am Comments		2444
810 KAR 007:040			915 KAR 001:090	50 Ky.R. 1839	
Amended	50 Ky.R. 2105		Am Comments		2447
As Amended	51 Ky.R. 48		915 KAR 001:100	50 Ky.R. 1842	
815 KAR 007:120			Am Comments		2450
Amended	50 Ky.R. 1973		915 KAR 001:110	50 Ky.R. 1845	
815 KAR 007:125			Am Comments		2453
Amended	50 Ky.R. 1976		915 KAR 002:001	50 Ky.R. 2122	
900 KAR 007:030			915 KAR 002:010	50 Ky.R. 2124	
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SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- *** Withdrawn before being printed in Register
- # Emergency withdrawn pursuant to KRS 13A.190(12).
- IJC Interim Joint Committee
- (r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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CERTIFICATION LETTER SUMMARIES

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016 KAR 002:090	06-25-2024	Remain in Effect without Amendment
910 KAR 001:210	06-17-2024	To be Amended, filing deadline 12-17-2025

TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments made during the 49th 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
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