



ADMINISTRATIVE REGISTER OF KENTUCKY

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

MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is tentatively scheduled to meet on November 13, 2024, at 1:00 p.m. in room 149 Capitol Annex. **ARRS Tentative Agenda – 841** [Online agenda updated as needed](#)

The **Education Assessment and Accountability Review Subcommittee** is tentatively scheduled to meet on November 8, 2024 at 9:30 a.m. in room 131 Capitol Annex. [See the Committee's Web page](#)

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Title		Chapter	Regulation
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Cabinet, Department, Board, or Agency		Office, Division, Board, or Major Function	Specific Regulation

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all of the administrative regulations that may be removed to complete the public comment process or deferred or withdrawn by promulgating agencies.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



Administrative Regulation Review Subcommittee
TENTATIVE Meeting Agenda
Wednesday, November 13, 2024 at 1 p.m.
Annex Room 149



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

COUNCIL ON POSTSECONDARY EDUCATION

Public Educational Institutions

[013 KAR 002:120](#). Comprehensive funding model for the allocation of state general fund appropriations to public universities. (Filed with Emergency) (Deferred from August)

[013 KAR 002:130](#). Comprehensive funding model for the allocation of state general fund appropriations to the Kentucky Community and Technical College System institutions. (Filed with Emergency) (Deferred from August)

Aerospace

[013 KAR 006:010](#). Aviation training scholarships.

[013 KAR 006:020](#). Aviation equipment grants.

OFFICE OF ATTORNEY GENERAL

Office of Regulatory Relief

[040 KAR 012:010](#). Regulatory sandbox application process and reporting procedures.

PERSONNEL CABINET

Personnel Cabinet, Classified

[101 KAR 002:086](#). Internship interview preference.

[101 KAR 002:210E](#). 2024 and 2025 Plan year handbooks for the Public Employee Health Insurance Program. (Filed with Ordinary) ("E" expires 06-10-2025)

FINANCE AND ADMINISTRATION CABINET

Teachers' Retirement System

General Rules

[102 KAR 001:320](#). Qualified domestic relations orders.

Department of Revenue

Ad Valorem Tax; Administration

[103 KAR 005:200](#). Valuation of multi-unit rental housing subject to government restriction on use.

State Investment Commission

[200 KAR 014:011](#). Qualified investments.

[200 KAR 014:081](#). Repurchase agreement.

[200 KAR 014:091](#). Guidelines for money market instruments.

Kentucky Private Activity Bond Allocation Committee

[200 KAR 015:010](#). Formula for allocation of private activity bonds.

BOARDS AND COMMISSIONS

Board of Pharmacy

[201 KAR 002:030](#). License transfer and Non-Resident Pharmacist License. (Not Amended After Comments) (Deferred from September)

[201 KAR 002:050](#). License and permits; fees. (Not Amended After Comments) (Deferred from September)

[201 KAR 002:210](#). Patient records, drug regimen review, patient counseling, and final product verification. (Amended After Comments)

[201 KAR 002:370](#). Pharmacy services in a long-term care facility (LTCF). (Not Amended After Comments)

[201 KAR 002:465](#). Non-Resident Pharmacy Applications and Waivers. (Amended After Comments) (Deferred from September)

[201 KAR 002:480](#). Telework and electronic supervision for remote prescription processing. (Not Amended After Comments)

Board of Dentistry

[201 KAR 008:563](#). Licensure of dental hygienists.

[201 KAR 008:610](#). Dental community health workers.

Board of Licensure for Professional Engineers and Land Surveyors

[201 KAR 018:010](#). Classes of applicants. (Deferred from October)

[201 KAR 018:030](#). In training certificates. (Deferred from October)

[201 KAR 018:115](#). License reinstatement.

[201 KAR 018:192](#). Continuing professional development for professional land surveyors. (Deferred from October)

[201 KAR 018:196](#). Continuing professional development for professional engineers. (Not Amended After Comments)

Board of Nursing

[201 KAR 020:057](#). Scope and standards of practice of advanced practice registered nurses.

Board of Interpreters for the Deaf and Hard of Hearing

[201 KAR 039:001](#). Definitions for 201 KAR Chapter 039. (Deferred from September)

[201 KAR 039:030](#). Application; qualifications for full licensure; and certification levels. (Amended After Comments)

[201 KAR 039:040](#). Fees. (Not Amended After Comments)

[201 KAR 039:050](#). Renewal and reinstatement of full licenses. (Not Amended After Comments)

[201 KAR 039:060](#). Reinstatement of full license subject to disciplinary action. (Deferred from September)

[201 KAR 039:070](#). Application and qualifications for temporary licensure and extensions. (Amended After Comments)

[201 KAR 039:075](#). Supervision. (Not Amended After Comments)

[201 KAR 039:090](#). Continuing education unit requirements. (Amended After Comments)

[201 KAR 039:100](#). Complaint procedure. (Deferred from September)

[201 KAR 039:120](#). Code of ethics. (Not Amended After Comments)

[201 KAR 039:130](#). Registration for nonresident interpreters. (Not Amended After Comments)

INDEPENDENT ADMINISTRATIVE BODIES

Kentucky Housing Corporation

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

Board of Emergency Medical Services

[202 KAR 007:201E](#). Emergency medical responders. (Filed with Ordinary) ("E" expires 05-31-2025)

[202 KAR 007:301E](#). Emergency medical technician. (Filed with Ordinary) ("E" expires 05-31-2025)

[202 KAR 007:330E](#). Advanced emergency medical technician. (Filed with Ordinary) ("E" expires 05-31-2025)

[202 KAR 007:401E](#). Paramedics. (Filed with Ordinary) ("E" expires 05-31-2025)

[202 KAR 007:560E](#). Ground vehicle staff. (Filed with Ordinary) ("E" expires 05-31-2025)

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Division of Air Quality

General Administrative Procedures

[401 KAR 050:038](#). Air emissions fee. (Not Amended After Comments) (Deferred from September)

JUSTICE AND PUBLIC SAFETY CABINET

Parole Board

[501 KAR 001:080](#). Parole board policies and procedures. (Not Amended After Comments)

Department of Corrections

Office of the Secretary

[501 KAR 006:410](#). Corrections policies and procedures: inmate life and issues. (Not Amended After Comments) (Deferred from October)

TRANSPORTATION CABINET

Office for Civil Rights and Small Business Development

Office of Minority Affairs

[600 KAR 004:010](#). Certification of disadvantaged business enterprises.

EDUCATION AND LABOR CABINET

Department of Education

General Administration

[702 KAR 001:116](#). Annual in-service training of district board members.

Facilities Management

[702 KAR 004:090](#). Property disposal.

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Office of Learning Programs Development

Office of Instruction

[704 KAR 003:305](#). Minimum requirements for high school graduation.

[704 KAR 003:535](#). Full-time enrolled online, virtual, and remote learning programs.

Department for Technical Education

Office of Instruction

[780 KAR 003:072](#). Attendance, compensatory time, and leave for certified and equivalent service.

[780 KAR 003:080](#). Extent and duration of school term, use of school days and extended employment.

PUBLIC PROTECTION CABINET

Department of Financial Institutions

Credit Unions

[808 KAR 003:050](#). Conduct of credit unions. (Amended After Comments)

General

[808 KAR 015:050](#). Out-of-State trust companies operating in Kentucky. (Deferred from October)

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Human Resource Management

Administration

[900 KAR 001:009](#). Employee Access to Federal Tax Information (FTI).

Food and Cosmetics

[902 KAR 045:012](#). Hemp-derived cannabinoid product retail and food service establishment requirements. (Filed with Emergency) (Amended After Comments) (Deferred from October)

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)

Hospital Service Coverage and Reimbursement

[907 KAR 010:015](#). Payments for outpatient hospital services.

Behavioral Health

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

Medicaid Eligibility

[907 KAR 020:035](#). Spousal impoverishment and nursing facility requirement for Medicaid.

Department for Community Based Services

Family Support

Supplemental Nutrition Assistance Program

[921 KAR 003:030](#). Application process.

Protection and Permanency

Child Welfare

[922 KAR 001:050](#). State funded adoption assistance. (Amended After Comments)

[922 KAR 001:060](#). Federal Title IV-E adoption assistance. (Amended After Comments)

[922 KAR 001:470](#). Central registry.

Daycare

[922 KAR 002:090](#). Child-care center licensure. (Filed with Emergency) (Deferred from September)

[922 KAR 002:120](#). Child-care center health safety standards. (Not Amended After Comments)

Adult Services

[922 KAR 005:120](#). Vulnerable adult maltreatment registry and appeals.

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

FINANCE AND ADMINISTRATION CABINET

Kentucky Public Pensions Authority

General Rules

~~[105 KAR 001:451](#). Quasi-governmental employer reports on independent contractors and leased employees. (Comments~~

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~~Received; SOC due 10-15-2024~~ (Withdrawn 10-15-2024, SOC not filed by deadline.)

ENERGY AND ENVIRONMENT CABINET

Department for Natural Resources

Bond and Insurance Requirements

[405 KAR 010:001](#). Definitions. (Comments Received; SOC due 11-15-2024)

[405 KAR 010:015](#). General bonding provisions. (Comments Received; SOC due 11-15-2024)

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Sanitation

[902 KAR 010:120](#). Kentucky public swimming and bathing facility operations. (Comments Received; SOC ext. due 11-15-2024)

[902 KAR 010:122](#). Repeal of 902 KAR 010:121 and 902 KAR 010:190. (Deferred from October)

[902 KAR 010:123](#). Kentucky public swimming and bathing facilities construction requirements. (Comments Received; SOC ext. due 11-15-2024)

[902 KAR 010:125](#). Kentucky public swimming and bathing facility safety requirements. (Comments Received; SOC ext. due 11-15-2024)

[902 KAR 010:127](#). Kentucky public beach requirements. (Comments Received; SOC ext. due 11-15-2024)

Kentucky Early Intervention System

[902 KAR 030:200](#). Coverage and payment for services. (Comments Received; SOC ext. due 11-15-2024)

Protection and Permanency

Child Welfare

[922 KAR 001:490](#). Background checks for foster and adoptive parents and relative and fictive kin caregivers. (Comments Received; SOC ext., due 11-15-2024)

Expiration dates listed on this agenda 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**

(See KRS Chapter 13A for specific provisions)

Filing and Publication

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

Public Hearing and Public Comment Period

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

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

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

Review Procedure

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

EMERGENCY ADMINISTRATIVE REGULATIONS

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

STATEMENT OF EMERGENCY
803 KAR 2:110E.

This emergency administrative regulation amends 803 KAR 2:110 Employer and employee representatives to clarify the representative(s) authorized by employees may be an employee of a third-party so that it mirrors and the United States Department of Labor, Occupational Safety and Health Administration (OSHA) final rule, Worker Walkaround Representative Designation Process, published in the April 1, 2024, Federal Register, codified in 29 Code of Federal Regulations ("C.F.R.") Part 1903. These clarifications aid workplace inspections by better enabling employees to select representative(s) of their choice to accompany the CSHO during a physical workplace inspection. Employee representation during the inspection is critically important to ensuring necessary information about worksite conditions and hazards are obtained and the amendment establishes that third-party employee representative(s) may accompany the Compliance Safety and Health Officer (CSHO) when, in the judgment of the CSHO, good cause has been shown why they are reasonably necessary to aid in the inspection. OSHA's final rule clarifies that a third party may be reasonably necessary because of their relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language or communication skills. It is necessary to promulgate this emergency regulation to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (Occupational Safety and Health ("OSH") Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.37(b)(3), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1953.5(a)(1), 29 C.F.R. 1953.5(a)(2), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(d)(1), which all require Kentucky OSH regulations to be as effective as the federal requirements. Furthermore, 29 C.F.R. 1953.5 mandates adoption of the final rule within six (6) months of the date of the April 1, 2024, promulgation. Therefore, Kentucky must adopt the rule no later than October 1, 2024. This emergency administrative regulation shall be replaced by an ordinary administrative regulation, which is being filed simultaneously with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
JAMIE LINK, Chairman

EDUCATION AND LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Emergency Amendment)

803 KAR 2:110E. Employer and employee representatives.

EFFECTIVE: September 30, 2024

RELATES TO: KRS 338.111

STATUTORY AUTHORITY: KRS 338.051, 338.061

NECESSITY, FUNCTION, AND CONFORMITY:
KRS.338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes employer and employee representation during an inspection.

Section 1. Definitions.

(1) "Compliance safety and health officer" means a person authorized by the commissioner to conduct occupational safety and health inspections or investigations.

(2) "Employee" is defined by KRS 338.015(2).

(3) "Employer" is defined by KRS 338.015(1).

Section 2. Representatives of Employers and Employees.

(1) The compliance safety and health officer shall be in charge of the inspection and questioning of persons.

(2) A representative of the employer and a representative authorized by her or his employees shall be given an opportunity to accompany the compliance safety and health officer.

(3) The compliance safety and health officer may permit additional employer representatives and additional representatives authorized by employees to accompany her or him if she or he determines it aids the inspection.

(4) A different employer and employee representative may accompany the compliance safety and health officer during each different phase of an inspection if it does not interfere with the conduct of the inspection.

(5) The compliance safety and health officer shall have authority to resolve all disputes as to who is the representative authorized by the employer and employees.

(6) If there is no authorized representative of employees, or if the compliance safety and health officer is unable to determine with reasonable certainty who is the representative, she or he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

(7) The representative or representatives authorized by employees ~~may~~shall be an employee of the employer or a third party.

(8) ~~If the authorized representative is not an employee of the employer, the representative may accompany the Compliance Safety and Health Officer during the inspection if [he], in the judgment of the Officer [compliance safety and health officer], good cause has been [is] shown why accompaniment by a third party [such as a safety professional or industrial hygienist, who is not an employee of the employer] is reasonably necessary to the conduct an effective and thorough physical inspection of the workplace (including but not limited to because of their relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language or communication skills) [the third party may accompany the compliance safety and health officer during the inspection].~~

(9) A compliance safety and health officer may consult with employees concerning matters of occupational safety and health necessary for an effective and thorough inspection.

(10) During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of KRS Chapter 338 that she or he has reason to believe exists in the workplace to the attention of the compliance safety and health officer.

(11) The compliance safety and health officer shall be authorized to deny accompaniment to any person whose conduct interferes with the inspection.

(12) Accompaniment in areas containing trade secrets shall be subject to KRS 338.171.

(13) Only persons authorized access to information classified by an agency of the United States government may accompany a compliance safety and health officer in areas containing information.

JAMIE LINK, Secretary

APPROVED BY AGENCY: September 30, 2024

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

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CONTACT PERSON: Robin Maples, OSH Standards Specialist, Education and Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email robin.maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this emergency administrative regulation, effective since December 11, 1974, defines terms. Section 2 establishes the requirements pursuant to 29 C.F.R. 1903.8 relating to representatives of employers and employees. This amendment clarifies representatives designated by employees may be an employee of a third-party.

(b) The necessity of this administrative regulation: This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (Occupational Safety and Health ("OSH") Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.37(b)(3), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1953.5(a)(1), 29 C.F.R. 1953.5(a)(2), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(d)(1), which require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. This emergency administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590, 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.37(b)(3), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1953.5(a)(1), 29 C.F.R. 1953.5(a)(2), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(d)(1), which all require the Kentucky OSH Program to be as effective as OSHA. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation promotes worker safety and health throughout Kentucky and ensures the state requirement is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.37(b)(3), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1953.5(a)(1), 29 C.F.R. 1953.5(a)(2), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(d)(1), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

(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 representative(s) designated by employees may be an employee of a third-party.

(b) The necessity of the amendment to this administrative regulation: Kentucky operates a State Plan approved by OSHA that provides employee OSH protections. OSHA approves, monitors, and provides funding to Kentucky. It is necessary to promulgate this emergency regulation to meet the requirements established in Public Law 91-596 84 STAT. 1590 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.37(b)(3), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1953.5(a)(1), 29 C.F.R. 1953.5(a)(2), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(d)(1), which all require the Kentucky OSH Program to be as effective as OSHA. The Education and Labor Cabinet must promulgate this emergency administrative to ensure the state is at least as effective as the federal requirement. This emergency administrative regulation ensures Kentucky's

compliance with the federal mandates, maintains Kentucky's primacy, and retains federal funding.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. This emergency administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.37(b)(3), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1953.5(a)(1), 29 C.F.R. 1953.5(a)(2), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(d)(1), which all require the Kentucky OSH Program to be as effective as OSHA. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This emergency administrative regulation affects all employers in the Commonwealth covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed, and no immediate action is required.

(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 the OSH Program to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This emergency administrative regulation promotes worker safety and health throughout Kentucky and ensures the state requirement is as effective as the federal requirement.

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

(a) Initially: There is no cost to the OSH Program to implement this emergency administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement this emergency administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this emergency administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This emergency administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are 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 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29

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C.F.R. 1902.37(b)(3), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1953.5(a)(1), 29 C.F.R. 1953.(a)(2), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(d)(1)

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: This emergency administrative regulation affects any unit, part, or division of state or local government covered by KRS Chapter 338.

(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 amendment does not impose any additional requirements or expenditures.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This administrative regulation affects any unit, part, or division of state or local government covered by KRS Chapter 338.

(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 amendment does not impose any additional requirements or expenditures.

(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 amendment does not impose any additional requirements or expenditures.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This emergency administrative regulation imposes no new direct cost burden on employers and does not require them to take any action to comply.

(b) Methodology and resources used to determine the fiscal impact: Federal Register, Volume 89, Number 63, V. Final Economic Analysis and Regulatory Flexibility Act Certification.

(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 emergency administrative regulation imposes no new direct cost burden on employers and does not require them to take any action to comply.

(b) The methodology and resources used to reach this conclusion: Federal Register, Volume 89, Number 63, V. Final Economic Analysis and Regulatory Flexibility Act Certification.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.37(b)(3), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1953.5(a)(1), 29 C.F.R. 1953.(a)(2), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(d)(1).

(2) State compliance standards. The Kentucky OSH Program is mandated to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard. This regulation is equivalent.

(3) Minimum or uniform standards contained in the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.37(b)(3), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1953.5(a)(1), 29 C.F.R. 1953.(a)(2), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(d)(1).

(4) Will this administrative regulation impose stricter

requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter requirements.

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. Other statutes or legislation may affect a regulation's actual end date.

NONE

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

EDUCATION AND LABOR CABINET
Education Professional Standards Board
(As Amended at ARRS, October 15, 2024)

16 KAR 9:010. Provisional and professional certificate for exceptional work experience.

RELATES TO: KRS 161.028, 161.030, 161.048

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.048

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048

establishes the eligibility requirements for a candidate seeking to participate in an alternative teacher preparation program and requires the board to promulgate administrative regulations establishing standards and procedures for alternative certification options. This administrative regulation establishes the requirements for issuance [and renewal] of a provisional and professional certificate based on exceptional work experience.

Section 1. Definitions.

(1) "Exceptional work experience" means a person with recognized superiority as compared with others in rank, status, and attainment or superior knowledge and skill in comparison with the generally accepted standards in the area in which certification is sought.

(2) "Population based certificate" means a certificate for teaching elementary, exceptional children, or interdisciplinary early childhood education.

Section 2. Verification of exceptional qualifications of an applicant for certification, in a field of endeavor taught or service practiced in a public school of Kentucky, shall include:

(1) Sufficient documentation that demonstrates to the local school district and the Education Professional Standards Board that an applicant is one who has exceptional work experience and has talents and abilities commensurate with the teacher standards established in 16 KAR 1:010;

(2) Documentation ~~of~~ may include advanced degrees earned, distinguished employment, evidence of related study or experience, publications, professional awards, achievement, or recognition attained for contributions to an applicant's field of endeavor; and

~~(3)~~ Recommendations from professional associations, former employers, professional colleagues, or any other individual or group whose evaluations ~~shall~~ support exceptional work in the field.

~~(4)~~ ~~(3)~~ Exceptional work experience shall not apply to population based certificates.

Section 3. Certification Requirements.

(1) An eligible candidate for certification other than a population based certificate who meets the requirements of KRS 161.048(2) and 16 KAR 2:010, Section 3(1), shall be issued a one (1) two (2) year provisional certificate for exceptional work experience.

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

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

(4) 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.

(5) Application for renewal of the one (1) two (2) year provisional certificate shall be submitted to the EPSB and be in compliance with 16 KAR 2:010, Section 3(1).

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

(7) (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).

FILED WITH LRC: October 15, 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.

EDUCATION AND LABOR CABINET
Education Professional Standards Board
(As Amended at ARRS, October 15, 2024)

16 KAR 9:080. University-based alternative certification program.

RELATES TO: KRS 156.111, 160.345(2)(h), 161.027, 161.028(1)(k), (s), (t), 161.030(11), 161.048, 161.1211, 34 C.F.R. 300.156(c)(2)

STATUTORY AUTHORITY: KRS 161.027(1), 161.048(1) ~~(e)~~ ~~(d)~~, (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048(1) ~~(e)~~ ~~(d)~~ and (7) require the Education Professional Standards Board (EPSB) to promulgate administrative regulations establishing the standards and procedures for a university alternative certification option for teacher and administrator certification. This administrative regulation establishes the requirements for entry and completion of the teacher and administrator university-based alternative certification options, the responsibilities of the employing school or school district, and the responsibilities of the approved college or university alternative program.

Section 1. Definitions.

(1) "Alternative certification administrator program" means a college or university post baccalaureate or post masters administrator preparation program for an individual enrolled concurrently with employment in a local school district as an assistant principal, principal, assistant superintendent, school counselor, director of special education, director of pupil personnel, supervisor of instruction, or superintendent.

(2) "Alternative certification teacher program" means a college or university post baccalaureate teacher preparation program for an individual enrolled concurrently with employment as a teacher.

Section 2. Admission Requirements.

(1) An applicant for an alternative certification teacher program shall meet the admission standards for an initial certification program established in 16 KAR 5:020.

(2) An applicant for an alternative certification administrator program shall meet the admission standards for the corresponding administrator certification program established in 16 KAR Chapter 3.

Section 3. University Requirements for Alternative Certification Teacher Program.

(1) An accredited college or university seeking to offer an alternative certification teacher program shall apply to the EPSB for program approval in accordance with 16 KAR 5:010.

(2) In addition to the standards for program approval established in 16 KAR 5:010, the educator preparation provider seeking alternative certification teacher program approval shall design the alternative certification teacher program to provide a candidate with the coursework and mentoring necessary to permit a candidate to maintain employment in an eligible position and to successfully

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complete any applicable assessments, ~~including internship programs,~~ within a period of three (3) years for those enrolled in an alternative certification teacher program for teachers of exceptional children or interdisciplinary early childhood education employed in a public school, or a period of five (5) years for all other alternative certification teacher programs.

(3) Upon approval, the alternative certification teacher program unit shall:

(a) Assess a candidate's educational background and develop a plan of coursework that shall adequately prepare the candidate for successful completion of the requirements for program completion and certification for the areas and grade ranges that correspond with the candidate's school placement;

(b) Provide a candidate written and dated documentation of eligibility for the university alternative certification teacher program so that the candidate may be considered for employment pursuant to KRS 160.345(2)(h);

(c) Ensure that a candidate begins coursework no later than ninety (90) days from the date the eligibility notice is issued;

(d) Develop a written agreement to provide, in collaboration with the administration of the candidate's employing school, mentoring to the candidate in the employment setting which shall include:

1. A minimum of fifteen (15) hours of annual observation utilizing university faculty and a district-based mentor of the candidate practicing instruction in the classroom, as follows:

a. A minimum of five (5) hours of observation by university faculty;

b. A minimum of five (5) hours of observation by a district-based mentor; and

c. A minimum of five (5) hours of observation by either the university faculty or the district-based mentor;

2. A description of how support shall be offered to the candidate during in-class and out-of-class time to assist the candidate in meeting the teacher's instructional responsibilities;

3. The name, contact person, and role for the collaborating educator preparation provider mentor; and

4. The name and role of all school district mentor teachers;

(e) Establish a process to maintain regular communication with the employing school so that the educator preparation provider and employing school may assist the candidate as needed and address identified areas of improvement; and

(f) Notify the EPSB in writing if a candidate's employment in a covered position or enrollment in the alternative certification teacher program permanently ceases.

(4) Student teaching shall not be required for program completion.

Section 4. Temporary Provisional Certificate for Teaching.

(1) The temporary provisional certificate for teaching shall be issued and renewed in accordance with KRS 161.048(7).

(2) The temporary provisional certificate for teaching shall be issued in accordance with a grade level and specialization as recommended by the educator preparation provider and valid for employment consistent with the area of certification being sought through the preparation program.

(3) The temporary provisional certificate for teaching shall be issued at the rank corresponding to the degree held by the teacher applicant in accordance with the requirements established in KRS 161.1211 and 16 KAR Chapter 8.

Section 5. Issuance of a Temporary Provisional Certificate for Teaching.

(1) Prior to seeking employment in a Kentucky public school, a candidate shall request from the educator preparation provider written and dated documentation of eligibility for the alternative certification teacher program to provide to school districts pursuant to KRS 160.345(2)(h).

(2) Prior to employment, a superintendent, on behalf of the employing local board of education, shall be responsible for requesting the temporary provisional certificate.

(3) The candidate shall submit to the EPSB an official college transcript from each college or university attended.

(4) The candidate shall demonstrate compliance with 16 KAR 2:010, Section 3(1).

(5) The employing school district shall submit a completed and signed copy of the mentoring collaboration agreement with the alternative certification teacher program as required by Section 3(3)(d) of this administrative regulation.

(6) The educator preparation provider shall submit a recommendation for the grade level and specialization of the temporary provisional certificate.

Section 6. Requirements for Renewal of the Temporary Provisional Certificate for Teaching.

(1) A candidate shall be eligible for renewal of the temporary provisional certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or regionally- or nationally accredited nonpublic school in the content area or areas indicated on the initial certificate; and

(b) Recommendation from the educator preparation provider based on continued enrollment, completion of annual observation hours, and progress towards the completion of the alternative teacher preparation program.

~~[(2)] [If a candidate is required to complete an internship in accordance with KRS 161.030, the candidate shall complete the required assessments as established in 16 KAR 6:010 prior to issuance of the final temporary provisional certificate and shall complete the internship during the final temporary provisional certificate.]~~

~~[(3)]~~ A candidate for exceptional children or interdisciplinary early childhood certification employed in a public school may only renew the temporary provisional certificate two (2) times.

~~[(4)]~~ All other alternative certification teacher candidates may renew the temporary provisional certificate four (4) times.

Section 7. Alternative Certification Teacher Program Completion Requirements.

(1) An applicant for teacher certification shall meet all certification requirements for the corresponding certificate established in 16 KAR Chapter 2 and the assessment requirements established in 16 KAR 6:010.

(2) Upon completion of all program requirements of the university based alternative teacher program, the candidate may apply to the EPSB for the professional certificate.

(3) Upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), recommendation of the employing school district, and verification that a candidate has met all eligibility requirements for certificate issuance, the EPSB shall issue a professional certificate.

Section 8. University Requirements for an Alternative Certification Administrator Program.

(1) An accredited college or university seeking to offer an alternative certification administrator program shall apply to the EPSB for program approval in accordance with 16 KAR 5:010.

(2) In addition to the standards for program approval established in 16 KAR 5:010, the educator preparation provider seeking alternative certification administrator program approval shall design the alternative certification administrator program to provide a candidate with the coursework and mentoring appropriate to permit a candidate to maintain employment in an eligible position and successfully complete any applicable assessments, including any internship or training programs, within a period of two (2) years for those enrolled in an alternative certification administrator program.

(3) Upon approval, the alternative certification administrator program unit shall:

(a) Assess a candidate's educational background and develop a plan of coursework that shall adequately prepare the candidate for successful completion of the requirements for program completion and certification for the areas and grade ranges that correspond with the candidate's school placement;

(b) Provide a candidate written and dated documentation of eligibility for the university alternative certification administrator program so that the candidate may be considered for employment pursuant to KRS 160.345(2)(h);

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(c) Ensure that a candidate begins coursework no later than ninety (90) days from the date the eligibility notice is issued;

(d) Develop a written agreement to provide, in collaboration with the administration of the candidate's employing school, mentoring to the candidate in the employment setting which shall include:

1. A minimum of fifteen (15) hours of annual observation utilizing university faculty and a district-based mentor of the candidate practicing in the appropriate administrative role, as follows:

a. A minimum of five (5) hours of observation by university faculty;

b. A minimum of five (5) hours of observation by a district-based mentor; and

c. Five (5) hours of observation by either the university faculty or the district-based mentor;

2. A description of how support shall be offered to the candidate to assist the candidate in meeting the candidate's administrative responsibilities;

3. The name, contact person, and role for the collaborating educator preparation provider mentor; and

4. The name and role of all school district mentors;

(e) Establish a process to maintain regular communication with the employing school so that the educator preparation provider and employing school may assist the candidate as needed and address identified areas of improvement; and

(f) Notify the EPSB in writing if a candidate's employment in a covered position or enrollment in the alternative certification administrator program permanently ceases.

Section 9. Temporary Provisional Administrative Certificate.

(1) The temporary provisional administrative certificate shall be issued for a validity period not to exceed one (1) year.

(2) The temporary provisional administrative certificate may be renewed a maximum of one (1) time.

(3) The temporary provisional administrative certificate shall be valid for employment in a position consistent with the area of certification being sought through the preparation program.

Section 10. Issuance of a Temporary Provisional Administrative Certificate.

(1) Prior to seeking employment in a Kentucky public school, a candidate shall request from the educator preparation provider written and dated documentation of eligibility for the university based alternative certification administrator program to provide to school districts pursuant to KRS 160.345(2)(h).

(2) Prior to employment, a superintendent, on behalf of the employing local board of education, shall be responsible for requesting the temporary provisional certificate.

(3) The candidate shall submit to the EPSB an official college transcript from each college or university attended.

(4) The candidate shall demonstrate compliance with 16 KAR 2:010, Section 3(1).

(5) The employing school district shall submit a completed and signed copy of the mentoring collaboration agreement with the university based alternative certification program as required by Section 8(3)(d) of this administrative regulation.

(6) The educator preparation provider shall submit a recommendation for the specialization of the temporary provisional certificate.

Section 11. Requirements for Renewal of the Temporary Provisional Certificate for an Administrator.

(1) A candidate shall **not** be eligible for ~~no~~ more than one (1) renewal of the temporary provisional certificate.

(2) A candidate shall be eligible for renewal of the temporary provisional certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school in the position indicated on the initial certificate; and

(b) Recommendation from the educator preparation provider based on continued enrollment, completion of annual observation hours, and progress towards the completion of the alternative administrator program.

(3) If a candidate is seeking principal certification and is required to complete an internship in accordance with KRS 161.030, the candidate shall complete the required assessments as established in 16 KAR 3:090 prior to renewal of the temporary provisional certificate and shall complete the internship during the final temporary provisional certificate.

Section 12. Alternative Certification Administrator Program Completion Requirements.

(1)

(a) During the period of enrollment in the alternative certification administrator program, a candidate seeking superintendent certification and serving in a local school district as a superintendent or assistant superintendent shall successfully complete both the coursework in the institution's alternative certification administrator program as well as the Superintendents Training Program and assessments required in KRS 156.111.

(b) The college or university faculty shall maintain contact with the employing school district and the Kentucky Department of Education regarding the completion of coursework to ensure that a superintendent candidate has completed the required coursework to prepare for the assessments and participation in the Superintendents Training Program.

(2) An applicant for administrator certification shall meet all certification requirements for the corresponding certificate established in 16 KAR Chapter 3.

(3) Upon completion of all program requirements of the alternative administrator program the candidate may apply to the EPSB for the professional certificate.

(4) Upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and verification that a candidate has met all eligibility requirements for certificate issuance, the EPSB shall issue a professional certificate.

FILED WITH LRC: October 15, 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.

EDUCATION AND LABOR CABINET
Education Professional Standards Board
(As Amended at ARRS, October 15, 2024)

16 KAR 9:100. Alternative Route to Certification Institute.

RELATES TO: KRS 161.028, 161.030, 161.048, 34 C.F.R. 300.156 (c)(2)

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.048(1)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048(1)(e) requires the Education Professional Standards Board (EPSB) to promulgate administrative regulations establishing standards and procedures for the Alternative Route to Certification Institute and the approval criteria for these programs. This administrative regulation establishes the required elements of the alternative route to certification and the application review process.

Section 1. Institute Providers.

(1) A provider not currently accredited by the EPSB in accordance with 16 KAR 5:010, may demonstrate a partnership with an institution of higher education accredited by the EPSB and a school district or cooperative recognized by the Kentucky Department of Education.

(2) A provider shall submit an application to the EPSB in accordance with the Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute (Option 7).

Section 2. Application Review.

(1) An application to provide an alternative route to certification institute shall be submitted to EPSB staff.

(2) EPSB staff shall complete an initial review to ensure that the application addresses the requirements of KRS 161.048(8) and the

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Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute (Option 7).

(a) If EPSB staff determines that the application addresses the requirements of this subsection, the application shall be forwarded to an external review team.

(b) If EPSB staff determines that the application does not address all the requirements of this subsection, staff shall notify the provider of the deficiencies.

(3) Pursuant to subsection (4) of this section, an external review team of trained reviewers appointed by EPSB [~~pursuant to subsection (4) of this section,~~] staff shall review the application in accordance with KRS 161.048(8) and the Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute (Option 7).

(4) The external review team shall be comprised of:

(a) One (1) representative from an EPSB accredited postsecondary institution;

(b) One (1) representative from a Kentucky education cooperative; and

(c) One (1) representative from a Kentucky public school district.

(5) The external review team shall review the application to provide an alternative route to certification institute and determine the quality of the application based on compliance with subsection (2) of this section. The review team shall recommend acceptance or denial of the application to the EPSB and shall include a supporting rationale for the recommendation.

(6) The EPSB shall review the external review team's recommendation, shall approve or deny each application, and shall transmit the decision and rationale for the decision to the provider.

(7) The provider may revise and resubmit a plan that has been denied.

(8) Any approval granted by the EPSB shall specify the period of approval of the institute, which shall not exceed two (2) years for initial approval. A provider may apply for an extension of approval as established in Section 3 of this administrative regulation.

Section 3. Continuance of Program Approval.

(1) An institute provider may apply for continuance of an approved alternative route to certification institute for an additional period of time not to exceed seven (7) years. The request for continuance shall specify any changes in program components that have occurred since the institute received prior EPSB approval and that are planned for implementation in subsequent training periods.

(2) The request for continuance shall provide specific examples of demonstrating program quality as established in this section and the application required by this administrative regulation. The request for continuance shall include statistical information related to teacher retention for all prior candidates who have completed the institute. Standards for program approval established under this administrative regulation shall be maintained under any program extension.

Section 4. Revocation for Cause.

(1) If an area of concern or an allegation of misconduct arises after an institute has been approved, staff shall bring a complaint to the EPSB for initial review.

(2) After review of the allegations in the complaint, the EPSB may refer the matter to the external review team for further investigation.

(3)

(a) Notice of the EPSB's decision to refer the matter and the complaint shall be sent to the provider.

(b) Within thirty (30) days of receipt of the complaint, the provider shall respond to the allegations in writing and provide information pertaining to the allegations in the complaint to the EPSB.

(4)

(a) The external review team shall review any evidence supporting the allegations and any information submitted by the provider.

(b) The external review team may conduct on-site evaluations to evaluate the quality of the program.

(c) Upon completion of the review, the external review team shall issue a report recommending to the EPSB continued approval of the institute or revocation of institute approval if the institute no longer

meets the standards and requirements for approval established in this administrative regulation.

(5) The provider shall receive a copy of the external review team's report and may file a response to the recommendation.

(6)

(a) The recommendation from the external review team and the provider's response shall be presented to the EPSB.

(b) The EPSB shall consider the findings and recommendations of the external review team and make a final determination regarding the approval of the institute.

Section 5. Reconsideration.

(1) If a provider seeks reconsideration of an EPSB decision, the provider shall submit a request within thirty (30) days of receipt of the EPSB official notification. A provider shall submit the request on the grounds that:

(a) A prescribed standard was disregarded;

(b) A procedure was not followed; or

(c) Evidence of compliance in place at the time of the review and favorable to the provider was not considered.

(2) A panel of no fewer than three (3) members shall be appointed by the EPSB chair from members of the EPSB who do not have a conflict of interest regarding the provider or institute. The panel[ad hoc committee] shall recommend action on the request to the full EPSB.

Section 6. Data Reports.

(1) The EPSB shall maintain data reports related to:

(a) Approval status of all EPSB approved Option 7 programs;

(b) Contact information for the person responsible for the institute;

(c) Year of last program review;

(d) Tables relating the institute total enrollment disaggregated by ethnicity and gender for the last three (3) years;

(e) Tables relating the institute faculty disaggregated by the number of full-time equivalents (FTE), ethnicity, and gender for the last three (3) years;

(f) Table of the number of program completers for the last three (3) years;

(g) Table relating pass rates on the required assessments;

(h) Table relating program completer satisfaction with the preparation program; and

(i) Table relating new teacher (under three (3) years) and supervisor satisfaction with the preparation program.

(2) A provider shall report to the EPSB staff at the end of each school year continuous improvement efforts relating to the institute.

Section 7. Temporary Provisional Certificate.

(1) An eligible candidate who meets the requirements of KRS 161.048(8)(a)[~~1- through 4-~~] and 16 KAR 2:010, Section 3(1), shall be issued a one (1) year provisional teaching certificate.

(2) The candidate shall apply to the EPSB and provide:

(a) Official transcripts of all college work undertaken by the candidate establishing proof of a bachelor's degree or graduate degree and grade point average; and

(b) [~~Proof of a passing score on the admission assessments as established in 16 KAR 5:020, unless the applicant holds a terminal degree;~~]

[(c)] [~~Proof of a passing score on the academic content assessment, as established in 16 KAR 6:010, in the area in which certification is being sought;~~]

[(d)] Verification by the institute provider of enrollment in an EPSB approved institute. [~~completion of half of the requisite institute hours; and~~]

[(e)] [~~Evidence of employment in a Kentucky school district or regionally- or nationally accredited nonpublic school in the content area of the certification.~~]

(3) A candidate shall be eligible for first renewal of the temporary provisional certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and verification[-]

[(a)] [Verification] of completion of:

(a)[~~1-~~] 240 hour institute for elementary or K-12 certification; or

(b)[~~2-~~] 180 hour institute for middle or high school certification.]; and]

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~~[(b)] [Evidence of employment in a Kentucky school district or regionally- or nationally accredited nonpublic school in the content area of the certification.]~~

~~(4) A candidate shall be eligible for subsequent renewal of the temporary provisional certificate upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and recommendation[successful completion of the following requirements:]~~

~~[(a)] [Evidence of employment in a Kentucky school district or regionally- or nationally accredited nonpublic school in the content area or areas indicated on the initial certificate; and]~~

~~[(b)] [Recommendation] from the institute provider based on continued enrollment, completion of mentoring, and progress towards the completion of the program.~~

~~[(5)] [If a candidate is required to complete an internship in accordance with KRS 161.030, the candidate shall complete the required assessments as established in 16 KAR 6:010 prior to issuance of the final temporary provisional certificate and shall complete the internship during the final temporary provisional certificate.]~~

~~[(6)] A candidate for exceptional children or interdisciplinary early childhood certification employed in a public school may only renew the temporary provisional certificate two (2) times.~~

~~[(7)] All other candidates may renew the temporary provisional certificate four (4) times.~~

Section 8. Professional Certificate.

(1) Upon completion of all program requirements established in this administrative regulation, and successfully completing one (1) year of teaching, the applicant may apply for the professional certificate.

(2) Prior to issuance of the professional certificate, the candidate shall obtain a passing score on the requisite assessments[pedagogy assessment], as established in 16 KAR 6:010, for the certificate being sought.

(3) Upon application to the EPSB, compliance with 16 KAR 2:010, Section 3(1), and verification that a candidate has met all eligibility requirements for certificate issuance, the EPSB shall issue the candidate a professional certificate.

Section 9. Incorporation by Reference.

(1) "Guidelines for Submitting an Application to Provide an Alternative Route to Certification Institute (Option 7)", 2024[2022], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Education Professional Standards Board's Web site at <http://www.epsb.ky.gov/course/view.php?id=2>.

FILED WITH LRC: October 15, 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.

**FINANCE AND ADMINISTRATION CABINET
Teachers' Retirement System
(As Amended at ARRS, October 15, 2024)**

102 KAR 1:350. Full actuarial cost purchase.

RELATES TO: KRS 161.220(22), 161.440, 161.507, 161.515, 161.545, 161.5465, 161.547, 161.548, 161.549

STATUTORY AUTHORITY: KRS 161.310(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Board of Trustees of the ~~[Kentucky-]Teachers' Retirement System of the State of Kentucky~~[KTRS)] (TRS) to promulgate all administrative regulations for the administration of the funds of the retirement system. KRS 161.507, 161.515, 161.545, 161.5465, 161.547, 161.548, and 161.549 permit members to purchase service credit. These purchases of service credit are

purchasable at full actuarial cost as defined by KRS 161.220(22). This administrative regulation provides the interest rate to be accredited to members who make an advance payment for service credit at full actuarial cost prior to retirement and the method for paying the full actuarial cost of health insurance.

Section 1. Members who make an advance payment for service credit at full actuarial cost prior[at least one (1) month prior] to their effective retirement date shall be accredited regular interest against their payment(s) at the rate provided for members under KRS 161.220(13). This interest, as assigned under KRS 161.440, shall be accredited at the time of retirement when the final full actuarial cost purchase amount is reconciled and shall be subject to adjustment to reflect the actuarial experience of the retirement system.

Section 2. Unless coverage is waived, the full actuarial cost for health insurance shall be paid by the member as follows:

(1) Members shall not be required to pay in advance any lump sum amount towards health insurance in making a full actuarial cost service purchase.

(2) Members who are not otherwise eligible to retire prior to making a full actuarial cost service purchase shall pay the full amount of the health insurance premium plus any amount required under KRS 161.675(4)(b) until the date is reached that they would have been eligible to retire the account under KRS 161.600 without the purchase. Upon reaching the date at which the retiree would have been eligible to retire the account under KRS 161.600 without the purchase, the retiree shall be entitled to the monthly health insurance benefit supplement approved by the board for each year based upon their years of service credit excluding the full actuarial cost service purchased. The retiree shall continue to pay monthly to the retirement system any amount required under KRS 161.675(4)(b) and any difference between the supplement as described in the previous sentence and the full cost of the monthly premium.

(3) Members who are eligible to retire the account under KRS 161.600 prior to making a full actuarial cost service purchase shall, upon retirement, be entitled to the monthly health insurance benefit supplement approved by the board for each year based upon their years of service credit, excluding the full actuarial cost service purchased. The retiree shall pay to the retirement system monthly any amount required under KRS 161.675(4)(b) and any difference between the supplement as described in the previous sentence and the full cost of the monthly premium.

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CONTACT PERSON: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199, email Beau.Barnes@trs.ky.gov.

**FINANCE AND ADMINISTRATION CABINET
Teachers' Retirement System
(As Amended at ARRS, October 15, 2024)**

102 KAR 1:370. Annuitization and disbursement from supplemental benefit.

RELATES TO: KRS 161.220(13)(c), 161.635, 161.636

STATUTORY AUTHORITY: KRS 161.310(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310

requires the Board of Trustees of the Teachers' Retirement System of the State of Kentucky (TRS) to promulgate all administrative regulations for the administration of the funds of the retirement system. KRS 161.635 and 161.636 establish a supplemental benefit component for TRS 4 members. Under these statutes, the member may, upon retirement or subsequently, choose to have the accumulated contributions in the supplemental benefit component annuitized into a lifetime monthly retirement allowance or receive the actuarial equivalent under one (1) of the options established by the board pursuant to KRS 161.630 or take a distribution over a period

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certain or a full or partial refund. This administrative regulation provides the process for, and rules of, the annuitization of and disbursement from the supplemental component.

Section 1. Definition. (1) "TRS 4 members" means those individuals who establish membership in the retirement system on or after January 1, 2022.

Section 2. Upon retirement or subsequently, members may elect to annuitize into a lifetime monthly retirement allowance the total contributions to the supplemental benefit component in accordance with the actuarial assumptions and methods adopted by the board and in effect at the time of the member's retirement date. Members may also elect to annuitize a portion of the contributions to the supplemental benefit component and either receive a disbursement of the remaining contributions or leave the remaining balance in the supplemental benefit component to be accredited regular interest in accordance with KRS 161.220(13)(c). Members may not elect an annuity that provides a retirement allowance of less than \$100 per month unless that retirement annuity represents an annuitization of all the contributions to the supplemental benefit component.

Section 3. Upon retirement or subsequently, members may request distribution of all contributions to the supplemental benefit component, partial disbursements, or leave all or part of the contributions in the supplemental benefit component to be accredited interest in accordance with KRS 161.220(13)(c). Partial disbursements shall be in amounts not less than \$5,000 unless the remaining balance is less than \$5,000.

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CONTACT PERSON: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199, email Beau.Barnes@trs.ky.gov.

FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
(As Amended at ARRS, October 15, 2024)

105 KAR 1:140. Employer's administrative duties.

RELATES TO: KRS 16.505-16.652 [16.583, 16.645(18), 18A.095, 18A.105, 61.505-61.705 [61.546, 61.552(23), 61.560, 61.565, 61.569, 61.597, 61.598, 61.637(17), 61.675, 61.685, 61.702], 78.510-78.852 [78.545(33), (37), 78.616, 78.625, 78.652], 26 U.S.C. 401(a)(17), [(34), 403(b), 408(a), (b), [414(g)(6), 457(b),]3121(b)(10), 41 C.F.R. Part 105-64, [Pub. L. 104-191, Pub. L. 111-5, Div. A, Title XIII, Div. B, Title IV, 26 C.F.R. 31.3121(b)(10)-2, 29 C.F.R. 519.2(a),] 42 C.F.R. 423.504(b)(4)(vi), 45 C.F.R. Parts 160, 162, 164

STATUTORY AUTHORITY: KRS 61.505(1)(g) [16.645(18)], 61.565 [61.645(9)(e)], 61.675, [78.545(33),]78.625, 78.635

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority [61.645(9)(e) requires the Board of Trustees of the Kentucky Retirement Systems] to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with [necessary or proper in order to carry out the provisions of] KRS 16.505 to 16.652, 61.505, 61.510 to 61.705, and 78.510 to 78.852. Employers participating in the Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System are required by KRS 16.545, 16.645 [(18)], 61.543, 61.560, 61.565, 61.637, 61.675, [78.545(33), and] 61.702, 78.5536, 78.5540, 78.610, 78.615, 78.625, and 78.635 to make contributions to the [retirement] systems, [to] report creditable compensation and other information that the systems may require to the Kentucky Public Pensions Authority [retirement systems and other information that the Board of Trustees may require], and perform other duties and responsibilities as participating employers. [26 U.S.C. 401(a)(17) places a limit on the amount of creditable

compensation on which contributions may be made.] This administrative regulation sets out the administrative duties and reporting requirements for all participating employers [agencies].

Section 1. Definitions.

(1) "Classify" means to report an employee as full-time, part-time, seasonal, temporary, emergency, probationary, volunteer, intermittent, or interim.

(2) "Confidential member account information" means information or data that relates directly or indirectly to a member's account at the agency that is specific or unique to the member.

(3) "County Fee Employer" means county employers who report to the Kentucky Personnel Cabinet due to the population of their county.

(4) "Employer Self-Service Web site" or "ESS Web site" means a secure agency Web site that:

(a) Allows employers to access its online employer account and employee information, download and submit forms, and provides other employer resources; and

(b) Allows some employers to perform reporting and contribution functions.

(5) "End of Year Report" or "EOY Report" means a school board's list of the classified participating and non-participating employees who were reported to the County Employees Retirement System during the school year that is used to average monthly work hours and determine service credit.

(6) "ESS Employer" means all employers as defined by KRS 16.505(3), 61.510(6), and 78.510(7), except a KHRIS Employer or a County Fee Employer.

(7) "Excess contributions" means employee contributions that exceed what is required by statute.

(8) "KHRIS" means Kentucky Human Resource Information System.

(9) "KHRIS Employer" means employers subject to KRS Chapter 18A.

(10) "Non-renewable" means a position created for a fixed period of time that cannot be filled, renewed, or reused after the fixed period of time has lapsed.

(11) "Personal identifiable information" or "PII" is defined by 41 C.F.R. Part 105-64.

(12) "Protected health information" or "PHI" is defined by 45 C.F.R. 160.103.

(13) "Supplemental Report" means a record-keeping tool used by County Fee Employers to report additional non-monetary monthly reporting details that cannot be submitted through KHRIS.

Section 2. Kentucky Public Pensions Authority Employer Reporting Manual. All employers shall follow the requirements and guidelines provided in the Kentucky Public Pensions Authority Employer Reporting Manual.

Section 3. ESS Web site and the Agency's Secure Email Portal.

(1) Each employer shall submit a valid Form 7851, Data Use and Reporting Agreement, completed by the agency head or agency reporting official prior to participating in the systems.

(2) Each employer shall submit a valid Form 7072, Reporting/Balancing Employer Acknowledgment, completed by the agency head or agency reporting official if it needs to designate a third-party entity to report employee information on behalf of the employer.

(3) Each employer shall have an employer administrator to grant and revoke access and security levels to the employer's ESS Web site users. The employer shall submit a valid Form 7071, Employer Self-Service Employer Administrator Account Creation Request, to designate an employer administrator.

(a) The ESS Web site users designated by the employer administrator shall include a primary reporting official and an agency head, and may also include human resources contacts.

(b)

1. Semi-annually, the ESS Web site shall require the primary reporting official to verify contact information for the employer administrator, primary reporting official, human resources contact, and the agency head.

2. If [at any time] there are changes to contact information in

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this paragraph or other account information changes, the primary reporting official shall update the ESS Web site with the new information.

(c) An employer is responsible for all acts and omissions of authorized ESS Web site users, including the employer administrator and any ESS Web site user designated by the employer administrator in accordance with paragraph (a) of this subsection.

(d) An employer shall ensure that the primary reporting official or any other authorized user holds any password or other means for accessing the ESS Web site in a confidential manner and does not release them to any other person.

(4) The agency shall notify employers of the Web address for the ESS Web site and shall notify employers if the Web address of the ESS Web site changes.

(5) Employers required to submit reports through the ESS Web site, as **established/indicated** in Sections (4) through (5) of this administrative regulation, shall follow the instructions for submission as provided in the Kentucky Public Pensions Authority Employer Reporting Manual. Reports shall be submitted by:

[(1)] [Each employer shall submit the reports required under KRS 61.675 and KRS 78.625 electronically using the secure Kentucky Retirement Systems' Employer Self-Service Web site by:]

(a) The Enter Report Details Module through a series of ESS Web site screens used to enter monthly report details; or

(b) The Upload Detail File Module through an [Uploading an] electronic file upload on the ESS Web site.

1. To submit reports in the Upload Detail File Module, the employer's electronic file format **shall/must first** meet [that meets] the requirements of the Strategic Technology Advancements for the Retirement of Tomorrow (START) Employer Contribution Record Layout as provided in the Kentucky Public Pensions Authority Employer Reporting Manual. The employer shall submit a test file to the agency[retirement systems], which shall be reviewed for compliance with the requirements of the START Employer Contribution Record Layout.

2. If the test file is in compliance with the requirements of the START Employer Contribution Record Layout, the agency[retirement systems] shall certify the electronic file and inform the employer of the month when the employer may begin using the Upload Detail File Module [electronic file] for submitting reports.

3. If the test file is not in compliance with the requirements of the START Employer Contribution Record Layout, the agency[retirement systems] shall inform the employer of the needed corrections to the test file.

4. The employer shall not submit a report using the Upload Detail File Module [by electronic file pursuant to this subsection] until the test file is certified by the agency[retirement systems]. If the employer is unable to timely submit its reports in accordance with KRS 61.675 and 78.625 through the Upload Detailed File Module, the employer shall timely submit its reports **through/via** the Enter Report Details Module.

[(2)] [The retirement systems shall notify each employer of the Web address of the secure Kentucky Retirement Systems' Employer Self-Service Web site and shall notify each employer if the Web address of the secure Kentucky Retirement Systems' Employer Self-Service Web site changes.]

(6)

(a) An employer shall submit electronic mail containing confidential member account information, PII, or PHI only through the agency's secure electronic mail portal. The Kentucky Public Pensions Authority Employer Reporting Manual shall provide employers with information on how to register, access, and use the secure electronic mail portal.

(b) An employer shall ensure that the primary reporting official or any other authorized user holds any password or other means for accessing the electronic mail portal in a confidential manner and does not release them to any other person.

Section 4. Submitting Reports.

(1) Each employer shall submit the monthly reports required by KRS 61.675, 78.625, and this administrative regulation on or before the **tenth/10th** of the month following the period being reported.

Reports shall be submitted through:

(a) The ESS Web site, for ESS Employers;

(b) KHRIS, for County Fee Employers and KHRIS Employers; and

(c) An electronic file transfer in a system maintained by the Finance and Administration Cabinet, for the Kentucky Personnel Cabinet.

(2) Each County Fee Employer shall also submit a Supplemental Report through the ESS Web site.

(3) Each month, the agency shall provide detailed information to employers regarding the employer submitted reports from the previous month. If the agency notifies the employer of any errors, the employer shall resolve the errors prior to the employer's next report submission.

Section 5. Additional Reporting Requirements for School Boards.

(1) Each school board shall submit the EOY Report through the ESS Web site by the end of day twenty (20) calendar days following the end of the fiscal year.

(2) After reviewing the EOY Report and identifying any employee who may need a correction or adjustment to his or her record, the agency shall provide the school board with the following applicable report(s) that the school board shall complete and submit through the ESS Web site no later than the end of day November 15th of the same calendar year:

(a) An Exception Report, if an employee had employee contributions reported during the fiscal year, but did not average eighty (80) hours per month of actual worked time in the fiscal year;

(b) A Multiple Enrollment Report, if an employee was reported with multiple periods of employment or multiple positions of employment during the fiscal year requiring an additional breakdown of the total actual days worked;

(c) A Non-Participating Employees Report, if an employee was reported as non-participating during the fiscal year and had salary reported during the school year that appears to meet the definition of a regular full-time position employee; and

(d) An Error Listing Report, if:

1. An employee was included on the EOY report, but was not otherwise reported during the fiscal year;

2. An employee was reported during the fiscal year, but was not included on the EOY report; or

3. An employee had invalid data on the EOY report, including multiple records for the same employee or employees that do not have an account established with the agency.

(3) A penalty of \$1,000 shall be imposed on school boards who fail to submit the required reports within the time periods prescribed by this section. An additional penalty of \$250 per month may be imposed every month until the required reports are submitted.

Section 6. Full-time Employee and Non-participating Position Reporting.

(1) Each employer shall report:

(a) All employees in a regular full-time position;

(b) All employees in non-participating positions, except as provided in subsection (2) of this section; and

(c) Employees whose employment ended during the report month, including the employee's last day of paid employment and the reason the employment ended.

(2) Employers shall not report the following employees in non-participating positions:

(a) Student employees of public universities participating in the Kentucky Employees Retirement System who are enrolled as full-time students in a course of study at the university and who are:

1. Exempt from FICA withholding pursuant to 26 U.S.C. 3121(b)(10) and 26 C.F.R. 31.3121(b)(10)-2; or

2. Classified as full-time students throughout the fiscal year pursuant to 29 C.F.R. 519.2(a);

(b) Retired-reemployed school resource officers, sheriff's deputies, and police officers that are exempt from reporting under 105 KAR 1:390; and

(c) City managers and appointed local government officials in a retirement system, Mayors, or city legislative body members who elect not to participate in the systems by completing, and the

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employer submitting, Form 2012, Election or Rejection of Participation for Mayors and Members of City Legislative Bodies, prior to participation in the systems in accordance with KRS 78.540(1).

(3) Employees dually employed and participating in another state-administered retirement system shall also be reported to the applicable state-administered retirement system in accordance with its rules and regulations.

Section 7. Non-Participating Positions Classification.

(1) An employer shall not change an employee's position status for the same position from full-time to seasonal, temporary, emergency, probationary, or interim.

(2) An employer shall not change the classification of an employee from one (1) non-participating position status to another non-participating position status during a fiscal year, except an employer participating in the County Employees Retirement System may classify an employee as probationary pursuant to KRS 78.510(21)(d) in the same fiscal year that the employer classifies the employee as seasonal, emergency, or part-time.

(3)

(a) An employer shall classify an employee as holding a seasonal position pursuant to KRS 61.510(21)(a) and 78.510(21)(a) only if the position:

1. Is temporary in duration;
2. Coincides with one (1) or more particular season(s) of the year, which may recur regularly from year to year; and
3. Is limited to six (6) months for noncertified school board positions or nine (9) months for all other positions.

(b)

1. Except as provided in subparagraph 2. of this paragraph, if the employer classifies an employee as holding a seasonal position and the employment of the employee in the seasonal position is terminated after the period defined in paragraph (a)3. of this subsection, there shall be a three (3) calendar month break in employment before the employee may again hold a seasonal position.

2. If the employer is a school board that classifies an employee as holding a seasonal position and the employment of the employee in the seasonal position is terminated after the period defined in paragraph (a)3. of this subsection during a fiscal or calendar year, there shall be a six (6) calendar month break in employment before the employee may again hold the same seasonal position.

(4) An employer shall only classify an employee as holding an emergency position pursuant to KRS 61.510(21)(b) or 78.510(21)(b) if the position:

(a) Is created as a result of an emergency as determined by the employer for a period not to exceed thirty (30) working days, and is non-renewable; or

(b) Is created in direct relation to a state of emergency declared by the President of the United States or the Governor of Kentucky.

(5) An employer shall only classify an employee as holding a temporary position pursuant to KRS 61.510(21)(c) or 78.510(21)(c) if the position is nonrenewable and the period in which the position exists does not exceed nine (9) calendar months for positions in the Kentucky Employees Retirement System or twelve (12) calendar months for positions in the County Employees Retirement System.

(6) An employer participating in the Kentucky Employees Retirement System shall only classify an employee as holding an interim position pursuant to KRS 61.510(21)(e) if the position is created for a one (1) time or recurring need that does not exceed nine (9) months.

(7)

(a) Except as provided in paragraph (b) of this subsection, an employer shall only classify an employee as holding a part-time position pursuant to KRS 61.510(21)(d) or 78.510(21)(e) if the position requires less than an average of 100 hours per month of actual worked time in a calendar or fiscal year.

(b) School boards shall only classify a noncertified employee as holding a part-time position pursuant to KRS 78.510(21)(e) if the position requires less than an average of eighty (80) hours per month of actual worked time in a fiscal year.

(8)

(a) An employer shall only classify an employee as holding an intermittent position if the position requires a sporadic work schedule. Across a calendar or fiscal year, an intermittent position employee:

1. May or may not earn wages every month;
2. May qualify as a part-time position in accordance with subsection (7) of this section in some months; or
3. May qualify as a regular full-time position in some months.

(b) For non-school board employees:

1. If an employee's actual worked time averages less than 100 hours per month in a fiscal or calendar year, the employee shall be classified as non-participating.

2. If an employee's actual worked time averages more than 100 hours or more per month in a fiscal or calendar year, the employee shall be classified as participating.

(c) For school board employees:

1. If an employee's actual worked time averages less than eighty (80) hours per month in a fiscal year, the employee shall be classified as non-participating.

2. If an employee's actual worked time averages more than eighty (80) hours per month or more in a fiscal year, the employee shall be classified as participating.

(9)

(a) Except as provided in paragraph (b) of this subsection, an employer shall only classify an employee as holding a volunteer position if the employee meets the requirements of KRS 61.510(42) or 78.510(39).

(b) An employer shall only classify a retired member as a volunteer if the employee meets the requirements in KRS 61.510(42), 61.637(17)(e), 78.510(39), and 78.5540(4)(e) and 105 KAR 1:390.

(10) The agency shall have the authority to determine whether any employee or retired member designated as holding a non-participating position by an employer is an employee in a regular full-time position.

(a) If the employer initially reports the employee in a non-participating position and the agency subsequently determines that the employee worked or averaged the necessary hours, or otherwise meets the requirements to be classified as an employee in a regular full-time position, the employer and employee shall be billed for omitted service in accordance with KRS 61.552(2) and 78.545, except as provided in paragraph (b) of this subsection.

(b) For retired reemployed members, the agency shall adjust the previously reported records from non-participating to retired reemployed and the employer shall pay the employer contributions and, if applicable, health insurance contributions.

(11)

(a) Except as provided in subsections (c) and (d) of this section, hours worked and creditable compensation earned by an employee working in multiple positions with one (1) or more employers participating in the same system shall be combined in accordance with KRS 61.680 and 78.545 only for the following positions:

1. Regular full-time;
2. Part-time;
3. Intermittent; or
4. Volunteer, if the employee has a membership date prior to August 1, 2016.

(b) If multiple part-time positions, intermittent positions, or volunteer positions (for employees with a membership date prior to August 1, 2016) are combined under paragraph (a) of this subsection and, as a result, the employee averages the required hours for a regular full-time position, employer contributions and employee contributions (including any applicable health insurance contributions) shall be remitted in accordance with Section 9 of this administrative regulation.

(c) Hours worked and creditable compensation earned by an employee working in a seasonal, temporary, emergency, probationary, or interim position with an employer shall not be combined with any other regular full-time, part-time, intermittent, or volunteer position with an employer in the same system.

(d) Hours worked and creditable compensation earned by an employee who retires or terminates employment shall not be

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combined with hours worked and creditable compensation later earned by the employee if the employee reemploys with a participating employer during the same fiscal year.

Section 8. Independent Contractors and Leased Employees.

(1) Quasi-governmental employers, as defined in 105 KAR 1:451, shall report persons providing services as an independent contractor, leased employee, or other employment arrangement in accordance with KRS 61.5991 and 105 KAR 1:451.

(2) The agency shall have the full authority to determine whether any person designated as an independent contractor, leased employee, or non-employee by any employer:

(a) Is an employee in a regular full-time position required to participate in the systems prospectively; or

(b) Was an employee in a regular full-time position for previous periods that were not reported by the employer in accordance with KRS 16.543, 61.543, 61.675, 78.615, and 78.625, and this administrative regulation.

(3) The agency shall apply the common law factors used by the Internal Revenue Service, in accordance with IRS Publication 1779, to make the determination described in subsection (2) of this section. The agency may also consider rules issued by the United States Department of Labor for determining whether a worker is an employee or an independent contractor under federal wage and hour laws.

(4)

(a) The agency shall provide written notification to the employer if it determines that any person designated as an independent contractor, leased employee, or non-employee by the employer:

1. Is an employee in a regular full-time position required to participate in the systems prospectively; or

2. Was an employee in a regular full-time position for previous periods that were not reported by the employer in accordance with KRS 16.543, 61.543, 61.675, 78.615, and 78.625, and this administrative regulation.

(b) A notice provided in accordance with paragraph (a)2. of this subsection shall include a Form 4225, Verification of Past Employment. The employer shall complete and submit the Form 4225 by the end of day thirty (30) calendar days from the date the notice was provided.

(5)

(a) An employer shall remit all reports, records, contributions, and reimbursements for a person as an employee in a regular full-time position in accordance with KRS 61.675, KRS 78.625, and this administrative regulation effective the first day of the calendar month after the date the notification described in subsection (4)(a) of this section is provided.

(b) Once a Form 4225, Verification of Past Employment, is received, the agency shall notify the employer of the delinquent omitted employer contributions owed.

1. An employer shall remit the delinquent omitted employer contributions in accordance with KRS 61.552(2), 61.675(3)(b), 78.545, and 78.625(3) no later than the end of day on the last day of the calendar month following the month the notice is provided.

2. If an employer needs an extension or payment schedule for the delinquent omitted employer contributions owed, it shall contact the agency to request the extension or payment schedule for the delinquent omitted employer contributions owed.

Section 9. Employer, Employee, and Health Insurance Contributions.

(1)

(a) Each employer shall remit the employer and employee contributions, and the employer contributions and reimbursements for retiree health insurance premiums as required by KRS 61.675 and [KRS]78.625 no later than the end of day on the ~~tenth~~ ^{10th} calendar day of the month following the month being reported.

(b) Employers shall not remit employer or employee contributions for employees in a non-participating position unless required to do so pursuant to KRS 61.680(6) and 78.545.

(2) Required contributions as **established/indicated** in subsection (1) of this section shall be remitted:

(a) By ESS Employers:

1. Through[Electronically—using] the agency's secure ESS[Kentucky Retirement Systems' Employer Self Service] Web site;

2. [(b)] By mailing or hand delivering a check; [(c)] [By the eMARS system maintained by the Finance and Administration Cabinet;] or

3. [(d)] By wire transfer; and[-]
(b) By KHRIS Employers and County Fee Employers through a payment system maintained by the Finance and Administration Cabinet.

(3)
(a) Except as provided in subsection (b) of this section, if an employer fails to withhold from an employee's creditable compensation the full amount of contributions due from the employee in accordance with KRS 16.583, 61.543, 61.560, 61.597, 61.702, 78.5512, 78.5516, 78.5536, 78.610, or 78.615:

1. The agency shall notify the employer of the additional amount of employee contributions due from the employee;

2. The employer shall withhold the additional contributions due from the employee in accordance with KRS 16.545, 16.583, 61.543, 61.560, 61.597, 61.702, 78.5512, 78.5516, 78.5536, 78.610, or 78.615 from his or her creditable compensation and remit the additional contributions to the agency; and

(b)
1. If the employee is no longer employed by the employer, the employer shall notify the agency and the agency shall refund the incomplete employee contributions submitted by the employer on behalf of the employee to the employer, and the employer shall withhold the applicable taxes from the contributions and remit the remaining money to the employee.

2. If the contributions are refunded in accordance with this paragraph, then the agency shall provide the employee with:

a. Any interest credited on the incomplete employee contributions in accordance with KRS 61.575 or 78.640; and

b. Notification explaining the potential impact to his or her service credit and an invoice for omitted service in accordance with KRS 61.552(2) and 78.545. If the omitted service invoice is not paid, the employee may lose service credit for the month(s).

Section 10. Creditable Compensation.

(1) [(4)] The employer shall report all creditable compensation paid during a month no later than the end of day on [by] the tenth calendar day of the [following] month following the month being reported.

(2)
(a) If creditable compensation is being reported for a month other than the reporting month, the [The] employer shall designate the month to which the creditable compensation shall [should] be applied [if it is not the month for which the employer is reporting and if the].

(b) The report may need to reflect a month other than the reporting month if the creditable compensation [was] earned is from the month in which the employee:

- 1. Became employed;
- 2. Became eligible to participate in [one of] the systems [administered by Kentucky Retirement Systems];
- 3. Was transferred from a [to hazardous coverage from] nonhazardous position to a hazardous position [participation];
- 4. Was transferred from a hazardous position [coverage] to a nonhazardous position [participation];
- 5. Terminated from employment; or
- 6. Became ineligible to participate in [one (1) of] the systems [administered by Kentucky Retirement Systems].

(3)
(a)

1. **Except as provided in subparagraph 3. of this paragraph,** the employer shall submit a valid Form 7250, Verification of Payments Outside Regular Wages, prior to payment for creditable compensation paid as

[(b)] [If the employee is paid creditable compensation in] a lump sum, [or] nonrecurring payment, or other payment outside of regular wages, and [the employer] shall designate the reason for the lump sum, [or] nonrecurring payment, or other payment outside of regular

wages.

~~2. [4.] If the lump sum, [–or] nonrecurring payment, or other payment outside of regular wages is for [–was earned during] a specific time period, the employer shall designate the time period during which the lump sum, [–or] nonrecurring payment, or other payment outside of regular wages was or will be earned.~~

~~(b)~~

~~1. The agency shall review the Form 7250 and notify the employer of its findings. If the agency determines the wages are creditable compensation, the agency shall also indicate how the wages shall be reported.~~

~~2. If the employer fails to designate a specific time period during which the lump sum, [–or] nonrecurring payment, or other payment outside of regular wages was or will be earned in accordance with paragraph (a)2. of this subsection, the payment shall be considered a lump sum bonus pursuant to KRS 16.505(8), 61.510(13), or 78.510(13).~~

~~**3. The Form 7250 shall not be completed for creditable compensation paid as a result of reinstatement due to an Order from the Personnel Board, Labor Board, or Court.**~~

~~(4) Workers' compensation payments shall not be included in creditable compensation.~~

~~[(5)] [The provisions of subsection (1) of this section shall not apply to the Kentucky Personnel Cabinet or agencies that are reported by the Kentucky Personnel Cabinet.]~~

~~[(6)] [Each employer shall report employees who are regular full-time employees as defined by KRS 61.510(21) and 78.510(21) and shall remit employer and employee contributions for those employees.]~~

~~[(7)] [If an employer fails to withhold from an employee's creditable compensation the full amount of contributions due from the employee in accordance with KRS 16.583, 61.560, 61.597, or 61.702:]~~

~~[(a)] [The retirement systems shall notify the employer of the additional amount of employee contributions due from the employee:]~~

~~[(b)] [The employer shall withhold the additional contributions due from the employee in accordance with KRS 16.583, 61.560, 61.697, or 61.702 from the employee's creditable compensation and remit the additional contributions to the retirement systems:]~~

~~[(c)] [If the employee is no longer employed by the employer, the employer shall notify the retirement systems and the retirement systems shall refund the contributions submitted by the employer on behalf of the employee to the employer, which shall withhold the applicable taxes from the contributions and remit the remaining money to the employee; and]~~

~~[(d)] [If the contributions are refunded in accordance with paragraph (c) of this subsection, then that service credit shall be omitted service in accordance with KRS 61.552(23).]~~

~~[(8)] [Each employer shall report employees who are not regular full-time employees as defined by KRS 61.510(21) and 78.510(21), but shall not remit employer or employee contributions for those employees unless required to do so pursuant to KRS 61.680(6), except:]~~

~~[(a)] [Student employees of public universities participating in the Kentucky Employees Retirement System who are enrolled as full-time students in a course of study at the university and who are exempt from FICA withholding pursuant to 26 U.S.C. 3121(b)(10) and 26 C.F.R. 31.3121(b)(10)-2; and]~~

~~[(b)] [Student employees of public universities participating in the Kentucky Employees Retirement System who are enrolled as full-time students in a course of study at the university and are classified as full-time students throughout the fiscal year pursuant to 29 C.F.R. 519.2(a).]~~

~~[(9)]~~

~~[(a)] [An employer participating in Kentucky Employees Retirement System or County Employees Retirement System shall not classify an employee in more than one (1) non-participating position status during the fiscal year, except an employer participating in the County Employees Retirement System may classify an employee as probationary pursuant to KRS 78.510(21)(d) in the same fiscal year that the employer classifies the employee as seasonal, emergency, or part-time.]~~

~~[(b)] [An employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System shall not change an employee's position status from full-time to seasonal, temporary, or interim in the same fiscal year.]~~

~~[(c)] [An employer shall not classify an employee as a seasonal employee pursuant to KRS 61.510(21)(a) or 78.510(21)(a) unless the duties of the job can only be performed during a defined time period during a fiscal or calendar year. If the employer classifies an employee as seasonal and the employee is terminated after the defined time period during a fiscal or calendar year, there shall be a three (3) calendar month break in employment before the employer may again classify the employee as a seasonal employee, except for employers that are school boards. If an employer that is a school board classifies an employee as seasonal and the employee is terminated after the defined time period during a fiscal or calendar year, there shall be a six (6) calendar month break in employment before the employer may again classify the employee as a seasonal employee.]~~

~~[(d)] [If an employer violates the provisions of this subsection, the retirement systems shall determine if the employee worked or averaged the necessary hours to be in a regular full-time position as provided in KRS 61.510(21) or 78.510(21). If the employee worked or averaged the necessary hours to be in a regular full-time position as defined by KRS 78.510(21), the service credit shall be omitted service in accordance with KRS 61.552(23).]~~

~~[Section 2.]~~

~~[(1)] [Each employer shall submit electronic mail to the retirement systems by logging on to the Kentucky Retirement Systems' secure electronic mail server.]~~

~~[(2)]~~

~~[(a)] [If an employer submits personal information about its employees to the retirement systems in an unsecure electronic format or submits personal information regarding its employees intended to be submitted to the retirement systems to another person or entity by hand delivery, mail, fax, or in an electronic format; the employer shall notify affected employees in writing of the disclosure of personal information and provide information regarding obtaining credit reports.]~~

~~[(b)] [Personal information includes the member's first name or first initial and last name in combination with the member's:]~~

~~[1.] [Social Security number;]~~

~~[2.] [Driver's license number;]~~

~~[3.] [Personal Identification Number permitting access to the member's account; or]~~

~~[4.] [Medical Information.]~~

~~[(c)] [The retirement systems shall notify the employer of a disclosure upon discovery.]~~

~~[(d)] [The employer shall notify the retirement systems of a disclosure upon discovery.]~~

~~[(e)] [The employer shall submit a draft of the written notification to be made to affected employees to the retirement systems for approval or denial.]~~

~~[(f)] [The employer shall submit copies of the written notifications made to affected employees to the retirement systems after the notifications have been made.]~~

~~[(g)] [If the retirement systems is required by federal or state law to provide notification to affected members about the employer's disclosure of personal information or if the retirement systems determines that it should provide the notification to its affected members because of the nature or magnitude of the employer's disclosure, the employer shall reimburse the retirement systems for its costs in notifying members affected by the employer's disclosure.]~~

~~[(h)] [In transmitting any medically related personal information, the employer shall comply with all statutes and regulations comprising the Health Insurance Portability and Accountability Act of 1996 "HIPAA", Pub.L. 104-191 and the Health Information Technology for Economic and Clinical Health Act "HITECH", Pub.L. 111-5.]~~

~~[(i)] [Each employer shall execute a data use agreement with retirement systems.]~~

~~[Section 3.]~~

~~[(1)]~~

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~~[(a)] [The retirement systems shall submit an invoice to employers for any payments owed to the retirement systems, which were not paid through the normal monthly reports.]~~

~~[(b)] [The employer shall remit payment to the retirement systems by the due date provided on the invoice.]~~

~~[(2)] [The retirement systems may offset funds owed by the employer to the retirement systems with funds owed to the employer by the retirement systems.]~~

~~[Section 4.]~~

~~[(1)] [An employer shall pay interest at the rate adopted by the board for any creditable compensation paid as a result of an order of a court of competent jurisdiction, the Personnel Board, or the Human Rights Commission or for any creditable compensation paid in anticipation or settlement of an action before a court of competent jurisdiction, the Personnel Board, or the Human Rights Commission including notices of violations of state or federal wage and hour statutes or violations of state or federal discrimination statutes.]~~

~~[(2)] [The interest shall be assessed from the time period for which the creditable compensation has been reinstated.]~~

~~[Section 5.] [If an employer refuses to provide the retirement systems access to records or information requested in accordance with KRS 61.685 or does not respond to a request for information or records by the retirement systems, the retirement systems may, if appropriate, hold all payments of:]~~

~~[(1)] [Any funds due to the employer; or]~~

~~[(2)] [Refunds or initial retirement allowances to any employee or former employee of the employer whose refund or retirement may be affected by the records or information requested by the retirement system:]~~

Section 11. [Section 6.] Maximum Limits to Creditable Compensation.

(1) The agency shall provide the maximum annual compensation limit to employers.

(2) Effective only for the 1996 fiscal year, in determining the compensation of an employee eligible for consideration under this provision, the rules of 26 U.S.C. 414(g)(6) shall apply, except that in applying these rules, the term "family" shall include only the spouse of the employee and any lineal descendants of the employee who have not attained age nineteen (19) before the close of the fiscal year.

(3) Effective July 1, 1996, and before July 1, 2002, the creditable compensation on which contributions are reported shall not exceed the maximum annual compensation limit contained in 26 U.S.C. 401(a)(17), \$150,000, as adjusted for cost-of-living increases under 26 U.S.C. 401(a)(17)(B). [The retirement system shall notify employers of the maximum annual compensation limit.] Each employer shall report contributions on all creditable compensation up to the maximum annual limit. Once an employee's creditable compensation has reached the maximum annual limit, the employer shall continue to report the amount of the employee's creditable compensation in accordance with Section 10 of this administrative regulation, but shall not remit[report] any further employer or employee contributions on the employee's creditable compensation. [If excess contributions are erroneously reported, the retirement system shall refund the excess contributions to the employer for distribution to the employee after making payroll deductions in accordance with federal and state law.]

[(2)] [Effective only for the 1996 plan year, in determining the compensation of an employee eligible for consideration under this provision, the rules of 26 U.S.C. 414(g)(6) shall apply, except that in applying these rules, the term "family" shall include only the spouse of the member and any lineal descendants of the employee who have not attained age nineteen (19) before the close of the year.]

[(4)] [(3)] Effective with respect to fiscal[plan] years beginning on and after July 1, 2002, an employee's[a plan member's] annual compensation that exceeds \$200,000, [as adjusted for cost-of-living increases in accordance with 26 U.S.C. 401(a)(17)(B),] shall not be taken into account in determining benefits or contributions due for any fiscal[plan] year.

(a) Annual compensation shall include compensation during the fiscal[plan] year or any other consecutive twelve (12) calendar

month period over which compensation is otherwise determined under the plan (the determination period).

(b) If the determination period consists of fewer than twelve (12) months, the annual compensation limit shall be prorated based on the following for formula:

$$\text{The otherwise applicable annual compensation limit} \times \frac{\text{Number of months in the short determination period}}{12} = \text{The annual compensation limit}$$

(c) If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for this prior determination period shall be subject to the applicable annual compensation limit in effect for that prior period.

(d) The cost-of-living adjustment in effect for a calendar year shall apply to annual compensation for the determination period that begins with or within the calendar year. [If the determination period consists of fewer than twelve (12) months, the annual compensation limit shall be an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve (12). If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for this prior determination period shall be subject to the applicable annual compensation limit in effect for that prior period.]

(5)

[(4)] Creditable [A participating member may pay contributions for the creditable] compensation over the maximum annual compensation limit may be considered for the years used to determine the employee's[member's] final compensation for purposes of retirement if:

1. [(a)] The employee's[member's] creditable compensation has exceeded the maximum annual compensation limit contained in 26 U.S.C. 401(a)(17) in years prior to the fiscal year beginning July 1, 2002;

2. [(b)] The employee[member] has filed a notification of retirement; [and]

3. [(c)] The excess creditable compensation is within the maximum annual compensation limit applicable in 2002-2003; and

4. The employee has remitted payment of employee contributions on the excess creditable compensation at the rate proscribed by KRS 61.560, 61.702, 78.5536, and 78.610.

(b) Upon receipt of employee contributions, the agency[retirement systems] shall bill the employer for the employer contributions on the excess creditable compensation in accordance with KRS 61.565 and 78.635, and the employer shall remit the employer contributions to the agency[retirement systems].

(c) The excess creditable compensation shall only be included in retirement calculations if both the employee and employer have paid their respective contributions.

Section 12. Creditable Compensation Paid as a Result of an Order of a Court, the Personnel Board, or the Kentucky Commission on Human Rights.

(1) The employer or employee may submit the following for review of potential effects to the employee's account and compliance with KRS 16.505-16.592, 61.510-61.705, and 78.510-78.852 prior to the entry of the agreement or order:

(a) A proposed settlement agreement or draft order related to the resolution of a case pending before the Personnel Board, the Kentucky Commission on Human Rights, or a court of competent jurisdiction regarding employment disputes that may affect an employee's service with the systems; or

(b) An order of reinstatement of an employee pursuant to KRS 61.569 and 78.545.

(2) For creditable compensation paid as a result of an order by the Personnel Board under the authority of KRS 18A.095, by a court of competent jurisdiction, or by the Kentucky Commission on Human Rights:

(a) The creditable compensation shall be reported in accordance with Section 10 of this administrative regulation and shall be credited to the fiscal year during which the wages were

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earned or should have been paid by the employer;

(b) The employer shall pick-up the employee contributions as required by KRS 61.543, 61.560, 61.702, 78.5536, 78.610, and 78.615 for the designated period;

(c) The employer shall remit employer contributions as required by KRS 61.565 and 78.635 for the designated period; and

(d) The employer shall pay interest at the rate adopted by the Kentucky Retirement Systems or the County Employees Retirement System on the creditable compensation.

(3) The interest owed pursuant to subsection (2)(d) of this section shall be assessed beginning on the first day the designated period began or begins.

Section 13. Excess Contributions.

(1)

(a) Upon discovery that excess contributions have erroneously been remitted, the agency shall correct its record in compliance with KRS 61.685 and 78.545 by refunding the excess contributions, except as provided in paragraph (c) of this subsection.

(b) The employer shall withhold the applicable taxes from the employee contributions and remit the remaining money to the employee.

(c) The agency may withhold excess employer contributions to offset a payment owed to the systems.

(d) The agency shall provide the employee with any interest credited on the excess employee contributions in accordance with KRS 61.575 or 78.640.

(2) If an employee uses paid sick leave while awaiting workers' compensation and subsequently receives workers' compensation payments for the hours during which paid sick leave was previously reported, the employee contributions on the paid sick leave that have been reported to the agency shall be refunded, unless the employee has remitted the workers' compensation payments to the employer in exchange for the use of his or her paid sick leave.

Section 14. Death or Disability of a Participating Employee.

(1)

(a) Employers shall report the death of a participating employee through the ESS Web site. Employers may notify the agency of the death of a previous employee.

(b) Upon the employer's report of the death of an employee or retired member, the agency shall begin the process of determining death benefits as provided in KRS 16.601, 61.621, 61.630, 61.640, 61.703, 61.705, 78.545, 78.5532, 78.5534, and 78.5538.

(c) ~~If in the event of~~ a death ~~that~~ is due to an act in line of duty or is duty-related, the employer shall add a comment to the death notice indicating this and shall complete and submit a valid Form 6800, Application for Duty Related/In Line of Duty Death Benefits. The employer shall also provide to the deceased employee's beneficiary or representative of the deceased employees' estate or trust, or submit to the agency:

1. The employer death investigation report;

2. A detailed position description or a valid Form 8030, Employer Job Description;

3. Certification or documentation of the employee's last day of paid employment; and

4. Any additional information requested by the agency or a third-party vendor on its behalf.

(2) ~~If in the event of~~ an employee files a ~~an~~ employee's claim for disability retirement benefits, the employer shall comply with the provisions of KRS 16.582, 61.600, 61.621, 61.665, 78.545, 78.5522, 78.5524, and 105 KAR 1:210, 105 KAR 1:310, and 105 KAR 1:455, and submit to the agency:

(a) A valid Form 8030, Employer Job Description and, if the employee was injured on the job, a copy of the incident report;

(b) Certification or documentation of the employee's last day of paid employment;

(c) Information regarding the employee's request for reasonable accommodations as required by KRS 61.665(2)(a), 61.665(2)(b), and 78.545; and

(d) Any additional information regarding the employee's job duties and reasonable accommodations upon request by the agency or a third-party vendor on its behalf.

Section 15. Retirement and Other Reporting Requirements for Participating Employers.

(1)

(a) The Form 6000, Notification of Retirement, **Employer Certification of Leave Balances and Final Salary** ~~Section H~~ shall be completed by the employer when an employee files for retirement in accordance with KRS 16.582, 61.600, 61.590, 78.545, 78.5522, and 78.5524. The employer shall certify the employee's leave balances and final salary, including any anticipated salary through the employee's termination date yet to be reported to the agency.

(b) The employer shall complete and provide the valid Form 6000, **Employer Certification of Leave Balances and Final Salary** ~~Section H~~, signed by the designated Agency Reporting Official, to the employee or through ESS **no later than thirty (30) days prior to the employee's effective retirement date as provided on the Form 6000.**

(2) The employer shall submit personnel actions prior to September 15, 2011 on a valid Form 2020, Advice of Personnel Action.

(3) Each employer shall complete and file a valid Form 2023, Leave Without Pay Verification, when an employee begins and ends a period of leave without pay.

(4) ~~If an~~ ~~at any time the~~ employee provides a Form 2035, Beneficiary Designation, to his or her employer, the employer shall forward the Form 2035 to the agency immediately upon receipt.

(5) If either of the following forms are provided to the employer, it shall submit the completed applicable form by the end of day thirty (30) calendar days from the date the form was provided:

(a) A Form 6487, Request for Member Pension Spiking Exemption Amounts in accordance with 105 KAR 1:142, Section 4; or

(b) A Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement, in accordance with 105 KAR 1:142, Section 3.

(6) If the agency is notified or becomes aware of past employment for which a member did not receive service credit, the agency shall provide the employer with a Form 4225, Verification of Past Employment, to certify dates, hours, wages, and the position classification for the past employment. The employer shall complete and submit the valid Form 4225 by the end of day thirty (30) calendar days from the date the Form 4225 was provided.

(7) An employer shall submit any additional information requested by the agency, including a position description or any other documentation deemed necessary by the agency to ensure employer compliance with KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852.

Section 16. Felony Charges Related to Employment. Employers shall notify the agency when an employee hired on or after August 1, 2000, is convicted of a felony related to his or her employment.

Section 17. Employer Cooperation with the Agency.

(1) If an ESS Employer or County Fee Employer refuses to provide the agency access to records or information requested in accordance with KRS 61.685 and 78.545, or does not respond to a request for information or records by the agency, the agency may, if appropriate, hold payments of:

(a) Any funds due to the employer; or

(b) Refunds or initial retirement allowances to an employee or former employee of the employer whose refund or retirement may be affected by the records or information requested by the agency.

(2) The agency may conduct an audit of the employer in accordance with KRS 61.675(2) and 78.625(5) to determine compliance with the provisions of KRS 16.505-16.652, 61.610-61.705, or 78.510-78.852.

[Section 7.]

[(1)] [For members retiring on or after January 1, 2014, but prior to July 1, 2017, the retirement systems shall determine if annual increases in a member's creditable compensation greater than ten (10) percent occurred over the member's last five (5) fiscal years of employment.]

[(a)] [For each of the member's last five (5) fiscal years of

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employment, the retirement systems shall multiply the member's creditable compensation for the previous fiscal year by 110 percent. If the member's creditable compensation in any of his or her last five (5) fiscal years of employment is greater than the member's creditable compensation for the previous fiscal year multiplied by 110 percent, the retirement systems shall determine that an annual increase in the member's creditable compensation greater than ten (10) percent has occurred.]

[(b)] [For purposes of performing the calculations in paragraph (a) of this subsection, the member's creditable compensation shall be annualized by dividing the member's creditable compensation for the fiscal year by the number of months of service credit, and multiplying by twelve (12).]

[(2)] [If the retirement systems determine that the member received annual increases in creditable compensation greater than ten (10) percent over his or her last five (5) fiscal years of employment, the retirement systems shall send written notice to the member's last participating employer of the retirement systems' determination that the member has experienced annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment, and the amount of the additional actuarial cost to the retirement systems attributable to the increases.]

[(3)] [If the employer believes that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment was due to a bona fide promotion or career advancement, the employer shall file a Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement, for a determination that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment were due to a bona fide promotion or career advancement. The Form 6481 shall be filed within sixty (60) days of the date on the notice. If the retirement systems had previously provided a determination that a change in position or hiring of the member would be a bona fide promotion or career advancement, the employer shall submit the determination and provide documentation that the increase in creditable compensation for that fiscal year was due to the employer implementing the proposed change in position or hiring.]

[(4)] [The employer shall provide any additional information requested by the retirement systems.]

[(5)] [The retirement systems may require the employer to make certifications regarding the information and documentation submitted.]

[(6)] [In determining if a change in position or hiring was a bona fide promotion or career advancement, the retirement systems shall consider the factors listed in KRS 61.598(1)(a).]

[(7)] [The retirement systems shall issue a final administrative decision in writing informing the employer whether the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment were due to a bona fide promotion or career advancement.]

[(8)] [If the employer fails to submit a Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement, within sixty (60) days of the date on the notice, the employer shall pay the additional actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment.]

[(9)] [If the employer disagrees with the final administrative decision by the retirement systems, the employer shall file a written request for an administrative hearing pursuant to KRS Chapter 13B within thirty (30) days of the date on the final administrative decision. The hearing shall be limited to the issue of whether the retirement systems correctly determined that the annual increases in the member's creditable compensation greater than ten (10) percent were not due to a bona fide promotion or career advancement.]

[(10)] [If the employer fails to file a written request for administrative hearing within thirty (30) days of the date on the final administrative decision, the employer shall pay the additional actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent

over the member's last five (5) fiscal years of employment.]

[(11)] [The retirement systems shall issue an invoice to the last participating employer representing the actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment. The employer may request that the retirement systems allow the employer to pay the cost over a period, not to exceed one (1) year, without interest and the retirement systems shall establish a payment plan for the employer.]

[(12)] [If the member was employed by more than one (1) participating employer when the member retired, the actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment shall be divided equally among the member's last participating employers.]

[(13)] [An employer who is required to pay the additional actuarial cost pursuant to KRS 61.598 shall be treated as a participating employer in the system to which the employer is required to pay the additional actuarial cost solely for purposes of making the payment required pursuant to KRS 61.598.]

[Section 8.]

[(1)] [For members retiring on or after January 1, 2018, the retirement systems shall determine if annual increases in a member's creditable compensation greater than ten (10) percent occurred over the member's last five (5) fiscal years of employment.]

[(a)] [For each of the member's last five (5) fiscal years of employment, the retirement systems shall multiply the member's creditable compensation for the previous fiscal year by 110 percent. If the member's creditable compensation in any of his or her last five (5) fiscal years of employment is greater than the member's creditable compensation from the previous fiscal year multiplied by 110 percent, the retirement systems shall determine that an annual increase in the member's creditable compensation greater than ten (10) percent has occurred.]

[(b)] [The fiscal year immediately preceding the member's last five (5) fiscal years shall be used for comparison to determine if an increase in creditable compensation greater than ten (10) percent occurred in the initial fiscal year of the member's last five (5) fiscal years.]

[(c)] [For purposes of performing the calculations in paragraph (a) of this subsection, the member's creditable compensation shall be annualized by dividing the member's creditable compensation for the fiscal year by the number of months of service credit, and multiplying by twelve (12).]

[(2)] [The member shall receive a refund of all pre-tax and post-tax member contributions and interest directly attributable to the reduction in creditable compensation.]

[(a)] [Pre-tax member contributions shall be refunded to the member by the employer who picked up the contributions.]

[(b)] [Post-tax member contributions shall be refunded to the member directly from the retirement systems.]

[(c)] [Interest earned on pre-tax and post-tax member contributions shall be refunded to the member directly from the retirement systems.]

[Section 9.]

[(1)] [If the retirement systems determine that the member received annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment, the retirement systems shall send the member's employer the Form 6487, Request for Member Pension Spiking Exemption Amounts.]

[(a)] [Pursuant to KRS 16.645, 61.675, and 78.545, the employer shall furnish the information required by the retirement systems in the discharge of its duties. The employer shall complete the Form 6487 in its entirety and provide supporting documentation.]

[(b)] [The employer shall submit a completed Form 6487 at the retirement office within sixty (60) days from the date the Form 6487 was mailed. If the employer fails to submit a completed Form 6487 within that sixty (60) day time period, Kentucky Retirement Systems shall issue a final administrative decision and provide adjustment correspondence to the member.]

[(2)] [If the employer believes that the annual increases in

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creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment was not due to a bona fide promotion or career advancement, a lump-sum payment for compensatory time, a lump-sum payment made pursuant to alternate sick leave, leave without pay, overtime attributable to a state or federally funded grant, or overtime attributable to a state of emergency, the employer shall indicate on the Form 6487 that none of the listed exemptions are applicable.]

(a) [The employer shall report any increases in creditable compensation directly attributable to a lump-sum payment for compensatory time, a lump-sum payment made pursuant to alternate sick leave, or leave without pay during the employer's normal monthly reporting.]

(b) [If, upon review of the Form 6487, the employer believes that adjustments to the reported salaries are required, then the employer shall make those adjustments during the next monthly reporting cycle pursuant to KRS 16.645, 61.675, and 78.545.]

(3) [If the employer believes that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment was due to a bona fide promotion or career advancement, overtime attributable to a state or federally funded grant, or overtime attributable to a state of emergency, the employer shall include the salary directly attributable to each exemption in Part 2 of the Form 6487.]

(a) [If the employer believes that any of the salary is directly attributable to a bona fide promotion or career advancement, the employer shall complete Part 3 of the Form 6487.]

(b) [The employer shall provide an explanation and documentation supporting the assertion that the increase in creditable compensation resulted from a bona fide promotion or career advancement.]

(c) [In determining if a change in position or hiring was a bona fide promotion or career advancement, the retirement systems shall consider the factors listed in KRS 61.598(1)(a).]

(4) [The employer shall provide any additional information requested by the retirement systems. The retirement systems may require the employer to make certifications regarding the information and documentation submitted.]

(5) [If the increases in creditable compensation are not directly attributable to any of the listed exemptions and no reporting information needs to be corrected, then any annual increase in creditable compensation greater than ten (10) percent shall not be used to calculate the member's retirement allowance.]

(6) [The retirement systems shall not issue a refund to the employer for the excess employer contributions. The retirement systems shall utilize any employer contributions directly attributable to the reduction in creditable compensation to pay the unfunded liability of the pension fund in which the retiring member participated.]

Section 18.[Section 10.] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Kentucky Public Pensions Authority Employer Reporting Manual", July 2021;

(b) Form 2012, "Election or Rejection of Participation for Mayors and Members of City Legislative Bodies", March 2024;

(c) Form 2020, "Advice of Personnel Action", March 2024;

(d) Form 2023, "Leave Without Pay Verification", March 2024;

(e) Form 2035, "Beneficiary Designation", March 2024;

(f) Form 4225, "Verification of Past Employment", March 2024;

(g) Form 6000, "Notification of Retirement", June 2023;

(h) Form 6800, "Application for Duty Related/In Line of Duty Death Benefits", June 2023;

(i) Form 7071, "Employer Self Service Employer Administrator Account Creation Request", March 2024;

(j) Form 7072, "Reporting/Balancing Employer Acknowledgment", April 2021;

(k) Form 7250, "Verification of Payments Outside Regular Wages", September 2024;

(l) Form 7851, "Data Use and Reporting Agreement", March 2024; and

(m) Form 8030, "Employer Job Description", June 2023.

(a) [Form 6481, "Employer Request for Post-Determination of

Bona Fide Promotion or Career Advancement", July 2015; and] (b) [Form 6487, "Request for Member Pension Spiking Exemption Amounts", February 2018.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority, [Kentucky Retirement Systems, Perimeter Park West,] 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m. This material is also available on the Kentucky Public Pensions Authority's Web site at kyret.ky.gov.

FILED WITH LRC: October 15, 2024

CONTACT PERSON: Jessica Beaubien, Policy Specialist, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8570, fax (502) 696-8615, email Legal.Non-Advocacy@kyret.ky.gov.

FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
(As Amended at ARRS, October 15, 2024)

105 KAR 1:142. Limitations and exclusions on creditable compensation in the last five (5) fiscal years of service.

RELATES TO: KRS 16.645, 61.598, 61.645, 61.675, 78.545, 78.625, 78.782

STATUTORY AUTHORITY: KRS 61.505(1)(g), 61.598(6), 78.545

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. KRS 61.598(6) and 78.545 authorize the Kentucky Public Pensions Authority to promulgate an administrative regulation to administer the limitations and exclusions on increases in creditable compensation codified in KRS 61.598 and 78.545. This administrative regulation establishes limitations and exclusions on increases in creditable compensation in the last five (5) years of service for retiring members with a membership date prior to January 1, 2014 in accordance with KRS 61.598 and 78.545.

Section 1. Definition. "Member" means a member of the systems with a membership date prior to January 1, 2014.

Section 2. Determining Percentage Increases for Creditable Compensation.

(1) Except as provided in subsection (2) of this section, in accordance with KRS 61.598 and 78.545, the agency shall review each of the last five (5) fiscal years of the member's employment to determine if his or her creditable compensation in any of the last five (5) fiscal years increased by ten (10) percent or more compared to the immediately preceding fiscal year.

(a) The fiscal year immediately preceding the member's last five (5) fiscal years shall be used for comparison to determine if an increase in creditable compensation of ten (10) percent or more occurred in the initial fiscal year of the member's last five (5) fiscal years.

(b) For each of the member's last five (5) fiscal years of employment, the agency shall multiply the member's creditable compensation for the previous fiscal year by 110 percent. If the member's creditable compensation in any of his or her last five (5) fiscal years of employment is greater than the member's creditable compensation from the immediately preceding fiscal year multiplied by 110 percent, the agency shall determine that an annual increase in the member's creditable compensation greater than ten (10) percent has occurred.

(c) For purposes of performing the calculations in this subsection:

1. Only fiscal years in which the member was employed in a regular full-time position in at least one (1) full month of the fiscal year shall be considered; and

2. The member's creditable compensation shall be annualized by dividing the member's creditable compensation for the fiscal year

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by the number of months of service credit, and multiplying by twelve (12).

(2) For members with an effective retirement date on or after January 1, 2018:

(a) The agency shall not review creditable compensation earned by the member prior to July 1, 2017; and

(b) For members with an effective retirement date on or after June 29, 2021, if a reduction in the member's creditable compensation causes his or her monthly retirement allowance to decrease by twenty-five (25) dollars or more, the member's monthly retirement allowance shall only be reduced by the amount that exceeds \$24.99.

(3) The agency shall not consider the following changes in creditable compensation to be increases in creditable compensation:

(a) The employee was on leave without pay for any reason in the fiscal year(s) prior to the fiscal year that contained the increased creditable compensation for members with an effective retirement date on or after January 1, 2014, but prior to July 1, 2017; or

(b) Modifications to the accounting method for reporting employees in accordance with KRS 61.675, KRS 78.625, and 105 KAR 1:140.

Section 3. Final Administrative Determination for Members with an Effective Retirement Date on or after January 1, 2014, but Prior to July 1, 2017.

(1)

(a) Based on the review as provided in Section 2 of this administrative regulation, if the agency determines that the member's creditable compensation in any of the last five (5) fiscal years increased by more than ten (10) percent compared to the immediately preceding fiscal year, the agency shall provide written notice to the member's last participating employer of the agency's determination.

(b) If the member was employed by more than one (1) employer when the member retired, the agency shall provide written notice to each of the member's last participating employers.

(c) The written notice shall include:

1. A statement that the member's creditable compensation in one (1) or more of the last five (5) fiscal years increased by more than ten (10) percent compared to the prior fiscal year;

2. The fiscal year or fiscal years in which the creditable compensation increased by more than ten (10) percent compared to the immediately preceding fiscal year;

3. Details of each increase in creditable compensation; and

4. The amount of the additional actuarial cost to the systems attributable to the increase or increases in creditable compensation.

(2)

(a) ~~In order to indicate if the employer believes~~ that one (1) or more annual increases in creditable compensation greater than ten (10) percent in the member's last five (5) fiscal years of employment were due to a bona fide promotion or career advancement, by the end of day thirty (30) calendar days from the date the notice indicated in subsection (1) of this section was provided, the employer shall:

1. Complete and submit a valid Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement;

2. Submit predetermination documentation if the agency previously provided a determination that a change in position or hiring of the member would be a bona fide promotion or career advancement, and provide documentation that the increase in creditable compensation for that fiscal year was due to the employer implementing the proposed change in position or hiring;

3. Provide a copy of the personnel form with the date of the promotion or advancement, to verify an explanation, and documentation supporting the assertion that the increase in creditable compensation resulted from a bona fide promotion or career advancement, ~~if the employer believes~~ that any salary increase is directly attributable to a bona fide promotion or career advancement; and

4. Effective July 1, 2024, submit a copy of the personnel form with the date of increased rate of pay, an explanation, and

documentation supporting the assertion that the increase in rate of pay was authorized or funded by the legislative or administrative body of the employer or mandated in a collective bargaining agreement approved by the legislative body of the employer, if the bona fide promotion or career advancement resulted from an increase in creditable compensation for all employees in a specified class due to an increase in rate of pay authorized or funded by the legislative or administrative body of the employer or due to an increase in rate of pay mandated in a collective bargaining agreement approved by the legislative body of the employer.

(b) The employer shall report any increases in creditable compensation directly attributable to a lump-sum payment for compensatory time during the employer's normal monthly reporting in accordance with 105 KAR 1:140.

(3)

(a) The agency shall consider the following in determining if a change in position or hiring was a bona fide promotion or career advancement:

1. A valid Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement, submitted in accordance with subsection (2)(a) of this section; and

2. Supporting documentation submitted by the employer in accordance with subsection (2)(a) of this section.

(b)

1. The agency may require the employer to provide additional information or require the employer to make certifications regarding the information and documentation submitted.

2. In accordance with KRS 16.645, 61.675, 78.545, and 78.625, the employer shall provide any additional information and certifications requested by the agency under this paragraph by the end of day thirty (30) days from the date the request for additional information was provided.

(4) The employer shall pay the additional actuarial cost to the systems attributable to any annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment if the employer fails to comply with:

(a) Subsection (2) of this section; or

(b) Subsection (3)(b) of this section if additional information is requested in accordance with that subsection.

(5)

(a) If the employer timely submits a valid Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement, in accordance with subsection (3)(a) of this section, the agency shall issue a final administrative decision in writing informing the employer whether the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment were due to a bona fide promotion or career advancement.

(b) If the employer disagrees with the final administrative decision by the agency, the employer may appeal the decision in accordance with Section 6 of this administrative regulation.

(c) If the employer does not file a written request for administrative hearing timely as provided in Section 6 of this administrative regulation, the employer shall pay the additional actuarial cost to the systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment.

(6)

(a) If an employer is required to pay the additional actuarial cost to the systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment, the agency shall issue an invoice to the last employer representing the actuarial cost.

(b) If the member was employed by more than one (1) employer when the member retired, the actuarial cost to the systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment shall be divided equally among the member's last employers. Each of the member's last employers shall receive an invoice as provided in this subsection.

(c) An employer that receives an invoice may request that the agency allow the employer to pay the cost over a period, not to

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exceed one (1) year, without interest and the agency shall establish a payment plan for the employer.

(d) An employer that is required to pay the additional actuarial cost shall be treated as a participating employer in the system to which the employer is required to pay the additional actuarial cost solely for purposes of making the payment required pursuant to KRS 61.598 and 78.545.

Section 4. Exemption Determination Process for Members with an Effective Retirement Date on or after January 1, 2018.

(1) This section shall only apply to members with an effective retirement date on or after January 1, 2018.

(2) Exemptions shall include:

(a) Exemptions provided in KRS 61.598(4) and 78.545;

(b) A bona fide promotion or career advancement as defined in 105 KAR 1:001; or

(c) Overtime worked from May 28, 2020, through May 11, 2021, due to local government emergencies issued on or after May 28, 2020, but prior to October 5, 2020, regardless of whether or not the National Guard was mobilized for the entire period.

(3) If the agency review, as provided in Section 2 of this administrative regulation, determines that the member's creditable compensation in any of the last five (5) fiscal years increased by more than ten (10) percent compared to the immediately preceding fiscal year, the agency shall provide the member's employer the Form 6487, Request for Member Pension Spiking Exemption Amounts. If the reductions in the member's creditable compensation would result in reduction to the member's monthly retirement allowance of less than twenty-five (25) dollars per month or the actuarial equivalent, a Form 6487 shall not be provided.

(4) The employer shall complete and submit the valid Form 6487, Request for Member Pension Spiking Exemption Amounts, and provide supporting documentation as required by KRS 16.645, 61.675, and 78.625 by the end of day thirty (30) calendar days from the date the Form 6487 was provided.

(a) ~~In order~~ To indicate that none of the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment were due to an exemption as provided in subsection (2) of this section, the employer shall select that none of the listed exemptions are applicable on the Form 6487.

(b)

1. ~~In order~~ To indicate that one (1) or more of the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment were due to an exemption as provided in subsection (2) of this section, the employer shall select which of the listed exemption are applicable on the Form 6487. Except as provided in subsection (5)(a) of this section, the employer shall list the portion of the salary directly attributable to each exemption in the corresponding section of the Form 6487.

2.

a. ~~In order~~ To verify that one (1) or more salary increase is directly attributable to a bona fide promotion or career advancement, the employer shall provide a copy of the personnel form with the date of the promotion or advancement, an explanation, and documentation supporting the assertion that the increase in creditable compensation resulted from a bona fide promotion or career advancement.

b. Effective July 1, 2024, ~~In order~~ to verify that one (1) or more bona fide promotion or career advancement resulted from an increase in creditable compensation for all employees in a specified class due to an increase in rate of pay authorized or funded by the legislative or administrative body of the employer or due to an increase in rate of pay mandated in a collective bargaining agreement approved by the legislative body of the employer, the employer shall submit a copy of the personnel form with the date of increased rate of pay, an explanation, and documentation supporting the assertion that the increase in rate of pay was authorized or funded by the legislative or administrative body of the employer or mandated in a collective bargaining agreement approved by the legislative body of the employer.

c. ~~In order~~ To verify that one (1) or more salary increase is

directly attributable to overtime hours worked under a state or federal grant as prescribed in KRS 61.598(4)(e)1., a copy of the grant shall be submitted with the specific language in the grant requiring overtime highlighted or otherwise emphasized.

d. Except as provided in subsection (2)(c) of this section, ~~In order~~ to verify that one (1) or more salary increase is directly attributable to a local state of emergency where the Kentucky National Guard was mobilized as prescribed in KRS 61.598(4)(f)2., the applicable Executive Order number that mobilized the National Guard shall be provided.

(5)

(a) The employer shall report any increases in creditable compensation directly attributable to a lump-sum payment for compensatory time, a lump-sum payment made pursuant to alternate sick leave, or leave without pay during the employer's normal monthly reporting in accordance with 105 KAR 1:140.

(b) If, upon review by the employer of the Form 6487, Request for Member Pension Spiking Exemption Amounts, adjustments to the reported salaries are required, then the employer shall make those adjustments during the next monthly reporting cycle pursuant to KRS 16.645, 61.675, and 78.625.

(6)

(a) The agency may require the employer to provide additional information or require the employer to make certifications regarding the information and documentation submitted.

(b) In accordance with KRS 16.645, 61.675, and 78.625, the employer shall provide any additional information and certifications requested by the agency under this subsection by the end of day thirty (30) days from the date the request for additional information was provided.

(7)

(a) Following review of the completed Form 6487, Request for Member Pension Spiking Exemption Amounts, and any additional information and certifications, the agency shall make a final administrative decision in accordance with Section 5 of this administrative regulation.

(b) The agency shall issue a final administrative decision in accordance with Section 5 of this administrative regulation if:

1. A valid Form 6487 is not submitted timely in accordance with subsection (4) of this section; or

2. Additional information ~~is~~ requested in accordance with ~~that~~ subsection (6) of this section is not submitted timely.

Section 5. Final Administrative Decisions for Members with an Effective Retirement Date on or after January 1, 2018.

(1) This section shall only apply to members with an effective retirement date on or after January 1, 2018.

(2)

(a) If the agency determines an increase in creditable compensation of more than ten (10) percent over the immediately preceding fiscal year, as provided in Section 2 of this administrative regulation, is not directly attributable to any of the listed exemptions in Section 4(2) of this administrative regulation, and no reporting information needs to be corrected, then the increase in creditable compensation above ten (10) percent shall not be used to calculate the member's retirement allowance, unless the reductions in the member's creditable compensation would result in reduction to the member's monthly retirement allowance of less than twenty-five (25) dollars per month or the actuarial equivalent.

(b) The agency shall notify the member of the final administrative decision which shall provide the member's benefit adjustment details. If the member disagrees with the final administrative decision by the agency, he or she may appeal the decision in accordance with Section 6 of this administrative regulation.

(3) Pursuant to KRS 61.598(2)(c)2. and 78.545, the agency shall not issue a refund to the employer for the excess employer contributions. The agency shall utilize any employer contributions directly attributable to the reduction in creditable compensation to pay the unfunded liability of the pension fund in which the retiring member participated.

(4)

(a) Pursuant to KRS 61.598(2)(c)1. and 78.545, the member shall receive a refund of all pre-tax and post-tax member

contributions and interest directly attributable to the reduction in creditable compensation.

1. Pre-tax member contributions shall be refunded to the member by the employer that picked-up the contributions.
2. Post-tax member contributions shall be refunded to the member directly by the agency.
3. Interest earned on pre-tax and post-tax member contributions shall be refunded to the member directly by the agency.

(b)

1. If a member files an appeal in accordance with Section 6 of this administrative regulation, the refunds indicated in this subsection shall be placed on hold during the pendency of the appeal.
2. No additional interest shall accrue during the pendency of the appeal.

Section 6. Appeal.

(1)

(a) For members with an effective retirement date on or after January 1, 2014, but prior to July 1, 2017, pursuant to KRS 61.645(16) and 78.782(16), if the employer disagrees with the final administrative decision in accordance with Section 3 of this administrative regulation, the employer shall file a written request for an administrative hearing pursuant to KRS Chapter 13B by the end of day thirty (30) calendar days from the date of the final administrative decision.

(b) In accordance with KRS 61.598(7) and 78.545, the employer's right to appeal is limited to the issue of whether the agency correctly determined that the annual increases in the member's creditable compensation greater than ten (10) percent were not due to a bona fide promotion or career advancement.

(c) Pursuant to KRS Chapter 13B.090(7), the employer has the burden to show its entitlement to the benefit of not paying the additional actuarial costs related to the employer's appeal in accordance with this subsection, and the ultimate burden of persuasion on that issue.

(2)

(a) For members with an effective retirement date on or after January 1, 2018, pursuant to KRS 61.645(16) and 78.782(16), if the member disagrees with the final administrative decision by the agency in accordance with Section 5 of this administrative regulation, the member shall file a written request for an administrative hearing to be held in accordance with KRS Chapter 13B by the end of day thirty (30) calendar days from the date of the final administrative decision.

(b) The member's right to appeal is limited to the issue of whether the agency correctly determined that the annual increases in the member's creditable compensation were not due to one (1) of the exemptions found in KRS 61.598(4) and 78.545, and 105 KAR 1:001(14).

(c) Pursuant to KRS Chapter 13B.090(7), the agency has the burden to show the propriety of the agency action to remove or reduce benefits related to the member appeals in accordance with this subsection, and the ultimate burden of persuasion as to that issue.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form 6481, "Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement", ~~September~~ **June** 2024; and

(b) Form 6487, "Request for Member Pension Spiking Exemption Amounts", ~~September~~ **June** 2024.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m., or on the agency's Web site at kyret.ky.gov.

FILED WITH LRC: October 15, 2024

CONTACT PERSON: Jessica Beaubien, Policy Specialist, Kentucky Public Pension Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8570, fax (502) 696-8615, email Legal.Non-Advocacy@kyret.ky.gov.

FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
(As Amended at IJC on State Government, October 22, 2024)

105 KAR 1:411. Hospital and medical insurance for retired members and Kentucky Retirement Systems Insurance Fund Trust.

RELATES TO: KRS 16.505, 16.576(4), 61.505(1)(g), 61.510, 61.701, 61.702, 78.510, 78.5536, ~~304.17A-005~~, 26 U.S.C. ~~105-106~~ ~~105(b)~~, ~~406~~, 115, 213(d), ~~223~~, ~~18031~~, ~~18041~~, 42 U.S.C. 300bb-8(3), ~~300e~~, 1395y(b), Pub.L. 111-148

STATUTORY AUTHORITY: KRS 61.505(1)(g), 61.702, 78.5536
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 16.505 ~~through~~ ~~(e)~~ 16.652, 61.505, 61.510 ~~through~~ ~~(e)~~ 61.705, and 78.510 ~~through~~ ~~(e)~~ 78.852. KRS 61.702 and 78.5536 provide for the systems operated by the Kentucky Public Pensions Authority to offer hospital and medical insurance coverage to recipients (including retired members and some beneficiaries of deceased members), their spouses, and their disabled or dependent children, and require the promulgation of administrative regulations concerning requirements for medical insurance reimbursement programs. This administrative regulation establishes procedures for the administration of the hospital and medical insurance benefits provided by the Kentucky Retirement Systems and the County Employees Retirement System, as well as establishes eligibility requirements, necessary documentation for proof of insurance, deadlines for filing for reimbursement, and forms.

Section 1. Definitions.

(1) ["Agency" means:]

~~[(a)] [Prior to April 1, 2021, the Kentucky Retirement Systems, which administered the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System; and]~~

~~[(b)] [Beginning April 1, 2021, the Kentucky Public Pensions Authority, which is authorized to carry out the day-to-day administrative needs of the Kentucky Retirement Systems (comprised of the State Police Retirement System and the Kentucky Employees Retirement System) and the County Employees Retirement System.]~~

~~[(2)] ["Boards" means the Board of Trustees of the Kentucky Retirement Systems and the Board of Trustees of the County Employees Retirement System.]~~

~~[(3)] ["Complete" means all required sections of a form are filled out, the form has been fully executed by the recipient or the recipient's legal representative, and all supporting documentation required by the form is included with the form.]~~

~~[(4)] ["Dependent child" is defined by KRS 16.505(17) and 78.510(49).]~~

~~[(5)] "Eligible spouse and dependent children" means spouses and dependent children who are eligible to receive all or a portion of their premiums paid for by the boards in accordance with KRS 61.702 and 78.5536.~~

~~[(6)] ["File" means a form or document has been received at the retirement office by mail, fax, secure email, in-person delivery, or via Self Service on the Web site maintained by the agency (if available).]~~

~~[(7)] **"Hospital and medical insurance plan" means:**~~

~~**(a) A basic health benefit plan as defined by KRS 304.17A-005(4);**~~

~~**(b) A provider-sponsored integrated health delivery network as defined by KRS 304.17A-005(39);**~~

~~**(c) A self-insured health plan as defined by KRS 304.17A-005(43);**~~

~~**(d) A health maintenance organization contract that meets the requirements of 42 U.S.C. 300e;**~~

~~**(e) Other health benefit plan as defined by KRS 304.17A-005(22);**~~

~~**(f) A health savings account as permitted by 26 U.S.C. sec. 223;**~~

~~**(g) A health reimbursement arrangement or a similar**~~

account as permitted by 26 U.S.C. sec. 105 or 106; or

(h) A hospital and medical insurance premium reimbursement program where members purchase individual health insurance coverage through a health insurance exchange established under 42 U.S.C. sec. 18031 or 18041.

~~(3)~~ "MEM" means:

(a) A Medicare eligible member who is retired and reemployed:

1. With a participating employer that offers the member a hospital and medical insurance benefit; or

2. By a participating employer that is prevented from offering a hospital and medical benefit to the member as a condition of reemployment under KRS 70.293, 95.022, or 164.952; and

(b) A Medicare eligible member who is retired and whose spouse meets the following criteria:

1. The spouse is also a member;

2. The spouse is reemployed with a participating employer that offers the spouse a hospital and medical insurance benefit, or by a participating employer that is prevented from offering a hospital and medical benefit to the spouse as a condition of reemployment under KRS 70.293, 95.022, or 164.952; and

3. The spouse's hospital and medical insurance plan coverage is provided by the retired member's benefits pursuant to KRS 61.702(2) and 78.5536(2).

~~(4)~~~~(3)~~ "Months of service" is defined by KRS 61.702(1)(c) and 78.5536(1)(c).

~~(8)~~ ["Member" is defined by KRS 16.505(21), 61.510(8), and 78.510(8).]

~~(9)~~ ["Monthly contribution rate" means:]

~~(a)~~ [The amount determined by the boards as the maximum contribution the systems will pay toward the premium of a retired member who began participating in the systems on or before June 30, 2003; or]

~~(b)~~ [For a retired member who began participating in the system on or after July 1, 2003, the amount per month earned by the retired member based on years of service as provided in KRS 61.702(4)(e) and 78.5536(4)(e).]

~~(5)~~~~(4)~~ [(10)] "Premium" means the monthly dollar cost required to provide hospital and medical insurance plan coverage for a recipient, a recipient's spouse, or a disabled or dependent child.

~~(11)~~ ["Provide", if used in reference to a form or other document, means the agency makes a form or document available on its Web site (if appropriate) or, upon request by a recipient or other person, by mail, fax, secure email, or via Self Service on the Web site maintained by the agency (if available).]

~~(6)~~~~(5)~~ [(12)] "Qualifying event" means a change in life circumstances that:

(a) Meets the agency's requirement for a member to alter an existing hospital and medical insurance plan, or sign up for a new one outside of new or open enrollment if the alteration is consistent with the change; and

(b) Is included on the list of qualifying events provided annually to the members by the agency.

~~(13)~~ ["Recipient" is defined by KRS 16.505(26), 61.510(27), and 78.510(26).]

~~(14)~~ ["Retired member" is defined by KRS 16.505(11), 61.510(24), and 78.510(23).]

~~(15)~~ ["Retirement allowance" is defined by KRS 16.505(12), 61.510(16), and 78.510(16).]

~~(16)~~ ["Retirement office" is defined by KRS 16.505(28), 61.510(31), and 78.510(29).]

~~(17)~~ ["Systems" means the State Police Retirement System, the Kentucky Employees Retirement System, and the County Employees Retirement System.]

~~(7)~~~~(6)~~ [(18)] "Wellness" or "wellbeing promise" means an annual health assessment or screening that, if completed by the due date established by the Kentucky Employees' Health Plan[timely], provides a discounted insurance rate for the following fiscal year's health insurance plan premium.

Section 2. Trust Fund.

(1) Pursuant to KRS 61.701, fund assets shall be dedicated for use toward health benefits, as established provided in KRS 61.702 and 78.5536, and as permitted under 26 U.S.C. 105 and 106

of the United States Internal Revenue Code, to retired recipients and employees of employers participating in the systems. Certain dependents or beneficiaries shall be included, such as qualified beneficiaries as established described in 42 U.S.C. 300bb-8(3) of the United States Public Health Service Act.

(2) The boards may adopt a trust agreement and take all action authorized by KRS 61.701(6).

Section 3. Contribution Rates.

(1)

(a) The boards shall adopt monthly contribution rates for as follows:

1. Medicare eligible coverage;
2. Non-Medicare eligible coverage; and
3. MEM coverage.

(b) The boards may choose to adopt a monthly contribution rate for MEM coverage that is separate from the monthly contribution rate the boards adopt for Medicare and non-Medicare eligible coverage, or may choose to adopt a monthly contribution rate that is the same for Non-Medicare eligible coverage and MEM coverage.

(2) The boards shall adopt a contribution plan for each monthly contribution rate in subsection (1) of this section.

~~[(3)]~~ [The boards may adopt separate contribution rates for:]

~~[(a)]~~ [Tobacco and non-tobacco users; and]

~~[(b)]~~ [Wellness or wellbeing promise completion and incomplection.]

Section 4. Payments by the Boards.

(1)

(a) The monthly contribution rate paid by the boards towards premiums for a recipient or eligible spouse or dependent child shall not exceed the monthly contribution rate to which the recipient is entitled under KRS 61.702 and 78.5536.

(b) The actual amount the systems will pay toward a retired member's hospital and medical insurance plan premium, or his or her eligible spouse and dependent children's hospital and medical insurance plan premium, shall be is dependent on the membership date of the member.

1. Except as established provided in subparagraph 3. of this paragraph, if the membership date is prior to July 1, 2003, the systems shall will pay a percentage of the contribution rate toward the hospital and medical insurance plan premiums in accordance with KRS 61.702(4)(b) through [(d)] and 78.5536(b) through [(d)].

2. Except as established provided in subparagraph 3. of this paragraph, if the membership date is on or after July 1, 2003, the systems shall will pay a dollar amount of the contribution rate toward hospital and medical insurance plan premiums in accordance with KRS 61.702(4)(e) and 78.5536(4)(e).

3. For a member with a membership hire date that began July 1, 2003 through July 31, 2004, his or her hire date shall be used to determine if the hospital and medical insurance plan premiums are paid as a percentage of the single premium contribution rate as established prescribed in subparagraph 1. of this paragraph, or as a dollar amount of the contribution rate as established prescribed in subparagraph 2. of this paragraph.

(2) For a retired member who retired based on reciprocity with any other state-administered retirement system, the boards shall not pay more than a portion of the single monthly contribution rate for the hospital and medical insurance plan chosen by the retired member based on the retired member's service credit with the systems.

(3)

(a) A retired member who is not Medicare eligible or is a MEM may cross-reference health insurance coverage with a spouse enrolled in the same hospital and medical insurance plan.

(b) A retired member established identified in paragraph (a) of this subsection who has hazardous service and a membership date prior to July 1, 2003 may be able to use any unused portion of the monthly contribution rate the retired member is entitled to receive toward the premium cost attributable to the spouse, if the spouse's portion of the premium is not fully paid by the boards pursuant to KRS 61.702 and 78.5536.

(4) Pursuant to KRS 61.702(4)(d), 61.702(4)(e)5., 78.5536(4)(d), and 78.5536(4)(e)5., funds from the insurance trust

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fund or the 401(h) accounts provided for in KRS 61.702(3)(b) and 78.5536(3)(b) shall be used to pay ~~the determined~~[a] percentage of the monthly contribution rate for family coverage for eligible spouses and dependent children[~~as defined in KRS 16.505(17) and 78.510(49)~~].

(5)

(a) Members not eligible for Medicare who began participation in the system on or after July 1, 2003 and have accrued an additional full year of service as a participating employee beyond his or her career threshold may receive an additional five (5) dollar contribution toward monthly hospital and medical insurance premiums in accordance with KRS 61.702(4)(e)6.b. and 78.5536(4)(e)6.b.

(b)

1. If a member who is eligible for an additional five (5) dollar contribution pursuant to paragraph (a) of this subsection has service in multiple systems operated by the agency, each system in which the member participates that meets the requirements of KRS 61.702(4)(e)6.b.iii. and 78.5536(4)(e)6.b.iii shall pay a portion of the additional five (5) dollar contribution based on the percentage of the member's service in each system.

2. If a member who is eligible for an additional five (5) dollar contribution pursuant to paragraph (a) of this subsection has service in multiple systems operated by the agency, and not all of the systems in which the member participates meet the requirements of KRS 61.702(4)(e)6.b.iii. and 78.5536(4)(e)6.b.iii, only those systems that meet the requirements of KRS 61.702(4)(e)6.b.iii. and 78.5536(4)(e)6.b.iii shall pay a portion of the additional five (5) dollar contribution based on the percentage of the member's service in each system.

Section 5. Premiums Paid by Recipient.

(1) A recipient may be charged one (1) or more of the following monthly fees related to his or her hospital and medical insurance coverage:

(a) Tobacco user fee; and

(b) Wellness or wellbeing promise incompleteness fee.

(2) Any premium amount or fee that is not paid or payable by the insurance trust fund established under KRS 61.701 or a 401(h) account in accordance KRS 61.702 and 78.5536 shall be deducted from the monthly retirement allowance of the recipient.

(3)[(2)]

(a) If the amount of a premium or fee is not fully paid by the insurance trust fund established under KRS 61.701, a 401(h) account, and the recipient's monthly retirement allowance, then the recipient shall pay the balance of the premium monthly by electronic transfer of funds by completing and filing a valid[~~complete~~] Form 6131, Bank Draft Authorization for Direct Pay Accounts[~~at the retirement office~~].

(b) If a valid[~~complete~~] Form 6131, Bank Draft Authorization for Direct Pay Accounts, is required and is not filed[~~at the retirement office~~], then the recipient, the recipient's spouse, and any disabled or dependent children shall not be enrolled in a hospital and medical insurance plan established pursuant to KRS 61.702 and 78.5536.

(c)

1. If the electronic transfer of funds based on a valid[~~complete~~] Form 6131, Bank Draft Authorization for Direct Pay Accounts.[~~on file at the retirement office~~] fails, then the agency shall provide an invoice to the recipient.

2. If a recipient fails to remit the balance of the premium or fee by the date provided on the invoice, then the enrollment of the recipient, the recipient's spouse, and any disabled or dependent children in the hospital and medical insurance plan shall be cancelled the month after the last month the recipient paid the premium.

(d) If the hospital and medical insurance plan coverage of a recipient, the recipient's spouse, or any disabled or dependent children is cancelled pursuant to this subsection, the recipient shall not be eligible to enroll in a hospital and medical insurance plan established pursuant to KRS 61.702 and 78.5536 until the next open enrollment period for hospital and medical insurance plan coverage.

Section 6. Eligibility to Participate in Hospital and Medical Insurance Plans.

(1) A person shall not be eligible to participate in the hospital and medical insurance plans established pursuant to KRS 61.702 and 78.5536 until the person is a recipient of a monthly retirement allowance, except as established[~~provided~~] in KRS 16.576(4).

(2) A person who retires under disability retirement shall not be eligible to participate in the hospital and medical insurance plans established pursuant to KRS 61.702 and 78.5536 until the month the person receives his or her first monthly retirement allowance payment.

(3) A recipient's spouse, disabled child, or dependent child shall not be eligible to participate in the hospital and medical insurance plans established pursuant to KRS 61.702 and 78.5536 unless the recipient is participating in the hospital and medical insurance plans established pursuant to KRS 61.702 and 78.5536.

(4) An alternate payee shall not be eligible for participation in the hospital and medical insurance plans established pursuant to KRS 61.702 and 78.5536.

Section 7. Participation in a Hospital and Medical Insurance Plan.

(1) A recipient, spouse, or disabled or dependent child who is Medicare eligible, except individuals established[~~identified~~] in subsection (2) of this section, shall participate in the hospital and medical insurance plan established for Medicare eligible recipients pursuant to KRS 61.702 and 78.5536.

(2) MEMs, and spouses of MEMs and disabled or dependent children of MEMs who are Medicare eligible, shall participate in the group hospital and medical insurance plan established for MEMs pursuant to KRS 61.702(2)(b)3.b. and 78.5536(2)(b)3.b.[~~]~~

(3) A recipient, spouse, or disabled or dependent child who is not Medicare eligible shall participate in a non-Medicare eligible group hospital and medical insurance plan established pursuant to KRS 61.702 and 78.5536.

(4) If a recipient, spouse, or disabled or dependent child is eligible for Medicare but the other persons enrolled in a group hospital and medical insurance plan are not, then the recipient, spouse, or disabled or dependent child who is not eligible for Medicare may continue to participate in the non-Medicare eligible group hospital and medical insurance plan established pursuant to KRS 61.702 and 78.5536.

(5) Members established[~~identified~~] in subsections (1) through (4) of this section may waive enrollment in the hospital and medical insurance plan by filing:

(a) A completed KPPA Health Plans for Medicare Eligible Persons form, for Medicare eligible recipients; or

(b) A completed Retiree Health Insurance Enrollment/Change Form, for MEMs and non-Medicare eligible recipients.

(6) Members established[~~identified~~] in subsections (1) through (4) of this section who do not enroll in or waive the hospital and medical insurance plan shall be automatically enrolled in an appropriate default plan in accordance with Section 9 of this administrative regulation.

Section 8. Required Forms.

(1) If the boards use the group hospital and medical insurance provided by the Kentucky Department of Employee Insurance to provide health insurance coverage for its non-Medicare eligible recipients, spouses, disabled or dependent children, and MEMs, then the agency shall provide these recipients and MEMs with the Retiree Health Insurance Enrollment/Change Form, required for enrollment, waiver, or changes to the group hospital and medical insurance plan.

(2) On behalf of the boards, the agency shall arrange hospital and medical insurance coverage for Medicare eligible recipients, spouses, and disabled or dependent children, except MEMs. The agency shall provide these recipients with the KPPA Health Plans for Medicare Eligible Persons form, required for enrollment, waiver, or changes to the hospital and medical insurance plans.

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(3) The agency shall provide the Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, for recipients to complete to receive health insurance contributions toward an eligible spouse and dependent children who are between the ages of eighteen (18) and twenty-two (22).

Section 9. Default Plans.

(1) The boards shall adopt a default plan for new retired members upon initial enrollment, and for recipients who do not file a complete insurance enrollment form during annual open enrollment, if required.

(2) The boards shall adopt a default plan for retired members and recipients who are Medicare eligible, and a default plan for retired members and recipients who are non-Medicare eligible and recipients who are subject to 42 U.S.C. 1395y.

Section 10. Initial and Annual Enrollment and Qualifying Events.

(1)

(a) The recipient shall complete and file valid[complete] insurance enrollment forms as established[described] in Section 8 of this administrative regulation[~~at the retirement office~~] by the last day of the month the initial retirement allowance is paid.

(b) If the recipient fails to file the valid[complete] insurance enrollment forms as required by paragraph (a) of this subsection, the retired member shall be automatically enrolled in the appropriate default plan adopted by the boards as established[described] in Section 9 of this administrative regulation.

(c) If the recipient established[identified] in paragraph (a) of this subsection files the valid[completed] insurance enrollment forms as established[described] in Section 8 of this administrative regulation by the last day of the month in which he or she receives his or her initial retirement allowance payment, the retired member shall be enrolled in the selection indicated on the form effective the first day of the following month.

(2) If a recipient has a qualifying event, the recipient shall complete and file the valid[complete] insurance enrollment forms as established[described] in Section 8(1) or (2) of this administrative regulation[~~at the retirement office~~] within the time period established[prescribed] by state and federal law and the health insurance plan documents.

(3)

(a) If enrollment is mandatory:

1. The recipient shall complete and file the valid[complete] insurance enrollment forms as established[described] in Section 8 of this administrative regulation[~~at the retirement office~~] by the last day of the month of the annual open enrollment period; or[-]

2. If the recipient fails to file the complete insurance enrollment forms as required by subparagraph 1. of this paragraph, the recipient shall be automatically enrolled in the default plan adopted by the boards as established[described] in Section 9 of this administrative regulation.

(b) If enrollment is not mandatory:

1. The recipient may complete and file the valid[complete] insurance enrollment forms as established[described] in Section 8 of this administrative regulation[~~at the retirement office~~] by the last day of the month of the annual open enrollment period; or[-]

2. If the recipient does not file the valid[complete] insurance enrollment forms as required by subparagraph 1. of this paragraph, the recipient, and the recipient's spouse and disabled or dependent children as applicable, shall remain on the same plan with the same level of coverage as the previous plan year.

(4)

(a)

1. In order to receive health insurance contributions toward an eligible spouse or a dependent child who is between the ages of eighteen (18) and twenty-two (22), the recipient shall complete and file a valid[complete] Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, by the end-of-day on November 30th of the calendar year prior to the calendar year in which coverage is effective, regardless of whether enrollment is mandatory or not mandatory.

2. If a qualifying event results in a new eligible spouse or dependent child, in order to receive health insurance contributions toward the eligible spouse or a dependent child who is between the

ages of eighteen (18) and twenty-two (22), the recipient shall complete and file a valid[complete] Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, and:

a. To add a spouse, the recipient shall file a copy of the marriage certificate; and

b. To add a dependent child, the recipient shall file a copy of the child's birth certificate or a court order establishing legal or natural parenthood.

(b)

1. If the recipient does not file a valid[complete] Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, in accordance with paragraph (a) of this subsection, health insurance contributions shall not be paid toward the premiums for an eligible spouse or dependent children unless a complete Form 6256 is filed[~~at the retirement office~~] in the calendar year in which coverage is in effect.

2. If the recipient files a valid[complete] Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, between December 1 and December 31 of the calendar year prior to the calendar year in which coverage is effective, then health insurance contributions may be paid for an eligible spouse or a dependent child who is between the ages of eighteen (18) and twenty-two (22) as of January of the calendar year in which coverage is effective. If the health insurance contributions are not paid for an eligible spouse or a dependent child as of January of the calendar year in which coverage is effective, then health insurance contributions shall be paid starting in February of the calendar year in which coverage is effective and the recipient shall also be reimbursed for the January health insurance contributions for the eligible spouse or dependent child.

3. If the recipient files a valid[complete] Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions, prior to December 31 of the calendar year in which coverage is in effect, health insurance contributions shall be paid toward premiums for an eligible spouse or a dependent child who is between the ages of eighteen (18) and twenty-two (22) in any month in the calendar year in which coverage is effective after the valid Form 6256 is filed[~~at the retirement office~~]. If a valid[complete] Form 6256 is filed[~~at the retirement office~~] prior to December 31 of the calendar year in which coverage is in effect, the recipient shall also be reimbursed for up to three (3) months of health insurance contributions for the eligible spouse and dependent children.

Section 11. Changes in Spouse and Disabled or Dependent Child Eligibility.

(1) Recipients, spouses, and disabled or dependent children shall notify the agency of any change that may affect the eligibility of the spouse, disabled child, or dependent child to enroll in a hospital and medical insurance plan offered by the agency or the eligibility of the spouse or dependent child to have all or a portion of their premiums paid for by the boards in accordance with KRS 61.702 and 78.5536.

(2)

(a) The recipient shall repay any premiums that were paid by the boards after the spouse or dependent child ceased to be eligible to have all or portion of their premiums paid in accordance with KRS 61.702 and 78.5536.

(b) If the agency is unable to recover from the recipient the full amount of premiums paid in accordance with paragraph (a) of this subsection, the agency may withhold any remaining amount from the recipient's monthly retirement allowance payment.

(c) If the agency is not able to recover the full amount of the premiums paid in accordance with paragraphs (a) and (b) of this subsection, the agency may recover any remaining amount from the spouse or dependent child.

Section 12. Medical Insurance Reimbursement Plan for Recipients Living Outside of Kentucky.

(1) A recipient may participate in the medical insurance reimbursement plan pursuant to KRS 61.702(6) and 78.5536(6) if the recipient lives in an area outside of the coverage of the group hospital and medical insurance plans offered by the agency.

(2) The medical insurance reimbursement plan shall be

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available in any month the recipient:

- (a) Resides outside of Kentucky;
 - (b) Is not eligible for the same level of hospital and medical benefits as recipients who resided inside of Kentucky with the same Medicare status; and
 - (c) Has paid hospital and medical insurance plan premiums capable of being reimbursed.
- (3) Recipients eligible to participate in the medical insurance reimbursement plan shall be reimbursed up to the applicable monthly contribution rate for premiums paid for hospital and medical coverage less any premiums paid by the recipient's employer.

(4)

(a) In order to receive the applicable reimbursement, an eligible recipient shall complete and file a valid Form 6240, Application for Out of State Reimbursement for Medical Insurance, and as applicable a valid Form 6256, Designation of Spouse and/or Dependent Child for Health Insurance Contributions,~~[at the retirement office]~~ with one (1) or more of the following as proof of coverage and payment of premiums for hospital and medical insurance that covers the entire time period for the requested reimbursement:

1. A valid Form 6241, Employer Certification of Health Insurance for Health Insurance Reimbursement Plan, completed by the employer;

2. A valid Form 6242, Insurance Agency/Company Certification of Health Insurance for Health Insurance Reimbursement Plan, completed by the insurance agency or company;

3. A signed statement from the employer listing individuals covered, dates of hospital and medical insurance coverage, amount of premiums deducted from wages, and the cost of the single coverage; or

4. A signed statement or invoice from the insurance company listing individuals covered, the dates and cost of single hospital and medical insurance coverage, along with proof of payment such as a receipt or bank statement clearly indicating payment for the statement or invoice provided.

(b)

1. If any provided documentation is deemed insufficient by the agency, the agency may request additional proof of medical and hospital insurance coverage or payment.

2. The agency may verify the recipient's eligibility for reimbursement for hospital and medical insurance by requesting verification of coverage and payments directly from the insurance company indicated on the Form 6240, Application for Out of State Reimbursement for Medical Insurance.

(5) An eligible recipient may file for reimbursement quarterly each calendar year in accordance with subsection (4) of this section.

(6) If the eligible recipient files for reimbursement in accordance with subsection (4) of this section, the eligible recipient shall be reimbursed on the following schedule:

(a) In February, if all documentation is filed~~[at the retirement office]~~ by January 20;

(b) In May, if all documentation is filed~~[at the retirement office]~~ by April 20;

(c) In August, if all documentation is filed~~[at the retirement office]~~ by July 20; or

(d) In November, if all documentation is filed~~[at the retirement office]~~ by October 20.

(7) The agency shall not reimburse an eligible recipient for premiums for a calendar year in which the eligible recipient failed to file a request for reimbursement in accordance with subsection (4) of this section by March 20 of the following calendar year.

(8)

(a) If a recipient receives a payment from the agency that does not qualify as a premium reimbursement, the recipient shall return the payment to the agency at the retirement office.

(b) If the recipient fails to return the payment, the agency may withhold the payment from the recipient's monthly retirement allowance payment.

Section 13. Dollar Contribution Medical Insurance Reimbursement Plan for Recipients Hired on or after July 1, 2003.

(1)

(a) Except as ~~established~~ provided in paragraph (b) of this subsection, beginning January 1, 2003, a recipient with a hire date on or after July 1, 2003 may participate in the hospital and medical insurance dollar contribution reimbursement plan pursuant to KRS 61.702(6) and 78.5536(6), if the recipient chooses to purchase a hospital and medical insurance plan not provided by the systems.

(b) A recipient who retired with reciprocity with another state-administered retirement system in accordance with KRS 61.680 and 78.545 shall not be eligible for the hospital and medical insurance dollar contribution reimbursement plan ~~established~~ provided by KRS 61.702(6) and 78.6636(6) if the recipient elects to receive hospital and medical insurance coverage through another state-administered retirement system. The systems shall pay a pro rata share of the recipient's premium for hospital and medical insurance coverage in accordance with KRS 6.577, 21.427, and 105 KAR 1:020.

(2)

(a) Recipients eligible to participate in the dollar contribution medical insurance reimbursement plan shall be reimbursed up to the applicable monthly contribution rate for premiums paid for the cost of single hospital and medical insurance coverage~~[less any premiums paid by the recipient's employer].~~

(b)

1. The reimbursement ~~established~~ detailed in this subsection shall be retroactive to January 1, 2023.

2. A recipient who previously received reimbursement that was reduced based on premiums paid by the recipient's employer or who was denied reimbursement solely based on premiums paid by the recipient's employer shall be reimbursed for an amount equal to the difference between what is owed to the recipient under this subsection and what was previously paid to the recipient.

(3)

(a) In order to receive the applicable reimbursement, an eligible recipient shall complete and file a valid Form 6280, Application for Dollar Contribution Reimbursement for Medical Insurance,~~[at the retirement office]~~ with one (1) or more of the following as proof of payment of premiums for hospital and medical insurance coverage that covers the entire time period for the requested reimbursement:

1. A valid Form 6281, Employer Certification of Health Insurance for Dollar Contribution Reimbursement Plan, completed by the employer;

2. A valid Form 6282, Insurance Agency/Company Certification of Health Insurance for Dollar Contribution Reimbursement Plan, completed by the insurance agency or company;

3. A signed statement from the employer or state-administered retirement system listing individuals covered, dates of hospital and medical insurance coverage, amount of premiums deducted from wages, and the cost of the single coverage; or

4. A signed statement or invoice from the insurance company listing the individuals covered, dates, and cost of single hospital and medical insurance coverage~~[,]~~ along with proof of payment such as a receipt or bank statement clearly indicating payment for the statement or invoice provided.

(b)

1. If any provided documentation is deemed insufficient by the agency, the agency may request additional proof of medical and hospital insurance coverage or payment.

2. The agency may verify the recipient's eligibility for reimbursement for hospital and medical insurance by requesting verification of coverage and payments directly from the insurance company indicated on the Form 6280, Application for Dollar Contribution Reimbursement for Medical Insurance.

(4) An eligible recipient may file for reimbursement in accordance with subsection (3) of this section, quarterly each calendar year.

(5) If the eligible recipient files a request for reimbursement in accordance with subsection (3) of this section, the eligible recipient shall be reimbursed~~[on the following schedule]~~:

(a) In February, if all documentation is filed~~[at the retirement office]~~ by January 20;

(b) In May, if all documentation is filed~~[at the retirement office]~~ by April 20;

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(c) In August, if all documentation is filed[at the retirement office] by July 20; or

(d) In November, if all documentation is filed[at the retirement office] by October 20.

(6) The agency shall not reimburse an eligible recipient for premiums for a calendar year in which the eligible recipient failed to file a request for reimbursement in accordance with subsection (3) of this section by March 20 of the following calendar year.

(7)

(a) If a recipient receives a payment from the agency that does not qualify as a premium reimbursement, the recipient shall return the payment to the agency at the retirement office.

(b) If the recipient fails to return the payment, the agency may withhold the payment from the recipient's monthly retirement allowance payment.

Section 14. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form 6131, "Bank Draft Authorization for Direct Pay Accounts", April 2021;

(b) "KPPA Health Plans for Medicare Eligible Persons", September 2022;

(c) "Retiree Health Insurance Enrollment/Change Form", September 2022;

(d) Form 6240, "Application for Out of State Reimbursement for Medical Insurance," September 2022;

(e) Form 6241, "Employer Certification of Health Insurance for Health Insurance Reimbursement Plan", September 2022;

(f) Form 6242, "Insurance Agency/Company Certification of Health Insurance for Health Insurance Reimbursement Plan", September 2022;

(g) Form 6256, "Designation of Spouse and/or Dependent Child for Health Insurance Contributions", September 2022;

(h) Form 6280, "Application for Dollar Contribution Reimbursement for Medical Insurance", September 2023[2022];

(i) Form 6281, "Employer Certification of Health Insurance for Dollar Contribution Reimbursement Plan", June 2024[September 2022]; and

(j) Form 6282, "Insurance Agency/Company Certification of Health Insurance for Dollar Contribution Reimbursement Plan", September 2022.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or on the agency's Web site at kyret.ky.gov.

FILED WITH LRC: October 22, 2024

CONTACT PERSON: Jessica Beaubien, Policy Specialist, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8570, fax (502) 696-8615, email Legal.Non-Advocacy@kyret.ky.gov.

BOARDS AND COMMISSIONS

Board of Nursing

(As Amended at ARRS, October 15, 2024)

201 KAR 20:056. Advanced practice registered nurse licensure and certification requirements.

RELATES TO: KRS 218A.205(3)(h), (8), 314.011, 314.042, 314.091, 314.103, 314.109, 314.161, 314.475

STATUTORY AUTHORITY: KRS 218A.205(3)(h), (8), 314.042, 314.103, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3)(h) requires the board to establish by administrative regulation for licensees authorized to dispense or prescribe controlled substances the process for submitting a query on each applicant to the National Practitioner Data Bank. KRS 218A.205(8) requires the board to require for any applicant for an initial licensure that authorizes the prescribing or dispensing of controlled substances to complete a state and national criminal records check. KRS 314.131(1) authorizes the Board of Nursing to promulgate

administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.042 requires the licensure of an advanced practice registered nurse and authorizes the board to promulgate administrative regulations establishing licensing requirements. KRS 314.103 authorizes the board to require a criminal background investigation of an applicant or a nurse. This administrative regulation establishes the requirements for licensure, renewal, and reinstatement, education, and recognition of a national certifying organization.

Section 1. An applicant for licensure as an advanced practice registered nurse in Kentucky shall:

(1)

(a) Complete an Application for Licensure as an Advanced Practice Registered Nurse as required by 201 KAR 20:370, Section 1(1);

(b) Provide a copy of a current active registered nurse license or validation of registered nurse licensure if the state of licensure does not issue licensure cards;

(c) Submit the fee required by 201 KAR 20:240, Section 1(2)(j); and

(d) Comply with the requirements established in KRS 314.042 and this administrative regulation.

(2) If the applicant is applying only for a license as an advanced practice registered nurse, the applicant shall also:

(a) Provide a criminal record check by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI);

(b) Use the FBI Applicant Fingerprint Card;

(c) Pay any required fee to the KSP and the FBI;

(d) Complete the criminal record check within six (6) months of the date of the application; and

(e) If there are any misdemeanor or felony convictions, provide:

1. A certified or attested copy of the court record as required by 201 KAR 20:370, Section 1(3); and

2. A letter of explanation that addresses each conviction.

(3) An applicant shall not be licensed until:

(a) A report is received from the FBI pursuant to the request submitted under subsection (2) of this section and any conviction is addressed by the board; and

(b) A query is completed to the board's reporting agent to the National Practitioner Data Bank of the United States Department of Health and Human Services pursuant to KRS 218A.205(3)(h) and any relevant data on the applicant is received.

(4) An applicant shall provide evidence of completion of the jurisprudence examination required by KRS 314.042(1)(d).

Section 2. Education and Clinical Experience.

(1) An applicant for licensure as an advanced practice registered nurse shall complete an accredited education program that prepares a registered nurse for one (1) of the four (4) APRN roles established under Section ~~13(5)~~ ~~12(5)~~ of this administrative regulation and clinical experience. This program shall conform to 201 KAR 20:062 or its substantial equivalence if from an out of state program.

(2)

(a) If the applicant for licensure as an advanced practice registered nurse completed a program of study after January 1, 2005, the applicant shall hold a master's degree, doctorate, or postmaster's certificate awarding academic credit by a college or university related to the advanced practice registered nurse designation.

(b) If the applicant for licensure as an advanced practice registered nurse completed a program of study before January 1, 2005, the program shall be evaluated by the board on an individual basis to find if the program sufficiently prepares a student for advanced practice registered nursing by complying with the requirements of 201 KAR 20:062.

Section 3. National Certifying Organizations.

(1) A nationally established organization or agency ~~that~~ ~~which~~ certifies registered nurses for advanced practice registered nursing shall be recognized by the board if it meets the following criteria:

(a) The certifying body is an established national nursing organization or a subdivision of this type of organization;

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- (b) Eligibility requirements for certification are delineated;
 - (c) Certification is offered in a role as established in KRS 314.042(6)(a)[defined by KRS 314.042(2)(a)] and in a population focus as defined by KRS 314.011 and with primary or acute care competencies;
 - (d) Scope and standards of practice statements are promulgated;
 - (e) Mechanism for determining continuing competency is established; and
 - (f) The certifying body is accredited by the American Board of Nursing Specialties or the National Commission for Certifying Agencies.
- (2) The board recognizes the following national certifying organizations:
- (a) American Nurses Credentialing Center;
 - (b) American Midwifery Certification Board;
 - (c) National Board of Certification and Recertification for Nurse Anesthetists;
 - (d) Pediatric Nursing Certification Board;
 - (e) National Certification Corporation;
 - (f) American Academy of Nurse Practitioners Certification Board; and
 - (g) American Association of Critical-Care Nurses Certification Corporation.
- (3) The board recognizes the Oncology Nursing Certification Corporation only for an individual who has received certification prior to December 15, 2010, and who has continually renewed his or her Kentucky advanced practice registered nurse license since that date.

Section 4. Practice Pending Licensure.

- (1) A registered nurse who meets all of the requirements for practice as an advanced practice registered nurse, and who holds a registered nurse temporary work permit issued pursuant to 201 KAR 20:110 pending licensure by endorsement or a privilege to practice as a registered nurse, shall be authorized to practice as an advanced practice registered nurse for a period of time not to exceed the expiration date of the temporary work permit.
- (2) Authorization to practice pursuant to this section shall be in the form of a letter from the board acknowledging that the applicant has met all the requirements of this section. An applicant shall not practice until the authorization letter has been issued.
- (3) An individual authorized to practice pursuant to subsection (1) of this section may use the title "advanced practice registered nurse" or "APRN[Applicant" or "APRN-App.]".

Section 5. Provisional License.

- (1) An applicant who meets the requirements of KRS 314.042(2) may request a provisional license by completing the application for licensure required by Section 1 of this administrative regulation.
- (2)
- (a) The board shall issue the provisional license to the applicant after the requirements of Section 1[4(1)] of this administrative regulation are met, but not until the report is received from the FBI and any conviction is addressed by the board.
 - (b) In the case of a graduate of a foreign nursing school, the board shall issue the provisional license after the requirements of 201 KAR 20:480 are met.
 - (3) The applicant shall not prescribe medications and shall only practice under a mentorship with an advanced practice registered nurse or a physician.
 - (a) To qualify as a mentorship pursuant to KRS 314.042(3), the APRN or physician responsible for the applicant shall be physically present and immediately available to the applicant during work hours while the applicant holds a provisional license; and
 - (b) The APRN or physician mentoring the applicant shall be currently licensed in Kentucky.
 - (4) Upon notification to the board that the applicant has failed the national certification exam after two (2) attempts, the provisional license shall be voided. The applicant shall:
 - (a) Notify the board within forty-eight (48) hours; and;
 - (b) Cease practicing under the provisional license provided by this section.
 - (5) An individual authorized to practice pursuant to subsection

(1) of this section may use the title "advanced practice registered nurse applicant" or "APRNA".

(6) A provisional license shall be valid for a period not to exceed six (6) months.

Section 6.[Section 5.] License Renewal.

- (1) The advanced practice registered nurse license shall expire or lapse when the registered nurse license or privilege expires or lapses.
- (2) To be eligible for renewal of the license as an advanced practice registered nurse, the applicant shall:
- (a) Renew the registered nurse license or privilege on an active status;
 - (b) Submit a completed Annual Licensure Renewal Application: RN and APRN or a completed Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky) form, as applicable, and as required by 201 KAR 20:370, Section 1(1);
 - (c) Submit the current renewal application fee, as established in 201 KAR 20:240, Section 1(2)(k); and
 - (d) Maintain current certification by a recognized national certifying organization.
- (3) An advanced practice registered nurse who fails to renew the registered nurse license or privilege or is otherwise unable to legally practice as a registered nurse shall not practice as or use the title of advanced practice registered nurse until:
- (a) A current active license has been issued by the board or a privilege is recognized by the board; and
 - (b) The advanced practice registered nurse license has been reinstated.
- (4) An advanced practice registered nurse shall provide to the board evidence of current certification by a recognized national certifying organization upon recertification or at the request of the board.

Section 7.[Section 6.] License Reinstatement.

- (1) If a nurse fails to renew the advanced practice registered nurse license as prescribed by KRS 314.042 and this administrative regulation, the license shall lapse on the last day of the licensure period.
- (2) To be eligible for reinstatement of the advanced practice registered nurse license, the applicant shall:
- (a) Submit a completed Application for Licensure as an Advanced Practice Registered Nurse form as required by 201 KAR 20:370, Section 1(1);
 - (b) Submit the current reinstatement application fee, as established in 201 KAR 20:240, Section 1(2)(l); and
 - (c) Maintain and submit evidence of current certification by a recognized national certifying organization.
- (3) If the applicant is applying for reinstatement of a license as an advanced practice registered nurse, the applicant shall also:
- (a) Provide a criminal record check by the KSP and the FBI;
 - (b) Use the FBI Applicant Fingerprint Card;
 - (c) Pay any required fee to the KSP and the FBI;
 - (d) Complete the criminal record check within six (6) months of the date of the application; and
 - (e) If there are any misdemeanor or felony convictions, provide:
 - 1. A certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and
 - 2. A letter of explanation that addresses each conviction, if applicable.
- (4) The license shall not be issued until a report is received from the FBI and any conviction is addressed by the board.

Section 8.[Section 7.] Certification or Recertification.

- (1)
- (a) An advanced practice registered nurse (APRN) shall maintain current certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation throughout the licensure period.
 - (b) The APRN shall notify the board if current certification or recertification has been obtained and provide evidence of the

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certification or recertification prior to the expiration date.

(2)

(a) A nurse who fails to attain current, active certification or recertification from one (1) of the national organizations recognized in Section 3 of this administrative regulation shall not practice or use the title of advanced practice registered nurse (APRN) until current certification or recertification is obtained.

(b)

1. An APRN who does not provide evidence of current certification or recertification prior to its expiration date shall have the APRN license voided. This action shall not be considered to be a disciplinary action. The board shall send written notice to the APRN if the license has been voided.

2. The APRN may request a hearing on this action by submitting the request in writing. If a hearing is requested and the order of the board is adverse to the APRN, the board may impose the costs pursuant to 201 KAR 20:162, Section 7. If the action is upheld or not challenged, the APRN may seek reinstatement of the license in accordance with Section ~~7(6)~~ of this administrative regulation, except as provided in subparagraph 3 of this paragraph.

3. If, after the APRN license has been voided, the APRN provides evidence of current certification acquired before the certification expiration date and there are no complaints pending against the APRN pursuant to 201 KAR 20:161 that indicate that reinstatement would create an immediate danger to the public health, safety, or welfare, then the APRN shall meet the requirements of Section ~~7(6)~~ of this administrative regulation except for Section ~~7(4)(6(4))~~ of this administrative regulation. A license may be issued prior to receipt of the FBI report in such cases.

(3) An advanced practice registered nurse whose certification lapses or is not renewed by the appropriate national organization shall:

(a) Notify the board of that fact; and

(b) Not practice as or use the title of advanced practice registered nurse during the period of decertification.

Section 9.~~[Section 8-]~~

(1) An application shall be valid for a period of one (1) year from the date of submission to the board.

(2) After one (1) year from the date of application, the applicant shall be required to reapply.

Section 10.~~[Section 9-]~~ The requirements of this administrative regulation shall not prohibit the supervised practice of a nurse enrolled in:

(1) An accredited educational program for preparation for advanced practice registered nursing; or

(2) An advanced practice registered nurse refresher course.

Section 11.~~[Section 10-]~~ A registered nurse who holds himself or herself out as a clinical nurse specialist or is known as a clinical nurse specialist shall be required to be licensed as an advanced practice registered nurse if his or her practice includes the performance of advanced practice registered nursing.

Section 12.~~[Section 11-]~~ A nurse practicing as an advanced practice registered nurse who is not licensed as an advanced practice registered nurse by the board, an advanced practice registered nurse whose practice is inconsistent with the population focus to which he or she has been designated, or an advanced practice registered nurse who does not recertify and continues to practice as an advanced practice registered nurse shall be subject to the disciplinary procedures established in KRS 314.091.

Section 13.~~[Section 12-]~~ Dual Designations.

(1) An advanced practice registered nurse who wishes to practice in more than one (1) role designation shall complete an accredited educational program of study and clinical experience for each desired designation in compliance with the educational requirements established in KRS Chapter 314 and 201 KAR 20:062 and meet all the requirements for licensure for each designation.

(2) To apply for licensure for more than one (1) role designation, the applicant shall submit a separate application and fee for each desired designation.

(3) To renew each role designation, the APRN shall pay a separate licensure fee as set forth in 201 KAR 20:240, Section 1(2)(k).

(4) For the purposes of Section ~~8(2)(b)(7(2)(b))~~ of this administrative regulation, if the APRN does not provide evidence of current recertification in a role designation, then that role designation shall be voided. The license shall not be voided if the other role designation is maintained. All other provisions of Section ~~8(2)(b)(7(2)(b))~~ of this administrative regulation shall apply to the voided designation.

(5) Role designations shall be the Certified Registered Nurse Anesthetist, Certified Nurse Midwife, Certified Nurse Practitioner, and Clinical Nurse Specialist pursuant to KRS 314.042.

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CONTACT PERSON: Jeffrey R. Prather, General Counsel,
Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300,
Louisville, Kentucky 40222, (502) 338-2851,
Jeffrey.Prather@ky.gov.

BOARDS AND COMMISSIONS

Board of Nursing

(As Amended at ARRS, October 15, 2024)

201 KAR 20:215. Continuing competency requirements.

RELATES TO: KRS 194A.540, 218A.205(3)(i), 314.011(12), 314.042(11), 314.073, 314.991(1)-(3), 620.020(8)

STATUTORY AUTHORITY: KRS 218A.205(3)(i), 314.073, 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1), (2), and 314.073 require the Board of Nursing to promulgate administrative regulations to establish continuing competency requirements for nurses. This administrative regulation establishes the fees, procedures, and requirements for continuing competency for nurses.

Section 1. Definitions.

(1) "Contact hour" means fifty (50) minutes of an approved, organized learning experience.

(2) "Earning period" means November 1 through October 31 of a current licensure period.

(3) "Preceptor" means a nurse with demonstrated competence in a specific clinical area who serves as a role model and mentor to assist in the development and validation of the competencies of a nursing student or new employee.

Section 2.

(1) A licensee shall choose a method from Section 3 of this administrative regulation to validate his or her continued competency in nursing for each earning period.

(2) A licensee shall maintain the documentation of the method chosen.

(3) A licensee shall provide the documentation if directed by the board.

Section 3. Methods for continued competency validation as established in subsection (1) through (4) of this section shall be:

(1) Fourteen (14) contact hours of continuing education, which shall:

(a) Be from a provider approved by the board pursuant to 201 KAR 20:220;

(b) Be completed during the earning period; and

(c) Include the continuing education required by Section 5 of this administrative regulation;

(2) Current national certification or recertification and the continuing education required by Section 5 of this administrative regulation. The certification shall be related to the nurse's practice role and shall:

(a) Have been initially attained during the earning period;

(b) If issued for a period of time as evidenced by an expiration date, have been in effect during the entire earning period; or

(c) Have been recertified during the earning period;

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(3) The continuing education required by Section 5 of this administrative regulation and at least one (1) of the following during the earning period:

(a) Completion of a research project that is nursing-related:

1. As principal investigator, coinvestigator, or project director;
2. That is qualitative or quantitative in nature;
3. That utilizes a research methodology;
4. That increases knowledge, causes an improved outcome, or changes behavior; and

5. That is evidenced by an abstract of the project, which includes a summary of the findings;

(b) Publication of an article in a peer-reviewed health-related journal; or

(c) Participation as a preceptor for at least one (1) nursing student or new employee:

1. That has a preceptorship that shall be for at least 120 hours;
2. Requires a one (1) to one (1) relationship between the preceptor and the student or employee;
3. Authorizes the preceptor to train more than one (1) student or employee and to combine the hours to total 120 hours; and
4. Includes that the preceptorship shall be evidenced by submission of the Preceptor Continuing Education Verification Form completed by the educational institution or preceptor's supervisor; or

(4)

(a) Seven (7) hours of continuing education from a provider approved by the board pursuant to 201 KAR 20:220 and earned during the licensure period, which shall include the continuing education required by Section 5 of this administrative regulation if applicable; and

(b) A nursing employment evaluation that is satisfactory for continued employment.

1. The nurse shall submit the Nursing Continuing Education Employment Evaluation Form, completed and signed by the nurse's supervisor or employer, which shall cover a period of at least six (6) months during the earning period; or

2. The board may accept from the employer a standard employee evaluation, which covers a period of at least six (6) months during the earning period.

(5) Contact hours of continuing education earned for the methods of continued competency validation as established in subsection (1) or (4) of this section may be earned by:

(a)

1. A nursing continuing education presentation that is:

- a. Designed and developed by the presenter;
- b. Presented to nurses or other health professionals;
- c. Evidenced by a program brochure, course syllabi, or a letter from the offering provider identifying the licensee's participation as the presenter of the offering; and
- d. Offered by a provider approved pursuant to 201 KAR 20:220.

2. The number of contact hours that may be earned shall be twice the number of contact hours offered to an attendee of the presentation; or

(b) Successful completion of a postlicensure academic course at a college, university, or postsecondary vocational institution if related to nursing practice as determined by this subsection.

1. Contact hours shall be calculated as follows:

- a. One (1) semester or trimester hour of academic credit shall equal fifteen (15) contact hours; or
- b. One (1) quarter hour of academic credit shall equal twelve (12) contact hours.

2. The following courses shall be relevant to nursing practice:

- a. A nursing course, designated by a nursing course number, and beyond the prelicensure curriculum of the individual licensee; or
- b. An academic course that is applicable to the nurse's role and beyond the prelicensure curriculum of the individual licensee.

3. A licensee may request course review for approval of applicable nursing content pursuant to Section 7 of this administrative regulation.

4. If it is an academic course in which grades are given, the licensee shall achieve a grade of "C" or better, or a pass on a pass-fail grading system.

Section 4.

(1) A licensee shall provide documentation of the method used to validate continued competency if the licensee is the subject of a disciplinary complaint.

(2) A licensee shall provide documentation of the method used to validate continued competency if requested by the board pursuant to a random audit of licensees.

Section 5.

(1)

(a) An Advanced Practice Registered Nurse (APRN) shall earn a minimum of five (5) contact hours in pharmacology, as required by KRS ~~314.073(9)~~ **314.073(8)**.

(b) An APRN who is registered with the DEA and has a PDMP account, as defined by 201 KAR 20:057, Section 1(7), shall earn a minimum of five (5) contact hours in pharmacology, including at least three (3) contact hours on either pain management or addiction disorders.

(c) To qualify as pharmacology pursuant to KRS 314.073, content shall include drug specific information, safe prescribing practices, safe medication administration, prescribing methodologies, new administrative regulations, or similar topics.

(d) Objectives for the contact hours related to pharmacology shall be identified. Casual mention of medications or medical treatments shall not qualify.

(2) After June 27, 2023, and before the APRN's next scheduled DEA registration, an APRN who has a DEA registration shall earn a minimum of eight (8) hours on the subject of treating and managing patients with opioid or other substance use disorders, including the appropriate clinical use of all drugs approved by the Food and Drug Administration for the treatment of a substance use disorder.

(3) The following APRNs shall be deemed to have satisfied the earning requirement in subsection (2) of this section:

(a)

1. Those who graduated from an advanced practice nursing school within five (5) years prior to June 27, 2023, and have successfully completed a comprehensive curriculum that included at least eight (8) hours of training on the subject of treating and managing patients with opioid or other substance use disorders, including the appropriate clinical use of all drugs approved by the Food and Drug Administration for the treatment of a substance use disorder; or

2.

a. Those who have satisfied this training by earning a minimum of eight (8) hours of training on treatment and management of patients with opioid or other substance use disorders.

b. Past trainings on the treatment and management of patients with opioid or other substance use disorders may count towards an APRN meeting this requirement, including past DATA-Waiver trainings.

(b) In addition to continuing education providers approved by the board pursuant to 201 KAR 20:220, groups approved by the DEA or the Substance Abuse and Mental Health Services Administration (SAMHSA) may provide trainings that satisfy the earning requirement of subsection (2) of this section.

(4) Sexual assault nurse examiners shall earn the continuing education required by 201 KAR 20:411, Section 8.

(5) ~~[Registered nurses and licensed practical nurses]~~ **Nurses shall earn, the following one (1) time continuing education requirements, subject to the applicable timeframes established in subsection (8) of this section:** ~~[within three (3) years of licensure],~~

~~[a]~~ **A** ~~[a]~~ minimum of one and one-half (1.5) contact hours in pediatric abusive head trauma as required by KRS 314.073(6); ~~[; and]~~

~~[b]~~ **A** ~~[a]~~ minimum of three (3) contact hours on domestic violence~~[,]~~ and elder abuse, neglect, and exploitation as required by KRS 194A.540(9)(d);

~~[c]~~ **A** minimum of one (1) contact hour on Alzheimer's disease ~~and other forms of dementia as required by KRS 314.073(7); and~~ ~~[;]~~

~~[(6)]~~ ~~[Registered nurses, licensed practical nurses, and advanced practice registered nurses who hold an active nursing license on July 1, 2022, shall satisfy the continuing competency~~

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requirement in subsection (8) of this section on or before July 1, 2023.]

~~[(7)] [Registered nurses, licensed practical nurses, and advanced practice registered nurses who obtain licensure by examination, endorsement, or reinstatement after July 1, 2022, shall satisfy the continuing competency requirement in subsection (8) of this section within three (3) years of licensure.]~~

~~[(d)] [(8)] [Nurses shall earn a] A minimum of two (2) contact hours on the subject of suicide prevention, which shall consist of one (1) contact hour on suicide prevention generally, and one (1) contact hour that addresses:~~

~~1. [(a)] Chronic toxic stress and secondary traumatic stress potentially increasing the incidence of suicide amongst nurses;~~

~~2. [(b)] A confidential and standardized pathway to care for nurses that addresses screening, assessing, safety planning, referrals, and follow-up for nurses at risk for suicide;~~

~~3. [(e)] Systems of care, evidence-informed approaches, and best practices to reduce suicide rates; and~~

~~4. [(e)] Ethical legal considerations of caring for patients and nurses who are suicidal.~~

~~(6) Nurses who have satisfied each of the continuing education requirements in subsection (5) of this section on or before July 15, 2024, shall not be required to complete them again.~~

~~(7) Registered nurses, licensed practical nurses, and advanced practice registered nurses who hold an active nursing license on July 15, 2024, shall satisfy the continuing competency requirement in subsection (5)(c) of this section on or before October 31, 2027.~~

~~(8) The following licensees shall satisfy the continuing competency requirement in subsection (5) of this section within three (3) years of licensure:~~

~~(a) Registered nurses and licensed practical nurses who graduated from a Kentucky program of nursing that did not include the curriculum additions in 201 KAR 20:320, Section 6, and obtain licensure by examination or reinstatement after July 15, 2024;~~

~~(b) Advanced practice registered nurses who hold a privilege to practice as a registered nurse and obtain initial licensure after July 15, 2024; and~~

~~(c) Registered nurses and licensed practical nurses who have graduated from an out-of-state program of nursing and obtain licensure through examination, endorsement, or reinstatement after July 15, 2024.~~

~~(9) Medicinal cannabis practitioners and medicinal cannabis practitioner applicants shall earn the continuing education required by 201 KAR 20:067, Section 6.~~

Section 6.

(1)

A licensee shall maintain records to substantiate methods used to validate competency.

All records shall be retained for at least five (5) years following the current licensure period.

(2)

A licensee shall, upon request, furnish to the board or its staff, legible copies of the records required to be maintained by subsection (1) of this section, in electronic format to CE Broker, the continuing education tracking system utilized by the board, via <https://cebroker.com>.

Copies shall be furnished within twenty (20) days of the date a written request is sent to the last known email address of the licensee or applicant.

Failure to furnish records as required by this administrative regulation shall be cause for the issuance of a complaint pursuant to 201 KAR 20:161 for failure to comply with KRS 314.073(2).

(3)

Except as provided by paragraph (b) of this subsection, if a licensee has failed to comply with the continuing competency requirements, the licensee shall be allowed to rectify the noncompliance if he or she:

1. Meets the continuing competency requirements within ten (10) business days of notification of noncompliance; and

2. Enters a consent decree with the board pursuant to 201 KAR 20:161, Section 2(5), within ten (10) days of notification by the board.

The board shall issue a complaint pursuant to 201 KAR

20:161 if:

1. A licensee fails to furnish records as requested pursuant to subsection (2) of this section; or

2. There is evidence of fraud or deceit in procuring or attempting to procure a license to practice nursing.

A licensee who attends continuing education activities, whether as a presenter, participant, or student, shall attend the entire offering to be eligible to receive the number of contact hours for which the activity has been approved.

It shall be the responsibility of each licensee to select and participate in those continuing education activities that will meet the criteria for acceptable continuing education.

A licensee shall not repeat the same continuing education offering within a licensure period. The board shall determine whether a continued education offering is the same offering based upon the certificate of attendance from the offering that includes items such as the activity number, date, topic, and presenter.

Section 7.

A licensee may request an individual review of a nonapproved continuing education activity completed during the earning period if, within thirty (30) days after the expiration of the immediate past licensure period, the licensee has:

(a) Requested the review by submitting an Application for Individual Review; and

(b) Paid a fee of ten (10) dollars.

The review shall be based on generally accepted standards of adult education and shall be applicable to the nurse's role.

Approval of a nonapproved continuing education activity shall:

(a) Qualify it as having been obtained from an approved provider for the licensee requesting the review; and

(b) Be limited to the particular offering upon which the request for individual review is based.

The board may offer continuing education hours for programs sponsored by the board. These continuing education hours shall be found to have been obtained from an approved provider. The board shall comply with all applicable provider standards.

Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Individual Review", 9/2023;

(b) "Nursing Continuing Education Employment Evaluation Form", 9/2023; and

(c) "Preceptor Continuing Education Verification Form", 9/2023.

This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://kbn.ky.gov/document-library/Pages/default.aspx>.

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CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, Jeffrey.Prather@ky.gov.

BOARDS AND COMMISSIONS

Board of Nursing

(As Amended at ARRS, October 15, 2024)

201 KAR 20:390. Nursing Incentive Scholarship Fund.

RELATES TO: KRS 314.011, 314.025, 314.026, 314.027

STATUTORY AUTHORITY: KRS 314.026(1), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.025 through 314.027 authorize the Kentucky Nursing Incentive Scholarship Fund for Kentucky residents. KRS 314.026(1) requires the Board of Nursing to promulgate administrative regulations to implement and administer the scholarship fund. This administrative regulation implements the Kentucky Nursing Incentive Scholarship

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Fund Program and establishes the requirements relating to the program.

Section 1. Definitions.

(1) "Academic year" means[;]

[(a)] [For a registered nursing or graduate nursing program,] a twelve (12) month period beginning with a fall session[; and]

[(b)] [For a practical nursing program, the completion of the required program].

(2) "Board" is defined by KRS 314.011(1).

(3) "Graduate nursing education" means the pursuit of a master's degree, post-master's certificate, or doctoral degree.

(4) "Initial year award" means the first Nursing Incentive Scholarship Fund award received by an individual.

(5) "Kentucky resident" is defined by 13 KAR 2:045, Section 1(10).

(6)[(5)] "Program of nursing" means a prelicensure, BSN completion, or graduate program of nursing[; program].

(7)[(6)] "Subsequent year award" means any Nursing Incentive Scholarship Fund award other than an initial year award. "Successful academic progression" means, except during the last academic year preceding graduation:]

[(a)] [For a prelicensure or BSN completion nursing program, the completion of a minimum of twelve (12) credit hours per academic year of published requirements for the program of nursing and maintenance of a minimum grade point average, which would allow continuation in a program of nursing; or]

[(b)] [For a graduate nursing program, the completion of a minimum of nine (9) credit hours per academic year of published requirements for the program of nursing and maintenance of a minimum grade point average, which would allow continuation in the graduate program.]

Section 2. Application.

(1) To be eligible for a nursing incentive scholarship, an applicant shall:

(a) Be a Kentucky resident[; and]

(b) Have been accepted for admission to a program of nursing[;];

and

(c)

1. Have attained a sufficient point ranking pursuant to under

Section 3 of this administrative regulation for initial year award eligibility; or and

2. [(d)] Have met the requirements in Section 4 of this administrative regulation for subsequent year award eligibility.

(2) An applicant shall submit:

(a) A completed Nursing Incentive Scholarship Fund Application on or before [June 8] May 1;

(b) For initial year award applicants, a[A] copy of the [Student Aid Report from the] Free Application for Federal Student Aid (FAFSA) Submission Summary for the current year, listing the applicant's Student Aid Index calculation, if requesting preference for financial need;

(c) A copy of the program of nursing acceptance letter verifying initial enrollment;

(d) For initial year award[newly enrolled nursing] applicants, an official transcript from the last academic institution in which the applicant was enrolled for verification of GPA or copy of a GED; and

(e) For subsequent year award applicants, a document issued by the program of nursing verifying[applicants enrolled in a program of nursing, a copy of an official transcript to verify continued] enrollment.

Section 3. Criteria for an Initial Year Award[Awards]. The board shall consider the following criteria in evaluating an application for an initial year award and shall allocate[award] points as follows:

(1) Preference categories as established in KRS 314.025(2):

(a) Licensed practical nurses, fifteen (15) points;

(b) Registered nurses pursuing a bachelor's degree or graduate nursing education, fifteen (15) points;

(c) [Prelicensure nursing]Nursing students who have not been issued a nursing license, ten (10) points; and

(d) Financially needy Kentucky residents, up to thirty-five (35) points. Financial need shall be determined by the Student Aid Index

(SAI) calculation listed on the applicant's Free Application for Federal Student Aid (FAFSA) Submission Summary for the current year, [estimated Federal Expected Family Contribution (EFC) as calculated by the annual FAFSA] and points shall be awarded based on need-based aid eligibility as follows:

1. SAI[EFC] of negative \$1,500[\$0] to \$3,500[\$5000], thirty-five (35) points;

2. SAI[EFC] of \$3,501[5001] to \$8,500[10,000], thirty (30) points; and

3. SAI[EFC] of \$8,501[10,001] to \$18,500[20,000], twenty-five (25) points;

(2) Potential for academic success, as follows: high school, vocational school, college, or university grade point average for whichever institution the applicant most recently attended:

(a) Three and five-tenths (3.5) to four (4.0), twenty-five (25) points;

(b) Three (3) to three and four-tenths (3.4), twenty (20) points; and

(c) Two and five-tenths (2.5) to two and nine-tenths (2.9), fifteen (15) points; and

(3) Potential for academic success when GED is earned in place of a high school diploma:

(a) A GED score of 601 to 800, twenty-five (25) points;

(b) A GED score of 501 to 600, twenty (20) points; and

(c) A GED score of 401 to 500, fifteen (15) points.

Section 4. Criteria for a Subsequent Year Award.

(1) Except as established in subsection (2) of this section, a past recipient of a Nursing Incentive Scholarship Fund award shall be eligible to receive a subsequent year award if the recipient:

(a) Is enrolled in a program of nursing;

(b) Is not in default as to a prior Nursing Incentive Scholarship award; and

(c) Submits to the board a completed Nursing Incentive Scholarship Fund Application on or before May 1.

(2) If combined awards to past recipients are projected to exceed the current fund balance, past recipient eligibility shall be based on level of education of the program of nursing in which the applicant is enrolled, first being a prelicensure LPN program of nursing, second being a prelicensure non-BSN RN program of nursing, third being a BSN program of nursing, and fourth being a graduate degree program of nursing.

Section 5.[Section 4.] Amount of Award.

(1) The board shall be notified by the board's fiscal officer as to the current fund balance prior to making an award.

(2)

(a) The board shall first make awards to those recipients who:

1. Received an award previously[in the previous year]; and

2. Remain eligible to receive an award pursuant to Sections[Section]2 and 4[6] of this administrative regulation in the current year.

(b) If funds remain available after the awards are made pursuant to paragraph (a) of this subsection, the board shall make an award to other eligible applicants.

Section 6.[Section 5.] Procedure for Disbursement of Awards.

(1) Prior to disbursement of funds, each year that funds are disbursed, the recipient shall sign a Nursing Incentive Scholarship Fund Contract and Promissory Note.

(2) Disbursement of funds shall be made directly to the recipient's [recipient]bank account via automated clearing house electronic funds transfer.

(3)[(2)] Disbursement shall be made annually.

[(3)] [Each educational institution in which a student receiving a nursing incentive scholarship award is enrolled shall certify to the board no later than thirty (30) days from the beginning of each semester, that the recipient:]

[(a)] [Has enrolled; and]

[(b)] [Is in good standing in the nursing program.]

[Section 6.] [Continuing Eligibility Criteria.]

[(1)] [Except as established in subsection (3) of this section, a recipient of a nursing incentive scholarship shall be eligible to

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continue to receive an award if the recipient:]

~~[(a)] [Maintains successful academic progression through the program; and]~~

~~[(b)] [Submits to the board a completed Nursing Incentive Scholarship Fund Application on or before June 8.]~~

~~[(2)] [The educational institution shall immediately notify the board of a change in a recipient's enrollment status.]~~

~~[(3)] [An award recipient in a practical nursing program shall not be eligible for further awards from the Nursing Incentive Scholarship Fund while enrolled in that program.]~~

~~[Section 7.] [Disbursement Contract.]~~

~~[(1)] [Prior to disbursement of initial funds, the recipient shall sign a Nursing Incentive Scholarship Fund Contract.]~~

~~[(2)] [The recipient shall sign a Nursing Incentive Scholarship Fund Promissory Note for each year in which funds are disbursed.]~~

~~Section 7.] [Section 8.] Repayment and Deferral.~~

~~(1) A recipient shall immediately become liable to the board to pay the sum of all scholarships received and the accrued interest on the scholarships if the recipient fails to complete the:~~

~~(a) Nursing program in which he or she is enrolled within the time established by the program of nursing; or~~

~~(b) Required employment as established in the contract.~~

~~(2) Written notification of demand for repayment shall be sent by the board to the scholarship recipient's last known address and shall be effective upon mailing.~~

~~(a) The board may agree to accept repayment in installments in accordance with a schedule established by the board.~~

~~(b) Payments shall first be applied to interest and then to principal on the earliest unpaid contracts.~~

~~(3) Repayment may be deferred in the case of disability, major illness, or accident that prevents a recipient from completing a program of nursing or being employed as a nurse in Kentucky.~~

~~(4) A student who ceases to be enrolled in a program of nursing prior to graduation may defer repayment for one (1) academic year if the student fails to achieve successful academic progression.]~~

~~(a) [This deferment shall apply for one (1) academic year.]~~

~~[(b)] If the student fails to resume enrollment [achieve successful academic progression] after one (1) academic year, monetary [that time], repayment shall be due.~~

~~[(b)] [(e)] If the student resumes enrollment [achieves successful academic progression] within one (1) academic year [the allotted time], he or she may apply for a continuation award pursuant to Section 4 [Section 6] of this administrative regulation.~~

~~(5)~~

~~(a) If a deferment is requested, the recipient shall submit the request to the board on a Nursing Incentive Scholarship Fund Request for Deferral form.~~

~~(b) If the request for deferment is submitted pursuant to subsection (3) of this section, the Nursing Incentive Scholarship Fund Request for Deferral form shall be accompanied by a statement by a physician, advanced practice registered nurse, or physician's assistant.~~

~~(6) If a recipient fails to pass the licensure examination within two (2) years of graduation, the sum of all nursing incentive scholarships received by the recipient, and the accrued interest, shall become due and payable.~~

~~(7) If a court of competent jurisdiction determines that the recipient has defaulted and the funds are due and owing to the board, then the provisions of 201 KAR 20:370, Section 1(5), shall apply.~~

~~(8) An individual who has defaulted on a scholarship shall not be eligible to receive another scholarship until the defaulted scholarship has been repaid.~~

~~(9) The board may utilize the services of a third party for collection of sums owed pursuant to a Nursing Incentive Scholarship Fund Contract and Nursing Incentive Scholarship Fund Promissory Note, including reasonable attorney fees.~~

~~(10) After the board refers a debt to a third party for collection, a recipient shall not be eligible for deferment or to otherwise cure the recipient's breach, other than through payment of all sums owed to the board.~~

~~(11) Employment and repayment requirements specified in the~~

contract and promissory note are not tolled or deferred as a consequence of a continuation of nursing education in a different degree program than was specified in the recipient's Nursing Incentive Scholarship Fund application; however, employment and repayment requirements are not activated if when a recipient transfers to the same degree program at a different school.

Section 8.] [Section 9.] Verification.

(1) Verification of employment as a nurse in Kentucky pursuant to the contract shall be submitted to the board when the recipient's employment commitment begins and when it is completed. A termination of employment prior to completion shall be reported to the board within thirty (30) days by the [employer and the] recipient.

(2) A recipient shall notify the board immediately of a change of name [or] address, school, or enrollment status in school.

Section 9.] [Section 10.] Incorporation by Reference.

(1) The following material is/are incorporated by reference:

(a) "Nursing Incentive Scholarship Fund Application", 06/24[05/23];

(b) "Nursing Incentive Scholarship Fund Request for Deferral", 06/24[10/96];

(c) "Nursing Incentive Scholarship Fund Contract", 06/24[10/43]; and

(d) "Nursing Incentive Scholarship Fund Promissory Note", 06/24[10/43].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8:30 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://kbn.ky.gov/document-library/Pages/default.aspx>.

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CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, Jeffrey.Prather@ky.gov.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, October 15, 2024)**

501 KAR 6:300. News media.

RELATES TO: KRS Chapters 196, 197, 439, 610.015, 610.320, 610.340, 635.120

STATUTORY AUTHORITY: KRS 196.035, 197.020, 197.110, 439.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 197.020(1)(a) and (b) require the Department of Corrections to promulgate administrative regulations for the government and discipline of the penitentiary, government and official conduct of all officials connected with the penitentiary, government of the prisoners in their department and conduct, and preservation of the health of the prisoners. KRS 197.110 authorizes the department to promulgate administrative regulations for purposes as the department deems necessary and proper for carrying out the intent of KRS Chapter 197. KRS 439.470 requires the commissioner to promulgate administrative regulations for the conduct of persons placed on probation or parole but not conflict with conditions of the parole board or court. This administrative regulation establishes procedures concerning news media for the Department of Corrections.

Section 1. Definitions.

(1) "DOC" means the Department of Corrections.

(2) "News media" means a form of mass media that focuses on

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delivering news to the general public, but does not include broadcast programs syndicated by independent producers, television stations, networks, or others for the primary purpose of entertainment.

(3) "PIO" means public information officer.

(4) "VSB" means the Victim Services Branch.

Section 2.

(1) A news media request or inquiry shall be handled by the Division of Public Affairs at the DOC headquarters in Frankfort, Kentucky.

(2) A request by a news media representative to visit an institution, probation and parole office, or other DOC office shall be reviewed on a case-by-case basis and a decision **shall be** rendered by the Division of Public Affairs in conjunction with the warden, director, or commissioner.

(3) Credentials. A state issued photo ID shall be required to verify the identity of a news media representative. An identification card issued by the reporter's place of employment may also be required if needed to verify the credentials of a media representative. In the absence of an employee identification card, the DOC may refuse admittance if the identification is suspect.

(4) Live broadcasts including television, radio, phone, and virtual communication from inside the perimeter of an institution shall not be permitted at any time.

(5) Arrangements for interviews and visits by representatives of the media shall be made in advance to the Division of Public Affairs. A brief summary of the purpose of the visit or interview shall be provided and shall be subject to approval. Approved interviews shall primarily be conducted virtually. Private prison and community center administrators shall refer all news media inquiries concerning DOC policies, DOC inmates, or DOC clients to the Division of Public Affairs.

(6) The Division of Public Affairs staff shall make this administrative regulation available in advance of a media visit to ensure that members of the news media are aware of the requirements. Each news media representative shall sign a Corrections Media Release Form upon each visit to a DOC institution or office, indicating familiarity with this administrative regulation and agree to abide by it. Failure by a news media representative to comply with this administrative regulation may result in immediate removal from the institution or office and may constitute grounds for denying the representative or his or her agency permission to attend future media events within a DOC institution or office.

Section 3. Inmate interviews and photographs.

(1) Media representatives may be permitted to interview an inmate if the inmate gives written consent to be interviewed. A news media representative wishing to interview an inmate shall submit to the Division of Public Affairs a brief summary of the purpose of the interview, which is subject to approval.

(2) An approved interview by a news media representative shall include only the news media representative, the inmate, and DOC staff. There shall not be anyone else present including family members, lawyers, or others.

(3) The Division of Public Affairs may establish time limits for an interview or other media event coverage.

(4) A news media interview shall not be permitted for an inmate in a high security unit, in protective custody, on watch, or on other significant medical or mental health status. An inmate involved in an internal affairs investigation may also be prohibited from granting interviews until that case is closed.

(5) The news media shall not interview an inmate away from institutional grounds except with direct authorization from the commissioner.

(6) An inmate shall not receive compensation or anything of value, in exchange for or as a result of participating in an interview. A media representative or entity who violates this stipulation may be restricted from further access to inmate interviews.

(7) The Division of Public Affairs may grant or deny an interview request. The Division of Public Affairs may consider safety and security concerns in an interview denial. The Division of Public Affairs may terminate an interview or coverage within a DOC facility if a disruption of any type occurs.

(8) A recording device may be used by a media representative during an interview with prior approval.

(9) If an inmate interview is approved, the Victim Services Branch shall review the inmate's information to determine if the inmate has any registered victims. The VSB shall attempt to contact a registered victim to notify the victim of the interview in advance of the interview.

(10) If a media visit has been approved, the media representative may take photographs of specific parts of the correctional institution or probation and parole office with approval of the appropriate warden or director.

(a) Media shall be escorted at all times while on institutional or office grounds by the designated staff.

(b) If news media films or photographs an inmate or an offender under supervision in which the inmate or offender may be identified, a signed copy of the Corrections Release Form shall be obtained from the inmate or offender to provide written consent before the video or photo may be shown or shared.

(11) Parole hearings. Because parole hearings are considered an open proceeding, an inmate who appears may be filmed, photographed, or recorded without signing a consent form; however, the general provisions of this section shall still apply to any interview before or after the hearing. Interviews shall not be conducted outside the parole hearing without prior DOC approval and the inmate's written permission using the Corrections Release Form.

Section 4. DOC Institutional Grounds.

(1) News media wanting to video or photograph the exterior of a correctional institution shall notify the Division of Public Affairs. News media shall remain in the parking lot. Any video or photograph obtained shall not include an identifiable inmate.

(2) High security areas, control centers, control panels and any other area designated by the warden for safety or security reasons shall not be filmed or photographed.

Section 5. Dissemination of Information.

(1) Dissemination of DOC information shall be the responsibility of the Division of Public Affairs including contact from a national or international news media representative.

(2) Institutional PIOs shall assist with the announcement of an escape or other incident within an institution as needed. Every effort shall be made to notify the family of an inmate involved in the emergency prior to the release of information to the media. Names of involved staff shall not be released to the media until the designated next of kin or family is notified.

(3) Individual staff members, contractors, or volunteers shall not respond to media inquiries unless they have received prior approval from the Division of Public Affairs.

(4) The Division of Public Affairs shall be informed of all correspondence sent to or received from a news media representative.

Section 6. Release of Information.

(1) The following information about an inmate, parolee, probationer, or other releasee may be provided to the news media:

- (a) Name;
- (b) Age;
- (c) Sex;
- (d) Physical description;
- (e) Photograph;
- (f) County where crime was committed;
- (g) Crime;
- (h) Sentence;
- (i) Disciplinary information including incident and penalty;
- (j) Institutional work assignments;
- (k) Prior DOC incarceration; and
- (l) Release eligibility.

(2) **Any** information regarding an **inmate beyond the items listed in subsection (1) of this section, including [inmate's personal identifiers,] health, [mental health, medical, or] juvenile criminal history, or substance use disorder treatment** shall not be released except **with prior approval from the Commissioner or designee and** in compliance with KRS 610.015, 610.320, 610.340 and 635.120.

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Section 7. Procedures During Emergency ~~Situations~~~~Conditions~~. Admittance of a media representative to a correctional institution may be denied or limited during an emergency situation, including an escape, disturbance, fire, or natural disaster. However, with approval of the Deputy Commissioner of Adult Institutions and the Commissioner, the news media may be granted access to the institution once it is determined that access will not jeopardize the security or safety of any person.

(1) Media staging area. A pre-designated area shall be established for the media to use as a staging area during an emergency ~~situation~~~~condition~~. This area shall be as close to the emergency scene as possible without inhibiting the resolution of the situation. News media representatives shall be directed to the staging area upon arrival.

(2) Press briefings. A briefing location for the media shall be established near the staging area. The news media shall be advised of developments by ~~frequency news briefings held in the designated briefing location or~~ press releases. A final briefing shall be held or press release provided as soon as possible after the emergency situation is resolved.

(3) Media pools. With approval of the Deputy Commissioner of Adult Institutions and the Commissioner, ~~a media pool may be formed to enter a correctional institution, a media pool may be formed to enter a correctional institution, if it is determined that doing so no longer jeopardizes the security or safety of any person~~. Efforts shall be made to allow the media to use their equipment while serving as a pool reporter. The media pool shall be chosen from the media representatives assembled at the staging area with the selections made by ~~the media representatives present in conjunction with~~ DOC designated staff.

(4) Media pool agreement. Media selected for the media pool shall agree to ensure that all news material generated by the media pool will be made available to all media without right of first publication or broadcast.

Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "Corrections Release Form", 2024; and
(b) "Corrections Media Release Form", 2024.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections Web site in the regulation filing area at https://corrections.ky.gov/about/pages/lrcfilings.aspx.

FILED WITH LRC: October 15, 2024

CONTACT PERSON: Nathan Goens, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8216, fax (502) 564-6686, email Justice.RegContact@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, October 15, 2024)

501 KAR 6:310. Monitoring and operation of private prisons.

RELATES TO: KRS Chapters 196, 197, [KRS]197.500-197.540, Chapter 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 197.110, 197.525

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 197.020(1)(a) and (b) require the Department of Corrections to promulgate administrative regulations for the government and discipline of the penitentiary, government and official conduct of all officials connected with the penitentiary, government of the prisoners in their department and conduct, and preservation of the

health of the prisoners. KRS 197.110 authorizes the department to promulgate administrative regulations for purposes as the department deems necessary and proper for carrying out the intent of KRS Chapter 197. KRS 197.525 requires the department to shall promulgate administrative regulations governing the standards, operation, and management of adult correctional facilities that may be contracted for pursuant to KRS 197.505. This administrative regulation establishes policies and procedures concerning personnel for the Department of Corrections. This administrative regulation establishes the procedures concerning the monitoring and operation of private prisons for the Department of Corrections.

Section 1. Definitions.

(1) "On-site contract monitor" means a Department of Corrections employee assigned on-site at the private prison that is responsible for ensuring that operations are in compliance with contract terms.

(2) "Private provider" is defined by KRS 197.500(2) and the private provider shall have a contract with the Department of Corrections to house prisoners committed to the custody of the department.

(3) The private provider shall operate the private prison in accordance with statutory requirements, contract terms, Corrections Policies and Procedures, and ACA standards to obtain or maintain accreditation.

(4) The Department of Corrections shall ensure that the requirements and terms provided by statute and the contract are monitored.

Section 2. Private Provider.

(1) A private provider shall have a contract with the Department of Corrections to house prisoners committed to the custody of the department.

(2) A private provider shall operate the private prison in accordance with statutory requirements, contract terms, Corrections Policies and Procedures, and ACA standards to obtain or maintain accreditation.

(3) The Department of Corrections shall ensure that the requirements and terms provided by statute and the contract are monitored.

Section 3. Monitoring.

(1) One (1) on-site contract monitor shall be assigned to each private prison.

(2) An on-site contract monitor shall be a full-time position.

(3) The on-site contract monitor shall not normally carry out routine duties of the private prison including manning posts. However, the on-site contract monitor may provide support in the form of specialized training and advice or during an emergency situation, with the approval of both the warden of the private prison and the Deputy Commissioner of Adult Institutions or designee.

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CONTACT PERSON: Nathan Goens, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8216, fax (502) 564-6686, email Justice.RegContact@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, October 15, 2024)

501 KAR 6:320. Corrections policies and procedures: inmate funds.

RELATES TO: KRS Chapter 196, 196.270, Chapter 197

STATUTORY AUTHORITY: KRS 196.035, 197.020, 197.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 197.020(1)(a) and (b) require the Department of Corrections to

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promulgate administrative regulations for the government and discipline of the penitentiary, government and official conduct of all officials connected with the penitentiary, and government of the prisoners in their department and conduct. KRS 197.110 authorizes the department to promulgate administrative regulations for purposes as the department deems necessary and proper for carrying out the intent of KRS Chapter 197. This administrative regulation establishes the policy and procedures concerning inmate funds for the Department of Corrections.

Section 1. Incorporation by Reference.

(1) "Department of Corrections Policies and Procedures, Chapter 2", **October**~~May~~ 15, 2024, are incorporated by reference. Department of Corrections Policies and Procedures Chapter 2 includes:

2.1	Inmate Canteen (10/15/24) (5/15/24)
2.12	Abandoned Inmate Funds (10/15/24) (4/12/18)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections Web site in the policies and procedures area at <https://corrections.ky.gov/About/cpp/Pages/default.aspx> or the regulation filing area at <https://corrections.ky.gov/about/pages/lrcfilings.aspx>.

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CONTACT PERSON: Nathan Goens, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8216, fax (502) 564-6686, email Justice.RegContact@ky.gov.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, October 15, 2024)**

501 KAR 6:340. Corrections policies and procedures: research and information.

RELATES TO: KRS Chapters 196, 197, 439, KRS 439.510

STATUTORY AUTHORITY: KRS 196.035, 197.020, 197.110, 439.470.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 197.020(1)(a) and (b) require the Department of Corrections to promulgate administrative regulations for the government and discipline of the penitentiary, government and official conduct of all officials connected with the penitentiary, government of the prisoners in their department and conduct, and preservation of the health of the prisoners. KRS 197.110 authorizes the department to promulgate administrative regulations for purposes as the department deems necessary and proper for carrying out the intent of KRS Chapter 197. This administrative regulation establishes the policy and procedures concerning research and criminal justice data base use for the Department of Corrections.

Section 1. Incorporation by Reference.

(1) "Department of Corrections Policies and Procedures, Chapter 5", **October**~~May~~ 15, 2024, are incorporated by reference. Department of Corrections Policies and Procedures Chapter 5 includes:

5.1	Research, Surveys, and Data Request (10/15/24) (5/15/24)
5.4	LINK, NCIC, and NLETS (10/15/24) (5/15/24)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections Web site in the policies and procedures area at <https://corrections.ky.gov/About/cpp/Pages/default.aspx> or the regulation filing area at <https://corrections.ky.gov/about/pages/lrcfilings.aspx>.

FILED WITH LRC: October 15, 2024

CONTACT PERSON: Nathan Goens, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8216, fax (502) 564-6686, email Justice.RegContact@ky.gov.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, October 15, 2024)**

501 KAR 6:360. Corrections policies and procedures: safety and critical incident notification.

RELATES TO: KRS Chapters 196, 197

STATUTORY AUTHORITY: KRS 196.035, 197.020, 197.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 197.020(1)(a) and (b) require the Department of Corrections to promulgate administrative regulations for the government and discipline of the penitentiary, government and official conduct of all officials connected with the penitentiary, government of the prisoners in their department and conduct, and preservation of the health of the prisoners. KRS 197.110(5) authorizes the department to promulgate administrative regulations for purposes as the department deems necessary and proper for carrying out the intent of KRS Chapter 197. This administrative regulation establishes policies and procedures concerning safety and notification of critical incidents for the Department of Corrections.

Section 1. Incorporation by Reference.

(1) "Department of Corrections Policies and Procedures, Chapter 8", **October**~~May~~ 15, 2024, are incorporated by reference. Department of Corrections Policies and Procedures Chapter 8 includes:

8.2	Fire Safety (5/15/24)
8.7	Notification of Critical Incident (10/15/24) (5/12/20)
8.10	Radiation Safety Program (5/15/24)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections Web site in the policies and procedures area at <https://corrections.ky.gov/About/cpp/Pages/default.aspx> or the regulation filing area at <https://corrections.ky.gov/about/pages/lrcfilings.aspx>.

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, October 15, 2024)

501 KAR 6:370. Corrections policies and procedures: security and control.

RELATES TO: KRS Chapters 196, 197

STATUTORY AUTHORITY: KRS 196.035, 197.020, 197.022, 197.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 197.020(1)(a) and (b) require the Department of Corrections to promulgate administrative regulations for the government and discipline of the penitentiary, government and official conduct of all officials connected with the penitentiary, government of the prisoners in their department and conduct, and preservation of the health of the prisoners. KRS 197.020(1)(c) further authorizes the department to promulgate administrative regulations for the disposition of abandoned, lost, or confiscated property of prisoners. KRS 197.022(5) requires the cabinet to promulgate an administrative regulation concerning the transport of a prisoner to court for a civil action if ordered by the court. KRS 197.110 authorizes the department to promulgate administrative regulations for purposes as the department deems necessary and proper for carrying out the intent of KRS Chapter 197. This administrative regulation establishes policies and procedures concerning security and control for the Department of Corrections.

Section 1. Incorporation by Reference.

(1) "Department of Corrections Policies and Procedures, Chapter 9", ~~October~~~~May~~ 15, 2024, are incorporated by reference. Department of Corrections Policies and Procedures Chapter 9 includes:

9.4	Transportation of Inmates to Funerals or Bedside Visits (10/15/24) (5/15/24)
9.6	Contraband (10/15/24) (2/26/16)
9.8	Search Policy (5/15/24)
9.13	Transport to Court - Civil Action (10/15/24) (7/9/07)
9.18	Informants (10/15/24) (9/13/10)
9.19	Found, Lost or Abandoned Property (10/15/24) (10/14/05)

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, October 15, 2024)

501 KAR 6:380. Corrections policies and procedures: special management and restrictive housing inmates, safekeepers, and contract prisoners.

RELATES TO: KRS Chapters 196, 197, KRS 441.540, 441.550

STATUTORY AUTHORITY: KRS 196.035, 197.020, 197.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 197.020(1)(a) and (b) require the Department of Corrections to promulgate administrative regulations for the government and discipline of the penitentiary, government and official conduct of all officials connected with the penitentiary, government of the prisoners in their department and conduct, character of food and diet of the prisoners, preservation of the health of the prisoners, daily cleansing of the penitentiary, cleanliness of the persons of the prisoners, general sanitary government of the penitentiary and prisoners, character of the labor, quantity of food and clothing, and the length of time during which the prisoners shall be employed daily. KRS 197.110 authorizes the department to promulgate administrative regulations for purposes as the department deems necessary and proper for carrying out the intent of KRS Chapter 197. This administrative regulation establishes policies and procedures concerning special management and restricted housing inmates, safekeepers, and contract prisoners for the Department of Corrections.

Section 1. Incorporation by Reference.

(1) "Department of Corrections Policies and Procedures, Chapter 10", ~~October~~~~May~~ 15, 2024, are incorporated by reference. Department of Corrections Policies and Procedures Chapter 10 includes:

10.2	Special Management and Restrictive Housing (10/15/24) (5/15/24)
10.3	Safekeepers and Contract Prisoners (10/15/24) (1/12/18)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections Web site in the policies and procedures area at <https://corrections.ky.gov/About/cpp/Pages/default.aspx> or the regulation filing area at <https://corrections.ky.gov/about/pages/lrcfilings.aspx>.

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CONTACT PERSON: Nathan Goens, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8216, fax (502) 564-6686, email Justice.RegContact@ky.gov

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, October 15, 2024)

501 KAR 6:390. Corrections policies and procedures: inmate diet.

RELATES TO: KRS Chapters 196, 197

STATUTORY AUTHORITY: KRS 196.035, 197.020, 197.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations d

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deemed necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 197.020(1)(a) and (b) require the Department of Corrections to promulgate administrative regulations for the government and discipline of the penitentiary, government and official conduct of all officials connected with the penitentiary, government of the prisoners in their department and conduct, character of food and diet of the prisoners, preservation of the health of the prisoners, cleanliness of the persons of the prisoners, general sanitary government of the penitentiary and prisoners, character of the labor, and quantity of food and clothing. KRS 197.110 authorizes the department to promulgate administrative regulations for purposes as the department deems necessary and proper for carrying out the intent of KRS Chapter 197. This administrative regulation establishes policies and procedures concerning inmate diet for the Department of Corrections.

Section 1. Incorporation by Reference.

(1) "Department of Corrections Policies and Procedures, Chapter 11", ~~October~~**May** 15, 2024, are incorporated by reference. Department of Corrections Policies and Procedures Chapter 11 includes:

11.2	Dietary Procedures and Compliance (10/15/24) (1/12/17)
11.4	Alternative Dietary Patterns (5/15/24)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections Web site in the policies and procedures area at <https://corrections.ky.gov/About/cpp/Pages/default.aspx> or the regulation filing area at <https://corrections.ky.gov/about/pages/lrcfilings.aspx>.

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**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, October 15, 2024)**

501 KAR 6:400. Corrections policies and procedures: inmate health care.

RELATES TO: KRS Chapters 196, 197, KRS 311.621-311.641, 439.3405

STATUTORY AUTHORITY: KRS 196.035, 197.020, 197.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 197.020(1)(a) and (b) require the Department of Corrections to promulgate administrative regulations for the government and discipline of the penitentiary, government and official conduct of all officials connected with the penitentiary, government of the prisoners in their department and conduct, preservation of the health of the prisoners, and character of the labor and length of time during which the prisoners shall be employed daily. KRS 197.110 authorizes the department to promulgate administrative regulations for purposes as the department deems necessary and proper for carrying out the intent of KRS Chapter 197. This administrative regulation establishes policies and procedures concerning inmate health care for the Department of Corrections.

Section 1. Incorporation by Reference.

(1) "Department of Corrections Policies and Procedures, Chapter 13", ~~October~~**May** 15, 2024, are incorporated by reference. Department of Corrections Policies and Procedures Chapter 13 includes:

13.1	Pharmacy Policy and Formulary (10/15/24) (1/15/15)
13.2	Health Maintenance Services (10/15/24) (2/26/16)
13.3	Medical Alert System (10/15/24) (3/14/14)
13.5	Advance Healthcare Directives (10/15/24) (6/14/16)
13.7	Involuntary Psychotropic Medication (10/15/24) (10/14/05)
13.9	Dental Services (10/15/24) (10/14/05)
13.10	Serious Infectious Disease (10/15/24) (3/14/14)
13.11	Do Not Resuscitate Order (10/15/24) (8/9/05)
13.12	Suicide Prevention and Intervention Program (10/15/24) (5/15/24)
13.13	Mental Health Services (10/15/24) (5/15/24)
13.15	Inmate Observer Program (10/15/24) (8/12/16)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections Web site in the policies and procedures area at <https://corrections.ky.gov/About/cpp/Pages/default.aspx> or the regulation filing area at <https://corrections.ky.gov/about/pages/lrcfilings.aspx>.

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**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, October 15, 2024)**

501 KAR 6:420. Corrections policies and procedures: inmate rules and discipline.

RELATES TO: KRS Chapters 196, 197, KRS 197.045

STATUTORY AUTHORITY: KRS 196.035, 197.020, 197.110

NECESSITY, FUNCTION, AND CONFORMITY: NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 197.020(1)(a) and (b) require the Department of Corrections to promulgate administrative regulations for the government and discipline of the penitentiary, government and official conduct of all officials connected with the penitentiary, government of the prisoners in their department and conduct, and preservation of the health of the prisoners. KRS 197.110 authorizes the department to promulgate administrative regulations for purposes as the department deems necessary and proper for carrying out the intent of KRS Chapter 197. This administrative regulation establishes policies and procedures concerning inmate rules and discipline for the Department of Corrections.

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Section 1. Incorporation by Reference.

(1) "Department of Corrections Policies and Procedures, Chapter 15", ~~October~~**May** 15, 2024, are incorporated by reference. Department of Corrections Policies and Procedures Chapter 15 includes:

15.1	Hair, Grooming and ID Card Standards (10/15/24) (5/15/24)
15.2	Rule Violations and Penalties (10/15/24) (5/15/24)
15.3	Meritorious Good Time (10/15/24) (1/13/20)
15.5	Restoration of Forfeited Good Time (10/15/24) (5/12/20)
15.6	Adjustment Procedures and Programs (10/15/24) (3/14/18)
15.7	Inmate Accounts (10/15/24) (5/15/24)
15.8	Possession or Use of Unauthorized Substance and Substance Abuse Testing (10/15/24) (4/12/18)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections Web site in the policies and procedures area at <https://corrections.ky.gov/About/cpp/Pages/default.aspx> or the regulation filing area at <https://corrections.ky.gov/about/pages/lrcfilings.aspx>.

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**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, October 15, 2024)**

501 KAR 6:430. Corrections policies and procedures: communication, mail, and visiting.

RELATES TO: KRS Chapters 196, 197

STATUTORY AUTHORITY: KRS 196.035, 197.020, 197.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 197.020(1)(a) and (b) require the Department of Corrections to promulgate administrative regulations for the government and discipline of the penitentiary, government and official conduct of all officials connected with the penitentiary, government of the prisoners in their department and conduct, and preservation of the health of the prisoners. KRS 197.110 authorizes the department to promulgate administrative regulations for purposes as the department deems necessary and proper for carrying out the intent of KRS Chapter 197. This administrative regulation establishes policies and procedures concerning communication, mail, and visiting for the Department of Corrections.

Section 1. Incorporation by Reference.

(1) "Department of Corrections Policies and Procedures, Chapter 16", ~~October 15~~~~September 13~~**May 15**, 2024, are incorporated by reference. Department of Corrections Policies and Procedures Chapter 16 includes:

16.1	Inmate Visits (9/13/24) (5/15/24)
16.2	Inmate Correspondence (10/15/24) (9/13/24) (5/15/24)
16.3	Inmate Access to Telephones (10/15/24) (10/12/12)

16.4	Inmate Packages (10/15/24) (8/12/16)
16.5	Video Visitation (10/15/24) (5/15/24)
16.6	Inmate Tablets (5/15/24)

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CONTACT PERSON: Nathan Goens, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8216, fax (502) 564-6686, email Justice.RegContact@ky.gov.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, October 15, 2024)**

501 KAR 6:440. Corrections policies and procedures: inmate reception, orientation, and personal property.

RELATES TO: KRS Chapters 196, 197, 454.415

STATUTORY AUTHORITY: KRS 196.035, 197.020, 197.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 197.020(1)(a) and (b) require the Department of Corrections to promulgate administrative regulations for the government and discipline of the penitentiary, government and official conduct of all officials connected with the penitentiary, government of the prisoners in their department and conduct, and quantity of food and clothing. KRS 197.110 authorizes the department to promulgate administrative regulations for purposes as the department deems necessary and proper for carrying out the intent of KRS Chapter 197. This administrative regulation establishes policies and procedures concerning inmate reception, orientation, and personal property for the Department of Corrections.

Section 1. Incorporation by Reference.

(1) "Department of Corrections Policies and Procedures, Chapter 17", ~~October~~**May** 15, 2024, are incorporated by reference. Department of Corrections Policies and Procedures Chapter 17 includes:

17.1	Inmate Personal Property (5/15/24)
17.2	Assessment Center Operations (10/14/24) (5/12/20)
17.3	Controlled Intake of Inmates (10/14/24) (3/14/14)
17.4	Administrative Remedies: Sentence Calculations (10/14/24) (8/12/16)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections Web site in the policies and procedures area at <https://corrections.ky.gov/About/cpp/Pages/default.aspx> or the regulation filing area at <https://corrections.ky.gov/about/pages/lrcfilings.aspx>.

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CONTACT PERSON: Nathan Goens, Justice and Public Safety

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Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8216, fax (502) 564-6686, email Justice.RegContact@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, October 15, 2024)

501 KAR 6:450. Corrections policies and procedures: classification.

RELATES TO: KRS Chapter 196, 196.070, 196.073, 196.173, 196.610, Chapter 197, 197.140, 439.380, 440.450, 504.150, 640.070, 640.075

STATUTORY AUTHORITY: KRS 196.035, 197.020, 197.110
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 197.020(1)(a) and (b) require the Department of Corrections to promulgate administrative regulations for the government and discipline of the penitentiary, government and official conduct of all officials connected with the penitentiary, government of the prisoners in their department and conduct, and preservation of the health of the prisoners. KRS 197.110 authorizes the department to promulgate administrative regulations for the classification of prisoners and purposes as the department deems necessary and proper for carrying out the intent of KRS Chapter 197. This administrative regulation establishes policies and procedures concerning classification for the Department of Corrections.

Section 1. Incorporation by Reference.

(1) "Department of Corrections Policies and Procedures, Chapter 18", ~~October~~**May** 15, 2024, are incorporated by reference. Department of Corrections Policies and Procedures Chapter 18 includes:

18.1	Classification of the Inmate (5/15/24)
18.2	Central Office Classification Committee (5/15/24)
18.3	Confinement of Youthful Offenders (5/15/24)
18.5	Custody Level and Security (5/15/24)
18.7	Transfers (5/15/24)
18.9	Out-of-state Transfers (5/15/24)
18.11	Placement for Mental Health Treatment in CPTU or PCU (10/15/24) (6/14/16)
18.12	Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill (10/15/24) (2/15/06)
18.13	Population Categories (5/15/24)
18.15	Protective Custody (5/15/24)
18.16	Information to the Parole Board (10/15/24) (1/13/20)
18.17	Interstate Agreement on Detainers (7/9/07)
18.18	International Transfer of Inmates (5/14/07)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections Web site in the policies and procedures area at <https://corrections.ky.gov/About/cpp/Pages/default.aspx> or the regulation filing area at <https://corrections.ky.gov/about/pages/lrcfilings.aspx>.

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, October 15, 2024)

501 KAR 6:460. Corrections policies and procedures: inmate work programs.

RELATES TO: KRS Chapters 196, 197, 197.065, 197.070, 197.110, 197.120, 197.150

STATUTORY AUTHORITY: KRS 196.035, 197.020, 197.047, 197.110, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 197.020(1)(a) and (b) require the Department of Corrections to promulgate administrative regulations for the government and discipline of the penitentiary, government and official conduct of all officials connected with the penitentiary, government of the prisoners in their department and conduct, character of the labor, and length of time during which the prisoners shall be employed daily. KRS 197.047(2) requires the department to promulgate an administrative regulation governing prisoners working on governmental services program-related projects. KRS 197.047(5) requires the department to promulgate an administrative regulation setting forth the amount of compensation a prisoner shall earn for any work-related project. KRS 197.110 requires the department to promulgate administrative regulations it deems necessary and proper for classification of prisoners, conditions of inmate work assignments, and inmate pay for work. This administrative regulation establishes policies and procedures concerning inmate work programs for the Department of Corrections.

Section 1. Incorporation by Reference.

(1) "Department of Corrections Policies and Procedures, Chapter 19", ~~October 15~~~~September 13~~**May 15**, 2024, are incorporated by reference. Department of Corrections Policies and Procedures Chapter 19 includes:

19.1	Governmental Services Program (10/15/24) 9/13/24 (10/12/12)
19.2	Sentence Credit for Work (10/15/24) (2/26/16)
19.3	Inmate Wage/Time Credit Program (5/15/24)
19.4	Work Release for State Inmates in Jails (10/15/24) (4/12/18)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections Web site in the policies and procedures area at <https://corrections.ky.gov/About/cpp/Pages/default.aspx> or the regulation filing area at <https://corrections.ky.gov/about/pages/lrcfilings.aspx>.

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, October 15, 2024)

501 KAR 6:470. Corrections policies and procedures: inmate education and training.

RELATES TO: KRS Chapters 196, 197, 197.045, 439.268
STATUTORY AUTHORITY: KRS 196.035, 197.020, 197.110, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 197.020(1)(a) and (b) require the Department of Corrections to promulgate administrative regulations for the government and discipline of the penitentiary, government and official conduct of all officials connected with the penitentiary, government of the prisoners in their department and conduct, and preservation of the health of the prisoners. KRS 197.110 authorizes the department to promulgate administrative regulations for purposes as the department deems necessary and proper for carrying out the intent of KRS Chapter 197. KRS 439.268 authorizes the department to promulgate administrative regulations for the awarding of probation program credits. This administrative regulation establishes policies and procedures concerning inmate education and training for the Department of Corrections.

Section 1. Incorporation by Reference.

(1) "Department of Corrections Policies and Procedures, Chapter 20", October 15 September 12 May 15, 2024, are incorporated by reference. Department of Corrections Policies and Procedures Chapter 20 includes:

Table with 2 columns: ID, Description. Rows include: 20.1 Educational Courses and Educational Sentence Credits (5/15/24), 20.2 Apprenticeship Courses (10/15/24)(5/12/20), 20.3 Special Education (9/12/2024)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections Web site in the policies and procedures area at https://corrections.ky.gov/About/cpp/Pages/default.aspx or the regulation filing area at https://corrections.ky.gov/about/pages/lrcfilings.aspx.

FILED WITH LRC: October 15, 2024

CONTACT PERSON: Nathan Goens, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8216, fax (502) 564-6686, email Justice.RegContact@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, October 15, 2024)

501 KAR 6:490. Corrections policies and procedures: inmate recreation and activities.

RELATES TO: KRS Chapters 196, 197, 439.600, 439.610

STATUTORY AUTHORITY: KRS 196.035, 197.020, 197.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 197.020(1)(a) and (b) require the Department of Corrections to promulgate administrative regulations for the government and discipline of the penitentiary, government and official conduct of all officials connected with the penitentiary, government of the

prisoners in their department and conduct, and preservation of the health of the prisoners. KRS 197.110 authorizes the department to promulgate administrative regulations for purposes as the department deems necessary and proper for carrying out the intent of KRS Chapter 197. This administrative regulation establishes policies and procedures concerning inmate recreation and activities for the Department of Corrections.

Section 1. Incorporation by Reference.

(1) "Department of Corrections Policies and Procedures, Chapter 22", October May 15, 2024, are incorporated by reference. Department of Corrections Policies and Procedures Chapter 22 includes:

Table with 2 columns: ID, Description. Rows include: 22.1 Privilege Trips (10/15/24)(10/14/05), 22.2 Recreation and Inmate Activities (10/15/24)(3/14/14)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections Web site in the policies and procedures area at https://corrections.ky.gov/About/cpp/Pages/default.aspx or the regulation filing area at https://corrections.ky.gov/about/pages/lrcfilings.aspx.

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, October 15, 2024)

501 KAR 6:500. Religious programs.

RELATES TO: KRS Chapters 196, 197, 197.270, 197.275

STATUTORY AUTHORITY: KRS 196.035, 197.020, 197.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 197.020(1)(a) and (b) require the Department of Corrections to promulgate administrative regulations for the government and discipline of the penitentiary, government and official conduct of all officials connected with the penitentiary, and government of the prisoners in their department and conduct. KRS 197.110 authorizes the department to promulgate administrative regulations for purposes as the department deems necessary and proper for carrying out the intent of KRS Chapter 197. This administrative regulation establishes the procedures concerning religious programs for the Department of Corrections.

Section 1. Definitions.

(1) "Chaplain" means a correctional employee or approved volunteer authorized to provide religious counsel, instruction, and advice to inmates and to provide a system of services or religious volunteers, ecclesiastical visitors, and guests for inmates.

(2) "Institutional Religious Center" or "IRC" means the designated area where religious services are conducted.

(3) "KDP" means Kosher Diet Program.

(4) "Religion Reference Manual" means the "Kentucky Department of Corrections Religion Reference Manual," incorporated by reference in 501 KAR 6:080.

(5) "Religious items" means items associated with a particular religious faith.

(6) "Religious practice" means outwardly observable manifestations of religious beliefs including:

- (a) Participating in congregations and meetings;
(b) Engaging in rituals and ceremonies;

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- (c) Praying, chanting, **and** singing;
- (d) Wearing special items of clothing, jewelry, hairstyles, or beards;
- (e) Adhering to special diets, [?] and
- (f) Participating in special activities characteristic of a particular religion or adherents of a particular religion.

Section 2. Religious Practice.

(1) An inmate may participate in practices of his religious faith. The Religion Reference Manual shall be used for religious practice questions. If a religious item or practice is not represented in the Religion Reference Manual, an inmate may request a religious item or practice by following the procedure in Section 4(10) of this administrative regulation.

(2) The religions listed in the Religion Reference Manual shall be treated in an equal manner. The institution shall assist in the research of a religion or religious practice not addressed in the Religion Reference Manual. [?]

(3) Religious practices shall be limited only by articulated facts showing a threat to the safety of persons involved in an activity, the safety of the institution, or that the activity itself disrupts order in the institution.

(4) Religious practices shall include religious publications, religious symbols, congregational religious services, individual and group counseling, and religious study classes.

(5) The following religious practices and activities shall not be authorized:

- (a) Animal sacrifice;
- (b) Language or behavior that may reasonably be construed as a threat to safety, security, or the orderly running of the institution;
- (c) Nudity;
- (d) Self mutilation;
- (e) Use, display, or possession of a weapon or an item that may appear to be a weapon;
- (f) Paramilitary exercises;
- (g) Self-defense training;
- (h) Sexual acts;
- (i) Profanity;
- (j) Consumption of alcohol;
- (k) Ingestion of illegal substances;
- (l) Proselytizing;
- (m) Inscription;
- (n) Disparagement of other religions; **and**
- (o) Tobacco products.

(6) An inmate shall not be allowed special services or to receive additional literature, religious icons, or other religious items at one institution that are not allowed at other institutions. Each institution shall follow the uniform requirements of this administrative regulation.

(7) An inmate shall not be coerced, harassed, or ridiculed due to religious affiliation.

Section 3. Chaplain.

(1) Each institution shall provide a chaplain who plans, directs, and coordinates all aspects of the religious program including approval and training of both lay and clergy volunteers from faiths represented by the inmate population.

(2) If the chaplaincy staff or volunteers do not include a religious leader of an inmate's faith, the chaplain shall assist the inmate in contacting a person who has the appropriate credentials from the faith judicatory. That person may minister to the inmate under the supervision of the chaplain.

(3) The chaplain shall:

- (a) Coordinate scheduling of all religious programs;
- (b) Supervise all chaplaincy students; and
- (c) Coordinate and supervise all religious volunteers in accordance with 501 KAR 6:520.

Section 4. Religious Programming.

(1) The institution shall provide space and equipment adequate for the conduct and administration of each religious program.

(2) In an institution that uses a common worship area, adequate space shall be provided for religious emblems and other items used during worship.

(3) The institution shall maintain a basic library of religious reading materials that includes required literature of faiths represented by the inmate population.

(4) Congregate religious items shall not remain outside or be a permanent structure or fixture.

(5) Services and ceremonies.

(a) Each institution shall provide religious services.

(b) A specific religious service and ceremony may be provided based upon the inmate's stated religious preference.

(6) Religious headwear.

(a) An inmate who has expressed a religious preference listed below may wear the following religious headwear in the institution as follows:

Religion	ItemFemale	ItemMale	Color
Jewish	scarf (45 in x 45 in)	yarmulke	White or off-white
Islam	hijab	kufi	White or off-white
Nation of Islam	scarf (45 in x 45 in)	Taqiyah	White
Rastafarian	scarf (45 in x 45 in)	crown	Crowns may contain one, some or all of the following colors: red, yellow, green or black and shall not have a bill or peak, free of any writing to include symbols and graphics. Solid color crowns shall be white in color only. Scarfs may be white or off-white only.
Bobo Ashanti	N/A	turban (45 in x 45 in scarf)	White or off-white

An inmate may have three (3) items of religious headwear.

(b) Ceremonial headwear. An inmate may have one (1) ceremonial headwear in addition to **the** three (3) **items of** religious headwear. A headband shall be worn only in a circle covering the forehead, but not the crown of the head. An inmate who has expressed one (1) of the following religious preferences may wear the following ceremonial headwear in the IRC only. It shall not be worn to and from the chapel or in any other area of the institution:

Religion	ItemFemale	ItemMale	Color
Moorish Science Temple of America	scarf (45 in x 45 in)	fez	Fez shall be red in color only. Scarfs shall be white or off-white in color only.
Native American	headband	headband	Solid color only (blue, red, green, white, yellow, or black) (no beading, graphics or other ornamentation permitted)
Odinist/Asatru	N/A	hlath (hlad)	Brown or white with one or more embroidered runes or printed runes

(7) An inmate who chooses a religious preference that allows for a dress as a personal religious item may be issued the uniform dress as specified in CPP 17.1 incorporated by reference in 501 KAR 6:440.

(8) Religious objects and literature. The institution shall permit an inmate to possess items identified in the Religion Reference Manual as personal religious items. Items essential for faith practice shall be purchased through the contracted commissary provider, if available, at the inmate's expense.

(9) Religious diets.

(a) The department shall, to the extent it is feasible and within

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appropriate institutional resources, provide each inmate with the opportunity to satisfy the minimum dietary requirements deemed essential by the Religion Reference Manual. The department shall offer an alternate diet meal program and a Kosher diet meal program.

(b) If an inmate requests to participate in the Kosher Diet Program, the inmate shall receive counseling from the chaplain regarding the provisions of the KDP and shall sign the Kosher Diet Participation Agreement incorporated by reference in this administrative regulation. The provisions of the Kosher Diet Participation Agreement shall go into effect on the day the Agreement is signed, unless the institutional food service department does not have a Kosher meal for the newly signed up inmate. The chaplain shall notify the food service department in writing that the inmate has signed the KDP Agreement. The food service department shall immediately request adequate Kosher meals to accommodate the request.

(c) If the inmate signs the agreement at an institution that does not have a Kosher kitchen, the inmate may continue to eat the regular diet until the inmate is transferred to an institution equipped for Kosher meal preparation. If the inmate is housed in special management, he shall be required to complete any disciplinary time prior to transfer to an institution equipped for Kosher meal preparation.

(10) New religious components. If a request is made for a religious service not represented at the institution, the chaplain shall review the request with the warden or designee.

(a) If the request is in compliance with the Religion Reference Manual, it shall be implemented.

(b) If the request is for a religion or religious practice that is not represented in the Religion Reference Manual, then the following process shall be used:

1. The inmate shall submit to the chaplain a written request and include the history of the religion or practice and state any necessary personal religious items and congregated items for practice.

2. The chaplain shall review the request and submit his written recommendation along with the original request to the deputy warden.

3. The deputy warden shall review and submit his written recommendation along with all documentation to the Director of Operations or designee.

4. The Director of Operations or designee shall review all documentation submitted based on the requirements of this administrative regulation. The Director of Operations or designee shall notify all parties in writing of the decision. If the decision affects the Religion Reference Manual or Corrections Policy and Procedure, the revisions shall be made during the next review period. If the decision affects the department, the Director of Operations or designee shall notify all institutions of the approved changes to be implemented.

(c) If the request is one that is listed in Section 2(5) of this administrative regulation, a review by the Director of Operations shall not be necessary.

Section 5. Religious Funding.

(1) An IRC fund, apart from the institutional budget, may be established for the religious program and may be used for the following:

(a) Purchase of religious literature, music, and other materials;

(b) Purchase of equipment, including sound and music equipment, for operation and maintenance of the program; or

(c) Funding social events or supplying refreshments for special events.

(2) Any inmate may donate to the IRC fund.

(3) A donation by a private citizen or community group may be accepted into the fund.

(4) Any request for an expenditure of IRC funds shall be submitted by the chaplain to the warden or his designee for final approval through a requisition that describes the purchase or expenditure and a brief justification.

(5) A separate checking account requiring signatures of any two

(2) of the following shall be maintained for the IRC fund:

(a) Chaplain;

(b) Warden; or

(c) Deputy warden.

Section 6. Inmate Faith Group. An inmate faith group shall not engage in any fundraising activity. A ceremonial meal shall not be funded by the IRC fund, a private citizen, an inmate donation, or a community group.

Section 7. Inmate Responsibilities.

(1) Upon entry into the correctional system, an inmate's stated religious preference shall be recorded in the offender management system.

(2) An inmate may change his religious preference every six (6) months by contacting the institutional chaplain.

(3) The inmate shall seek a job or program assignment that does not conflict with his beliefs and practices.

(4) An inmate request for a special service or ceremony shall be made at least sixty (60) days prior to the requested date. This request shall be made in writing to the chaplain and shall include a statement of the reason for the request. The chaplain shall review the request following the procedure in Section 4(10)(b) of this administrative regulation.

(5) If an inmate changes his religious preference, the inmate shall surrender all sacred items related to the former religious preference listed in CPP 17.1 and the Religion Reference Manual.

(6) Institutional staff shall use a sign-up sheet for religion specific ceremonial meals and activities to determine inmate participation to properly advise the food service department to ensure the adequate amount of meals are provided. Failure to sign up in accordance with the posted sign-up sheet requirements shall result in non-participation for that meal or activity.

Section 8. Communication between an inmate and a chaplain or volunteer that presents a safety or security concern within an institution shall not be confidential.

Section 9. Training. Training shall be provided to the chaplains and religious services staff. Staff who have direct contact with inmates shall receive training concerning religious practices developed or approved by the Division of Corrections Training.

Section 10. Incorporation by Reference.

(1) "Kosher Diet Participation Agreement", 2024, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections Web site in the policies and procedures area at <https://corrections.ky.gov/About/cpp/Pages/default.aspx> or the regulation filing area at <https://corrections.ky.gov/about/pages/lrcfilings.aspx>.

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JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (As Amended at ARRS, October 15, 2024)

**501 KAR 6:510. Corrections policies and procedures:
release preparation and temporary release.**

RELATES TO: KRS Chapters 196, 197, 197.120, 197.140, 197.170, 197.175, 421.500, 439.3110, 439.3405, 439.590, 439.600, 439.610, 440.010, 441.146, 441.148, 532.200-532.262

STATUTORY AUTHORITY: KRS 196.035, 197.020, 197.110, 441.148

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NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 197.020(1)(a) and (b) require the Department of Corrections to promulgate administrative regulations for the government and discipline of the penitentiary, government and official conduct of all officials connected with the penitentiary, government of the prisoners in their department and conduct, and preservation of the health of the prisoners. KRS 197.110 authorizes the department to promulgate administrative regulations for purposes as the department deems necessary and proper for carrying out the intent of KRS Chapter 197. KRS 441.148(1) requires the department to promulgate administrative regulations to establish standards for the operation of reentry centers established pursuant to KRS 441.146. This administrative regulation establishes policies and procedures concerning release preparation and temporary release for the Department of Corrections.

Section 1. Incorporation by Reference.

(1) "Department of Corrections Policies and Procedures, Chapter 25", ~~October~~ May 15, 2024, are incorporated by reference. Department of Corrections Policies and Procedures Chapter 25 includes:

25.2	Public Official Notification of Release of an Inmate (10/15/24) (10/14/05)
25.3	Pre-release Program (10/15/24) (11/15/06)
25.4	Inmate Furloughs (5/15/24)
25.6	Community Service Center Program and Jail Placement (10/15/24) (11/13/18)
25.10	Administrative Release of Inmates (10/15/24) (11/13/20)
25.11	Victim Services (10/15/24) (8/25/09)
25.12	Home Incarceration Program (10/15/24) (11/13/20)
25.13	Women's Medical Release: Pregnancy (10/15/24) (11/13/18)
25.14	Reentry Center Program (10/15/24) (11/13/18)
25.15	Early Medical Parole Review (5/15/24)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections Web site in the policies and procedures area at <https://corrections.ky.gov/About/cpp/Pages/default.aspx> or the regulation filing area at <https://corrections.ky.gov/about/pages/lrcfilings.aspx>.

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**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, October 15, 2024)**

501 KAR 6:520. Citizen involvement, volunteer, and reentry mentor service programs.

RELATES TO: KRS Chapters 196, 197
STATUTORY AUTHORITY: KRS 196.035, 197.020,
197.110, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations

deemed necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 197.020(1)(a) and (b) require the Department of Corrections to promulgate administrative regulations for the government and discipline of the penitentiary, government and official conduct of all officials connected with the penitentiary, government of the prisoners in their department and conduct, and preservation of the health of the prisoners. KRS 197.110 authorizes the department to promulgate administrative regulations for purposes as the department deems necessary and proper for carrying out the intent of KRS Chapter 197. KRS 439.640 requires the commissioner to recommend administrative regulations to implement the provisions of the vocational training program. This administrative regulation establishes the procedures concerning citizen involvement, volunteer, and reentry mentor service programs for the Department of Corrections.

Section 1. Definitions.

(1) "Certified volunteer" means an individual not employed by the Department of Corrections (DOC) who provides specified services to the inmate population on an on-going basis and has met the certification requirements.

(2) "DOC" means Department of Corrections.

(3) "Non-certified volunteer" means an individual not employed by the DOC who provides specified services to the inmate population and has not met the certification requirements.

(4) "Reentry mentor" means a volunteer who is affiliated with a community- or faith-based organization, which has collaborated with the Division of Reentry Services, to assist offenders in transitioning into the community from incarceration or on supervision under the Division of Probation and Parole.

(5) "Reentry Mentor Coordinator" means a person within the Division of Reentry Services who is designated by the director to facilitate reentry mentor activities.

(6) "Special event volunteer" means an individual or member of a group not employed by the DOC who is involved in a selected activity that does not occur on a regular basis.

(7) "Student volunteer" means a student enrolled in a college or university who gains unpaid work experience that may enhance their skills and abilities and encourage a career with the DOC.

(8) "Volunteer coordinator" means the person at an institution who is designated by the warden to facilitate volunteer activities.

(9) "Volunteer services" means any specified service made available to the inmate population that involves contact or interactions with an approved volunteer providing a specified service.

Section 2. Volunteer Programs.

(1) A volunteer program shall have a stated purpose.

(2) Each correctional institution shall have a volunteer coordinator designated by the warden. The volunteer coordinator shall be responsible for recruiting volunteers and coordinating training and assignment of volunteers.

(3) Inmates at an institution shall be notified of the programs and opportunities available at the correctional institution through posted information, announcements, or other notification methods designed to reach the inmate population or eligible inmates.

Section 3. Volunteer Standards of Conduct.

(1) A volunteer shall not use employee time, facilities, equipment, or supplies of the Commonwealth for private purposes.

(2) The use of intoxicants shall not be tolerated.

(3) A volunteer shall not exchange a gift or favor with an inmate or family member of an inmate without approval of the warden or designee.

(4) A volunteer shall not become romantically involved with an inmate.

(5) A volunteer shall maintain confidentiality of records and inmate information.

(6) A volunteer may exchange information with an inmate consistent with the mission of the volunteer program.

Section 4. Volunteer Application Process.

(1) An individual may apply to become a volunteer for the DOC

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at any DOC correctional institution.

(2) Information about applying to be a volunteer may be obtained from the volunteer coordinator at the correctional institution. Institutional contact information may be located on the DOC Web site in the area for adult institutions.

(3) An applicant shall notify the volunteer coordinator of any criminal record and provide necessary information and authorization to obtain a background check. A criminal record shall be considered but may not necessarily preclude an individual from becoming a volunteer.

(4) The applicant may be interviewed.

(5) The applicant may be asked to submit to a drug test.

(6) The applicant shall be notified in writing if the applicant is accepted or rejected as a volunteer.

(7) The application of a volunteer shall be reviewed by the warden or designee before an applicant is rejected as a volunteer.

(8) The applicant accepted to be a volunteer shall agree to abide by the volunteer standards of conduct and all institutional policies, particularly those relating to the security and confidentiality of information and records by signing the Volunteer Confidentiality and Conduct Agreement incorporated by reference in this administrative regulation.

Section 5. Certified Volunteer.

(1) An applicant to be a certified volunteer shall:

(a) Be at least eighteen (18) years of age; and

(b) Provide all requested information when making an application to become a volunteer.

(2) A certified volunteer shall be eligible to provide services to all institutions.

(3) Certified volunteer orientation and training.

(a) The volunteer shall receive an orientation to the institution, including a tour with emphasis on the area in which the volunteer will work. A volunteer working in multiple institutions shall receive an orientation and tour of each institution.

(b) The volunteer shall complete the training program developed by the Division of Corrections Training.

(c) The volunteer shall complete annual training as required by the Division of Corrections Training. Failure to complete annual training shall result in the volunteer being removed from the volunteer list.

(4) Certified volunteer registration and identification.

(a) Upon completion of orientation and training, the certified volunteer shall be assigned an identification card. This identification card shall be maintained at all institutions where the person volunteers.

(b) Upon entering an institution to volunteer, the certified volunteer shall present a picture ID and receive his institutional volunteer ID. The personal picture ID shall be returned to the volunteer upon surrender of the institutional volunteer ID as the volunteer exits the institution.

(c) The identification information maintained on the volunteer shall include photograph, address, current telephone number, and emergency contacts. It may include other relevant information.

(5) A certified volunteer shall submit a schedule to the volunteer coordinator.

Section 6. Non-certified and Special Event Volunteers.

(1) A non-certified or special event volunteer shall not be required to be eighteen (18) years old or complete the training required to be a certified volunteer.

(2) A non-certified or special event volunteer shall always be accompanied by a DOC staff member or a certified volunteer. The accompanying certified volunteer shall not be a student volunteer.

(3) A non-certified or special event volunteer shall be admitted to the institution in accordance with the institutional policy for visitors incorporated by reference in the administrative regulation for the applicable correctional institution in 501 KAR Chapter 6.

Section 7. Student Volunteer.

(1) A student enrolled in a college or university shall be eligible to apply to be a student volunteer.

(2) A student volunteer shall not receive compensation for the student volunteer's services.

(3) A student volunteer may earn academic credit for the student volunteer's service, if accepted by the student's college or university.

(4) Information about applying to be a student volunteer may be obtained from the Justice and Public Safety Cabinet Office of Human Resource Management.

(5) An applicant shall notify the Office of Human Resource Management of any criminal record and provide necessary information and authorization to obtain a background check. A criminal record shall be considered but may not necessarily preclude an individual from becoming a volunteer.

(6) The applicant may be interviewed.

(7) The applicant may be asked to submit to a drug test.

(8) A student volunteer shall always be accompanied by a DOC staff member or a certified volunteer. The accompanying certified volunteer shall not be a student volunteer.

Section 8. Volunteer Review and Termination.

(1) A volunteer program shall be reviewed annually by the volunteer coordinator to ensure that the program is meeting stated goals and continuing to enhance services provided to the inmate population.

(2) A volunteer shall be reviewed annually to evaluate the volunteer's participation in the volunteer program. A volunteer may be terminated for inadequate participation, security issues, or other relevant issues.

(3) Any volunteer or program deemed to threaten the security of the institution shall be discontinued or limited until the problem is resolved.

Section 9. Reentry Mentor Program.

(1) The Division of Reentry Services shall maintain a list of mentors and the mentor's affiliated organization.

(2) The director of the Division of Reentry Services shall designate a reentry mentor coordinator. The reentry mentor coordinator shall be responsible for recruiting reentry mentors and coordinating training and assignment of reentry mentors.

(3) Inmates shall be notified of the mentor services available through posted information, announcements, or other notification methods designed to reach the inmate population or eligible inmates.

(4) The Division of Reentry Services shall review and evaluate reentry-related and mentoring programs annually.

Section 10. Reentry Mentor.

(1) An applicant to be a reentry mentor shall:

(a) Be affiliated with a DOC recognized community or faith-based partner organization and have a recommendation from the leadership of that organization;

(b) Be a certified volunteer; and

(c) Be at least twenty-one (21) years of age.

(2) The applicant shall be notified in writing if the applicant is accepted or rejected as a reentry mentor.

(3) The application of a reentry mentor shall be reviewed by the director of the Division of Reentry Services or designee before an applicant is rejected as a reentry mentor. The Director of the Division of Reentry Services or designee shall review the application and the reasons for the rejection and make a final determination.

Section 11. Mentor Orientation and Training.

(1) The reentry mentor shall complete a training program developed by the Division of Corrections Training and Division of Reentry Services.

(2) The reentry mentor shall agree in writing to abide by the mentor standards of conduct and all DOC and institutional policies by signing the Mentor Confidentiality and Conduct Agreement incorporated by reference in this administrative regulation.

(3) A reentry mentor shall complete annual training and other training as required by the Division of Reentry Services. Failure to complete annual training shall result in the reentry mentor being removed from the approved reentry mentor list.

Section 12. Reentry Mentor Standards of Conduct.

(1) A reentry mentor shall not use DOC employee time, facilities, equipment, or supplies for private purposes.

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- (2) The use of intoxicants shall not be tolerated.
(3) A reentry mentor shall not become romantically involved with an inmate or an individual under supervision within the DOC.
(4) A reentry mentor may make electronic contact by telephone or email with an assigned mentee within reason (as outlined by the Reentry Mentor Coordinator) for reentry planning purposes.
(5) A reentry mentor shall be of the same gender as the assigned mentee.

Section 13. Reentry Mentor Review and Termination.

(1) A reentry mentor shall be reviewed annually to evaluate the reentry mentor's participation in the reentry mentor program. A reentry mentor may be terminated for inadequate participation, security issues, or other relevant issues.
(2) Any reentry mentor deemed to threaten the security of the institution shall be discontinued or limited by the warden or designee until the issue is resolved.

Section 14. Incorporation by Reference.

(1) The following material is incorporated by reference:
(a) "Volunteer Confidentiality and Conduct Agreement", 2024, 1 page; and
(b) "Mentor Confidentiality and Conduct Agreement", 2024, 1 page.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections Web site in the policies and procedures area at https://corrections.ky.gov/About/cpp/Pages/default.aspx or the regulation filing area at https://corrections.ky.gov/about/pages/lrcfilings.aspx.

FILED WITH LRC: October 15, 2024

CONTACT PERSON: Nathan Goens, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8216, fax (502) 564-6686, email Justice.RegContact@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, October 15, 2024)

501 KAR 6:530. Corrections policies and procedures: programs and sentence credits.

RELATES TO: KRS Chapters 196, 197, 197.400 - 197.440, Chapter 439
STATUTORY AUTHORITY: KRS 196.035, 196.111, 197.020, 197.110, 439.3101, 439.640
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 authorizes the secretary to promulgate administrative regulations deemed necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 196.111 requires the Department of Corrections to promulgate administrative regulations for an evidence-based practices review process. KRS 197.020(1)(a) and (b) require the Department of Corrections to promulgate administrative regulations for the government and discipline of the penitentiary, government and official conduct of all officials connected with the penitentiary, government of the prisoners in their department and conduct, and preservation of the health of the prisoners. KRS 197.110 authorizes the department to promulgate administrative regulations for purposes as the department deems necessary and proper for carrying out the intent of KRS Chapter 197. KRS 439.3101 requires the department to promulgate administrative regulations that require the supervision and treatment of supervised individuals in accordance with evidence-based practices. KRS 439.640 requires the department to promulgate administrative regulations to implement the provisions of the vocational training program for inmates in the last ninety (90) days of confinement. This administrative regulation establishes

policies and procedures concerning programs and sentence credits for the Department of Corrections.

Section 1. Incorporation by Reference.

(1) "Department of Corrections Policies and Procedures, Chapter 30", October 15/September 13/May 15, 2024, are incorporated by reference. Department of Corrections Policies and Procedures Chapter 30 includes:

Table with 2 columns: Item Number and Description. Items include: 30.1 Program Approval Process, Evaluation, and Measurement (5/15/24); 30.2 Program Credit (5/15/24); 30.3 Risk and Needs Assessment and Reentry Programming Training and Quality Assurance (10/15/24)(5/15/24); 30.4 Probation Program Credit (5/15/24); 30.5 Sex Offender Treatment Program (10/15/24)(5/15/24); 30.6 Division of Addiction Services Substance Abuse Program (5/15/24); 30.7 DOC Approved Substance Abuse Program Parole Compliance Credits and Probation Program Credits (5/15/24); 30.8 Pretrial Substance Abuse Program (PSAP) 9/13/24(5/15/24); 30.9 Supporting Others in Active Recovery (SOAR) Program (5/15/24)

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COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Board of Regents
(As Amended at ARRS, October 15, 2024)

739 KAR 1:060. Management of capital construction projects.

RELATES TO: KRS 164A.580
STATUTORY AUTHORITY: KRS 164A.560
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.560 authorizes[permits] the governing boards of public institutions of higher education to elect to perform financial management functions pursuant to per KRS 164A.555 through to 164A.630 by [issuing] administrative regulation[regulations]. This administrative regulation implements the provisions established in of KRS 164A.580 at the Kentucky Community and Technical College System.

Section 1. Subject to the provisions of KRS 45.750 through 45.800 and 56.870 through to 56.874, the Kentucky Community and Technical College System Board of Regents elects to adopt the management and administration procedures established set forth in KRS 164A.580, Sections 1, 2, 3, 4, 5, 6, 7, and 8.

FILED WITH LRC: October 15, 2024

CONTACT PERSON: Katie George, Staff Attorney, 300 North

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Main Street, Versailles, Kentucky 40383, phone 859-256-3242, email katie.george@kctcs.edu.

COMMUNITY AND TECHNICAL COLLEGE SYSTEM Board of Regents (As Amended at ARRS, October 15, 2024)

739 KAR 1:070. Contracting for capital construction projects.

RELATES TO: KRS 164A.580, 164A.590, 164A.595, 164A.600 STATUTORY AUTHORITY: KRS 164A.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.560 authorizes[permits] the governing boards of public institutions of higher education to elect to perform financial management functions pursuant to[per] KRS 164A.555 through[to] 164A.630 by [issuing] administrative regulation[regulations]. This administrative regulation implements the provisions established in[of] KRS 164A.580 at the Kentucky Community and Technical College System.

Section 1. Subject to the provisions of KRS 164A.560, the[The] Kentucky Community and Technical College System Board of Regents[, under the provisions of KRS 164A.560,] elects to manage and administer capital construction projects in accordance with KRS 164A.585 through[, 164A.590, 164A.595, and] 164A.600.

FILED WITH LRC: October 15, 2024

CONTACT PERSON: Katie George, Staff Attorney, 300 North Main Street, Versailles, Kentucky 40383, phone 859-256-3242, email katie.george@kctcs.edu.

PUBLIC PROTECTION CABINET Department of Insurance Division of Health Life and Managed Care (As Amended at ARRS, October 15, 2024)

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, 304.17-380, 304.17-383, 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 established 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 by[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 that[which] includes genetic services, by the individual or any family member of the individual; and[.]

(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; and

(b) Does not mean[Except for] an analysis of proteins or metabolites that:

1. Does not detect genotypes, mutations, or chromosomal changes; or

2. [an analysis of proteins or metabolites that] Is directly related to a manifested disease, disorder, or pathological condition that could[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)[(18)].

(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 Kentucky,[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).

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(21) "Medicare Advantage plan" means a plan of coverage for health benefits under Medicare Part C as defined by ~~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, as established in Section 12 of this administrative regulation, within which an insurer is authorized to offer a Medicare Select policy.

~~(32)~~~~(31)~~ "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 Kentucky~~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

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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) **Except as established in this subsection,** "sickness" shall not be defined to be more restrictive than the following: "Sickness means illness or disease of an insured person ~~that~~**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 ~~allowed~~**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 ~~Kentucky~~**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 ~~Kentucky~~**the state** shall not contain benefits that duplicate benefits provided by Medicare.

(4)

(a) ~~In accordance with~~**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 ~~the policy or certificate~~**it** meets or exceeds the ~~following~~**minimum standards established in subsections (2) and (3) of this section,** which shall not preclude the inclusion of other provisions or benefits that are not inconsistent with these standards.

(2) General standards. The ~~following~~**standards established in paragraphs (a) through (g) of this subsection** 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~~**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[-]"₁ "guaranteed renewable[-]"₁ 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 ~~established~~**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 2₂ 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 ~~that~~**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 hospitalization₂ 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 ~~limited 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, ~~limited 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, ~~limited 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 ~~Kentucky this state~~ as a Medicare supplement policy or certificate unless it complies with ~~subsections (1) through (4) of this section these benefit standards~~.

(1) General Standards. The following standards shall apply to Medicare supplement policies and certificates and ~~shall be 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 5₂ 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 ~~provides for~~.

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 3₂ 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 ~~by~~ 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. Reinstitution of coverages as described in subparagraphs 2₂ and 3₂ 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

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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 **(1)** 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 **subparagraphs 1. through 5. of this paragraph.**~~[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:

a. 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; **and**

b. ~~[, 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 **through** ~~[to]~~ J. Every insurer shall make available a policy or certificate including at a minimum the ~~[following]~~ basic "core" package of benefits **established in paragraphs (a) through (e) of this subsection** 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, **including**.~~[-]~~

(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, **limited 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, **limited 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, **limited 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 2. 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; **and**.~~[-]~~

(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-

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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 defined by~~ ~~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 ~~benefits established in~~ ~~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 ~~through~~ ~~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 ~~established in subsections (1) through (3) of this section~~ 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 ~~the policy or certificate~~ ~~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, ~~shall remain in compliance with~~ ~~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)6₂, shall apply to all policies ~~in this section~~ ~~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 ~~established in paragraphs (a) and (b) of this subsection~~ 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, ~~including~~:

(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 regulation₂:

(a) Medicare Part A Deductible, which is coverage for 100 percent of the Medicare Part A inpatient hospital deductible amount per benefit period₁;

(b) Medicare Part A Deductible, which is coverage for fifty (50) percent of the Medicare Part A inpatient hospital deductible amount per benefit period₁;

(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 A₁;

(d) Medicare Part B Deductible, which is coverage for 100 percent of the Medicare Part B deductible amount per calendar year regardless of hospital confinement₁;

(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; ~~and~~;

(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 ~~limited~~ ~~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 established 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 allowed 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[an] 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)

a New or Innovative Benefits: An insurer may, with the prior approval of the commissioner as established in KRS 304.14-120, 304.14-130, and 304.14-510, 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:

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1. Appropriate to Medicare supplement insurance;
2. ~~[-]~~ New, ~~[or]~~ innovative, or not available;
3. ~~[-]~~ Not available Cost-effective; ~~[-]~~ and
4. Offered in a manner that is consistent with the goal of simplification of Medicare supplement policies.

(b) 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 the policy or certificate ~~it~~ complies with these benefit plan standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued before June 1, 2010, shall remain in compliance with ~~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 established 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 (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, with ~~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;

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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 benefits established in following:

1. ~~The benefits described in~~ Paragraph(h)1₂, 2₂, 3₂, and 9₂ of this subsection;

2. ~~The benefit described in~~ Paragraph(h)4₂ through ~~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 visit₂; ~~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)

(a) New or Innovative Benefits: An insurer may, with the prior approval of the commissioner as established in KRS 304.14-120, 304.14-130, and 304.14-510, 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:

1. Appropriate to Medicare supplement insurance;

2. ~~are~~ New₂ ~~or~~ innovative, or ~~are~~ not available₂; and

3. ~~are~~ Cost-effective.

(b) Approval of new or innovative benefits shall not adversely impact the goal of Medicare supplement simplification.

(c) New or innovative benefits shall not include an outpatient prescription drug benefit.

(d) 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 established in subsections (1) through (4) of this section 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, delivered₂ 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 established in this section. Benefit plan standards applicable to Medicare supplement policies and certificates issued to individuals eligible for Medicare before January 1, 2020, shall remain limited subject to the requirements of Sections 9 and 10 of this administrative regulation.

(1) Benefit Requirements. The standards and requirements of Section 10 of this administrative regulation 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 established in paragraphs (a) through (d) of this subsection.₂

(a) Standardized Medicare supplement benefit Plan C shall be ~~is~~ redesignated as Plan D and shall provide the benefits contained in Section 10~~(14)~~(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 shall be ~~is~~ redesignated as Plan G and shall provide the benefits contained in Section 10~~(14)~~(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 shall be ~~is~~ redesignated as Plan G with High Deductible and shall provide the benefits contained in Section 10~~(14)~~(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~~ ~~out-of-pocket~~ expense in meeting the annual high deductible.

(2) Applicability to Certain Individuals. This section shall apply only to individuals who ~~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 ~~Kentucky~~~~[this state]~~ until ~~the insurer's~~~~[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 ~~with~~~~[subject to]~~ restricted network provisions are available and accessible through network providers, including a demonstration that:

1. Covered services ~~can~~~~[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 ~~with~~~~[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; ~~and~~~~[-]~~

5. If covered services are ~~with~~~~[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; ~~and~~~~[-]~~

(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 as established in KRS 304.14-130.

(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 ~~if~~~~[when]~~ providers other than network providers are utilized. Except to the extent specified in the policy or certificate, expenses incurred ~~if~~~~[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; ~~and~~~~[-]~~

(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 within a reasonable time~~[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, then appropriate 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 ~~the policy or certificate if~~ 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 ~~the policy or certificate if~~ 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) ~~Except as established in KRS 304.14-525(3)(b)1.,~~ 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 ~~the applicant~~

1.

~~a. [The applicant] is enrolled for benefits under Medicare Part B; and~~

~~b. Submits [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]~~

~~2. [b.] [A non-age eligible person, who] Meets the requirements of KRS 304.14-525(2)(a) or (b) [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) ~~Except as established in KRS 304.14-525(3):~~

(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; ~~and[.]~~

(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 ~~KRS 304.14-525(3)~~, 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 ~~shall be 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 ~~an individual who~~ 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 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 2. 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

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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. 1395(a)(1)(A), regarding health care prepayment plan; or

d. An organization under a Medicare Select policy; and

2. ~~[The enrollment]~~ Ceases to be enrolled under the same circumstances that would allow/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 violating/violated a material provision of the policy; or

3. The insurer, or an agent or other entity acting on the insurer's behalf, materially misrepresenting/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. Subsequently enrolls ~~The subsequent enrollment~~ under subparagraph 1₂ of this paragraph and whose enrollment is terminated by the enrollee during any period within the first twelve (12) months of subsequent enrollment during which the enrollee is allowed/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 and 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; ~~or~~

(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; ~~or~~

(c) For an individual described in subsection (2)(d)1₂ 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; ~~or~~

(d) For an individual described in subsection (2)(b), (d)2₂, (d)3₂, (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; ~~or~~

(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)(a), (b), (c), (d), (e), (f), or (g) of this section but not as described in paragraphs (a), (b), (c), (d), or (e) of this subsection ~~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 established 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; ~~or~~

(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 shall be are entitled. The Medicare supplement policy to which eligible persons shall be entitled under:

(a) Subsection (2)(a) through (d) of this section shall consist

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~~of 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) ~~On or before December 31, 2005, [1. Subject to subparagraph 2, of this paragraph, a person eligible pursuant to]~~ subsection (2)(e) of this section ~~shall be [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 ~~paragraph shall be~~ subparagraph is:

1.[a.] The policy available from the same insurer but modified to remove outpatient prescription drug coverage; or

2.[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 ~~shall be [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; ~~or; or.]~~

(e) Subsection (2)(h) of this section shall be [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 ~~if [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 ~~if [when]~~ combined with the actual experience since inception;

2. The appropriate loss ratio requirement from paragraph (a)1.a₁ and b₂ of this subsection ~~if [when]~~ combined with actual experience beginning with July 5, 1996, to date; and

3. The appropriate loss ratio requirement from paragraph (a)1.a₂ and b₂ 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 ~~with [subject to]~~ an individual loss ratio standard ~~at issuance [when issued]~~, combined and all other group policies combined for experience after July 5, 1996.

(d) A refund or credit shall be made only ~~if [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

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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 ~~Kentucky~~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~~304-44-420:

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 ~~Kentucky~~this state shall file with the commissioner, in accordance with KRS ~~304.14-120~~304-44-420:

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; ~~and.~~

- 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; ~~and.~~

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, which shall be conducted 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 submitted~~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 as established in KRS 304.14-120, 304.14-130, and 304.14-510, 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, upon good cause shown, 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 established~~described~~ in the actuarial memorandum to change. The commissioner, as established in KRS 304.17-380 and 304.17-383, 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.

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(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. ~~##~~ 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 ~~that~~ 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; ~~and~~.

b. To the applicant upon application and acknowledgement of receipt of the guide, which 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 ~~the insurer's~~ its policyholders and certificate holders of modifications ~~the insurer~~ 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 ~~with~~ 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)

1. The outline of coverage provided to applicants pursuant to this section shall consist of four (4) parts:

a. A cover page;

b. [] Premium information;

c. [] Disclosure pages; [] and

d. Charts displaying the features of each benefit plan offered by the insurer.

2. 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.

3. All plans shall be shown on the cover page, and the plans that

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are offered by the insurer shall be prominently identified.

4. 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.

5. The premium and mode shall be stated for all plans that are offered to the prospective applicant.

6. 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, ~~HL-MS-5[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 the agent has[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 ~~provide[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, as established in KRS 304.14-130, 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, as established in KRS 304.14-130, 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 as established in KRS 304.14-130.

(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 shall[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; and[-]

(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; and.]

(c) Cold lead advertising. Making use of any method of marketing ~~that~~ ~~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 ~~shall not~~ ~~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 ~~is~~ ~~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; ~~and~~

(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; ~~and~~

(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; ~~and~~

(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; ~~and~~

(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~~ ~~corporate~~ 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) ~~"HLMS-9/HL-MS-09"~~, ~~October~~ ~~2023~~ ~~edition~~ ["Plan-Benefit Chart", April 2018 edition].

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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]~~.

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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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, October 15, 2024)

902 KAR 45:001. Definitions for hemp-derived cannabinoid products.

RELATES TO: KRS Chapter 13B, 217.015, 217.025, 217.035, 217.037, 217.039, 260.850, 438.305(4), 2023 Ky Acts ch. 78, **7 C.F.R. 990.1**

STATUTORY AUTHORITY: KRS 217.125, 217.135

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.125(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations for the efficient administration and enforcement of the Kentucky Food, Drug and Cosmetic Act, KRS 217.005 through 217.215. KRS 217.135 authorizes the secretary to establish food standards by administrative regulation including a reasonable definition, standard of identity, and designation of optional ingredients that shall be named on the label. This administrative regulation establishes the definitions applicable to hemp-derived cannabinoid products.

Section 1. Definitions.

(1) "Adult-use cannabinoid" means a product with intoxicating properties that changes the function of the nervous system and results in alterations of perception, cognition, or behavior.

(2) "Approved source" means:

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

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

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

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

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

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

(6) "Cannabinoid product class" means a group of cannabinoid products that:

(a) Have all ingredients in common; and

(b) Are produced by or for the same company.

(7) "Cartoon" means any drawing or other depiction of an object, person, animal, creature, or any similar caricature that satisfies any of the following criteria:

(a) The use of comically exaggerated features;

(b) The attribution of human characteristics to animals, plants or other objects, or the similar use of anthropomorphic technique; or

(c) The attribution of unnatural or extra-human abilities, such as imperviousness to pain or injury, X-ray vision, tunneling at very high speeds, or transformation.

(8) "Child-resistant" means packaging that is:

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

to use properly; and

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

(9) "Cosmetic" is defined by KRS 217.015(7).

(10) "Direct supervision" means the continuous, on-site observation of an employee with the supervisor physically present.

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

(12) "Hemp" is defined by KRS 260.850(5).

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

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

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

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

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

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

(19) "Person" is defined by KRS 217.015(32).

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

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

(22) "Serious adverse event" means a medical occurrence associated with the use of a cannabinoid product that results in ~~one~~ **(1) or more of the following**:

(a) Death;

(b) A life-threatening event;

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

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

(e) A congenital anomaly or birth defect.

(23) "Tentatively identified compounds" or "TIC" means compounds detected in a sample that are not among the target analytes.

(24) "Total THC" is defined by 7 C.F.R. 990.1.

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CONTACT PERSON: Julie Brooks, Policy Specialist, Dept. for Public Health, 275 East Main St., HS1GW-A, Frankfort, KY 40621; Phone: (502) 564-3970; Email: julied.brooks@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, October 15, 2024)

902 KAR 45:021. Hemp-derived cannabinoid products registration, processing, manufacturing, storage and distribution requirements.

RELATES TO: KRS Chapter 13B, 217.015, 217.025, 217.035, 217.037, 217.039, 217.992, 2023 Ky Acts ch. 78

STATUTORY AUTHORITY: KRS 217.125, 217.127, 217.135, 217.155

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.125(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations for the efficient administration and enforcement of the Kentucky Food, Drug and Cosmetic Act, KRS 217.005 through 217.215. KRS 217.125 **(2), (4) [(12)]** requires the secretary to provide by administrative regulation a schedule of fees for permits to operate and for inspection activities carried out by the cabinet pursuant to KRS 217.025 through 217.390. KRS 217.135 authorizes the secretary to establish food standards by administrative regulation including a reasonable definition, standard of identity, and designation of optional ingredients that shall be named on the label. KRS 217.155 **authorizes[allows]** the cabinet or its duly authorized agent free

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access at reasonable times for the purpose of inspecting any factory, warehouse, or establishment where foods, drugs, devices, or cosmetics are manufactured or held for sale. This administrative regulation establishes the product registration, the processing and manufacturing procedures for hemp-derived cannabinoid products, including the permit fee, and the labeling and packaging requirements for products containing hemp-derived cannabinoids. Establishments permitted with the department prior to **December 31, 2024**, ~~[the effective date of this administrative regulation]~~ shall be exempted from the permit fee requirement until the annual renewal date.

Section 1. Permit and Product Registration.

(1) In-state permit.

(a) A person located in Kentucky seeking to process, manufacture, store, or distribute hemp-derived cannabinoid products shall be permitted by the cabinet.

(b) The permit shall ~~be~~:

1. **Be** nontransferable in regard to person or address;
2. **Be** posted in a conspicuous place in the facility;
3. **Be** renewed annually; **and**
4. Include the fee paid in accordance with **the following**:
 - a. For a hemp processing permit, the fee is \$3,000; ~~[-]~~
 - b. For a hemp manufacturing permit, the fee is \$1,000; ~~[-]~~
 - c. For a hemp cannabinoid wholesale warehouse and distributor permit, the fee is \$1,000; **and** ~~[-]~~
 - d. For a hemp cosmetic permit, the fee is \$200; **and** ~~[-]~~

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

(2) The permit fee established pursuant to subsection (1)(b)4. of this section shall be waived for all facilities permitted as of **December 31, 2024** ~~[April 27, 2024]~~, and ~~those~~ ~~[such]~~ facilities shall pay the permit fee at next annual renewal date.

(3)

(a) All out-of-state processors and manufacturers of hemp-derived cannabinoid products available for distribution in Kentucky shall **complete the business registration as required by** ~~[submit an annual registration to]~~ the department.

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

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

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

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

c. **The fee required by subparagraph (1)(b)4.c. of this section; and**

d. The product registration fee required by subsection (5) of this section.

(4) Cannabinoids requiring registration:

(a) Adult-use cannabinoids shall include:

Cannabinoid	CAS Number
Delta-10-tetrahydrocannabinol (Delta-10-THC)	95543-62-7
Delta-9-tetrahydrocannabinol (THC) with three tenths of one percent (0.3%) or less Total THC	1972-08-3
Delta-8-tetrahydrocannabinol (Delta-8-THC)	5957-75-5
Delta-9-tetrahydrocannabinolic acid A (THCA-A) with three tenths of one percent (0.3%) or less Total THC	23978-85-0
Delta-9-tetrahydrocannabivarin (THCV)	31262-37-0
Delta-9-tetrahydrocannabivarinic acid (THCVA)	39986-26-0
Delta-6-tetrahydrocannabinol (Delta 6)	95720-02-8
Hexahydrocannabinol (HHC)(-)	6692-85-9
Tetrahydrocannabiphorol (THCp)	54763-99-4
Tetrahydrocannabinol methyl ether (THCM)	36403-68-6

(b) Non-intoxicating cannabinoids shall include:

Cannabinoid	CAS Number
Cannabidiol (CBD)	13956-29-1
Cannabidiolic acid (CBDA)	1244-58-2
Cannabidivarin (CBDV)	24274-48-4

Cannabidivarinic acid (CBDVA)	31992-13-5
Cannabichromene (CBC)	20675-51-8
Cannabichromenic acid (CBCA)	185505-15-1
Cannabigerolic acid (CBGA)	25555-57-1
Cannabigerol (CBG)	25654-31-3
Cannabinol (CBN)	521-35-7
Cannabitriol (CBT)	11003-36-4

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

(5) Product registration fee.

(a) A product registration fee of \$200 shall be paid for each cannabinoid product or cannabinoid product class sold in Kentucky.

(b) The fee shall be paid to the cabinet by check or money order made payable to the Kentucky State Treasurer.

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

(a) In the chemical composition or formula of the cannabinoid product; **or**

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

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

(a) The name and address of the applicant;

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

(c) The name of the product;

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

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

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

(8) A new ~~product~~ ~~[in-state processor or manufacturer permit, or out-of-state]~~ registration shall be required for any changes to the requirements of subsection (7) of this section.

Section 2. Processing, Manufacture, Storage, or Distribution of Hemp-derived Cannabinoid Products.

(1) All processors and manufacturers shall meet:

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

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

(2) Cannabinoid products shall not be manufactured, marketed, sold, or distributed by a home-based processor.

(3) The following hemp-derived products shall not be manufactured **with the intent for retail sale**:

(a) Hemp cigarettes;

(b) Hemp cigars;

(c) Chew, dip, or other smokeless material consisting of hemp leaf material or hemp floral material; **and**

(d) Hemp leaf material or floral material teas; **and**

(e) Hemp bud or floral material.

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

(5) Non-intoxicating cannabinoid products shall:

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

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

(6) Products not meeting the requirements of subsection (5) of this section shall be considered adult-use products.

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

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

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

(c) Based on the amount typically consumed.

(8)(7) A hemp-derived cannabinoid processing or

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manufacturing facility shall not treat or otherwise adulterate a cannabinoid product with:

- (a) Any non-cannabinoid additive that increases toxicity or addictive potential, excluding caffeine;
- (b) Alcohol;
- (c) Nicotine; or
- (d) Other chemicals that may increase carcinogenicity or cardiac effects.

~~(9)~~~~(8)~~ All products shall be homogenized to ensure uniform distribution of cannabinoids throughout the product.

~~(10)~~~~(9)~~ Only permitted hemp-derived cannabinoid processing facilities shall perform cannabinoid extraction, conversion, catalyzation, distillation, hydrogenation, or other refinement processes.

~~(11)~~~~(10)~~ A hemp-derived cannabinoid processor or manufacturer shall only use the following solvents: water, glycerin, vegetable oils, animal fats, butane, propane, carbon dioxide, ethanol, isopropanol, acetone, heptane, ethyl acetate, and pentane. The use of any other solvent is expressly prohibited unless pre-approved by the cabinet.

~~(12)~~~~(11)~~ A hemp-derived cannabinoid processor using hydrocarbon-based solvents shall use only ~~those~~~~[such]~~ solvents of ninety-nine (99) percent or better purity. Nonhydrocarbon-based solvents shall be food grade.

~~(13)~~~~(12)~~

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

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

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

~~(14)~~~~(13)~~

(a) Solvents shall be collected and stored in food-grade containers to maintain purity; and

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

~~(15)~~~~(14)~~ Extraction processes shall take place in an environment properly ventilated to control all sources of ignition where a flammable atmosphere is, or could be, present.

~~(16)~~~~(15)~~ Cannabinoid processing facilities shall not use pressurized canned flammable fuel, such as butane intended for use in outdoor activities, handheld torch ~~devices~~~~[devises]~~, and refillable cigarette lighters.

~~(17)~~~~(16)~~ Cannabinoid processing facilities using carbon dioxide shall have equipment and facilities approved by local fire code officials, if applicable.

~~(18)~~~~(17)~~ Processes using flammable gas or flammable liquid shall have leak or gas detection measures, or both.

~~(19)~~~~(18)~~ A permittee shall not use dimethylsulfoxide (DMSO) in the manufacture of hemp-derived cannabinoid products, and possession upon the permitted premises is prohibited.

~~(20)~~~~(19)~~

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

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

~~(21)~~~~(20)~~ The following substances shall be prohibited in hemp-derived cannabinoid extraction intended for inhalation:

- (a) Acetates;
- (b) Medium-chain triglycerides (MCT);
- (c) Polyethylene glycol (PEG);
- (d) Propylene glycol (PG or PPG);
- (e) Diketones:
 1. 2,3-butanedione (Diacetyl);
 2. 2,3-pentanedione (acetylpropionyl); and
 3. 3-hydroxybutanone (acetoin);

- (f) Myclobutanil;
- (g) Artificial food coloring; and
- (h) Benzoic acid.

~~(22)~~~~(21)~~ Hazard analysis and risk-based preventive controls.

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

1. Processing reagents or catalysis;
2. Processing by-products or compounds; and
3. Tentatively identified compounds.

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

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

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

Section 3. Record Keeping.

(1) A master formulation record shall be prepared and maintained for each unique hemp-derived cannabinoid product.

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

- (a) Name of the cannabinoid product;
- (b) Ingredient identities and amounts;
- (c) Specifications on the delivery device (if applicable);
- (d) Complete instructions for preparing the cannabinoid product, including equipment, supplies, and description of the manufacturing steps;
- (e) Process controls and procedures; and
- (f) Any other information needed to describe the production and ensure its repeatability.

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

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

- (a) Name of the cannabinoid product;
- (b) Master formulation record reference for the cannabinoid product;
- (c) Date and time of preparation of the cannabinoid product;
- (d) Production batch number;
- (e) Signature or initials of individuals involved in each manufacturing step;
- (f) Name, vendor, or manufacturer, production batch number, and expiration date of each ingredient;
- (g) Weight or measurement of each ingredient;
- (h) Documentation of process controls;
- (i) Any deviations from the master formulation record, and any problems or errors experienced during the manufacture, and corrective actions; and
- (j) Total quantity of the cannabinoid product manufactured.

Section 4. Product Packaging and Labeling.

(1) Each cannabinoid product manufactured, marketed, sold, or distributed in the commonwealth shall be packaged and labeled in accordance with KRS 217.037, HB 544, 2023 Ky. Acts ch. 78, and this administrative regulation.

(2) Each container of adult-use cannabinoid product, excluding cosmetics, shall:

- (a) Have a tamper-evident seal; and
 - (b) Be in child-resistant packaging.
- (3) Each container of non-intoxicating cannabinoid product or

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cosmetic shall have a tamper-evident seal.

(4) Cannabinoid product packaging shall not include:

(a) Any cartoon images;

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

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

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

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

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

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

(b) Other hemp-derived cannabinoids labeled milligrams per gram (mg/g) per serving, excluding cosmetics, and milligrams per package, if listed on the label.

(6) Adult-use hemp-derived cannabinoid products shall include the following warning label statements:

(a) "Warning: Contains THC";

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

(c) "There may be health risks associated with the consumption of this product";

(d) "There may be additional health risks associated with the consumption of this product for those who are pregnant, nursing, or plan to become pregnant";

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

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

(g) "Use of this product may result in a positive drug screen";

(7) A quick response or QR code may be used as a link to the warning statements required by subsection (6) of this section. The QR code shall be labeled as "Warning Statements" directly above or below the code and shall be large enough to be smart-phone readable.

Section 5. Inspection and Enforcement.

(1) The cabinet or its duly authorized agent shall conduct an onsite inspection of all permitted cannabinoid processing and manufacturing establishments, storage warehouses, and distribution centers.

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

(3) All cannabinoid establishments, whether permitted or not, shall cooperate with the cabinet or its duly authorized agent during any inspections, complaint investigation, and requests for information or data, in order to verify compliance with this administrative regulation.

(4)

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

(b) The permit holder shall be given notice that it has ~~they~~ have ten (10) days to file an appeal pursuant to subsection (12) of this section.

(c) If a ~~request~~ request for an appeal is not filed, seized products shall be destroyed.

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

(6)

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

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

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

2. Phone to (502)564-7181.

(7) If the cabinet has evidence that a permit holder has failed to act to correct an imminent health hazard, the following enforcement provisions shall be initiated:

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

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

(8) If a permit suspension is due to an imminent health hazard, the permit holder may submit a request for an administrative hearing to the cabinet in accordance with KRS Chapter 13B.

(9) A permit holder shall notify the cabinet within twenty-four (24) hours of becoming aware of any serious adverse event to a hemp-derived cannabinoid product sold or transferred by the permit holder.

(10) In all other instances of violation of this administrative regulation, the cabinet shall serve the permit holder with a written notice specifying the violation and afford the holder an opportunity to correct.

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

(12)

(a) The notice in subsection (11) of this section shall include notification that the permit shall be suspended at the end of ten (10) days following service of the notice, unless a written request for an administrative hearing is filed with the cabinet by the permit holder within the ten (10) day period; and

(b) The administrative hearing shall be conducted in accordance with KRS 13B.080.

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

(14) Any person who violates any provision of this administrative regulation may be fined, found guilty ~~of~~ a criminal offense, or both pursuant to KRS 217.992.

(15) State and local law enforcement officers shall have concurrent jurisdiction to enforce violations of this administrative regulation ~~section~~.

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CONTACT PERSON: Julie Brooks, Policy Specialist, Dept. for Public Health, 275 East Main St., HS1GW-A, Frankfort, KY 40621; Phone: (502) 564-3970; Email: julied.brooks@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, October 15, 2024)

902 KAR 45:031. Hemp-derived cannabinoid product sampling and testing requirements.

RELATES TO: KRS Chapter 13B, 217.015, 217.025, 217.035, 217.037, 217.039, 260.850, 438.305(4), 2023 Ky Acts ch. 78

STATUTORY AUTHORITY: KRS 217.125, 217.155

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.125(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations for the efficient administration and enforcement of the Kentucky Food, Drug and Cosmetic Act, KRS 217.005 through 217.215. KRS 217.155

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authorizes[allows] the cabinet or its duly authorized agent free access at reasonable times for the purpose of inspection any factory, warehouse, or establishment where foods, drugs, devices, or cosmetics are manufactured or held for sale. This administrative regulation establishes the hemp-derived cannabinoid product sampling and testing requirements.

Section 1. Product Sampling and Testing Requirements.

(1) Sampling and testing for all cannabinoid products shall be:

- (a) Done for each batch or process lot; and
- (b) Conducted with representative samples to ensure:

1. All batches or process lots are adequately assessed for contaminants; and

2. The cannabinoid profile is consistent throughout.

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

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

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

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

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

(c) Included on the product package or label.

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

(a) Cannabinoid products samples shall consist of enough material from the batch or process lot to ensure that the required attributes in the products are homogenous and consistent with the testing facility's accredited sampling policies and procedures.

(b) A cannabinoid processing or manufacturing permittee shall prepare sampling policies and procedures that contain the information necessary for collecting and transporting samples from cannabinoid products in a manner that does not endanger the integrity of the sample for any analysis required by this administrative regulation.

(6) Reserve samples.

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

(b) The reserve samples shall:

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

2. Be identified with the batch or process number;

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

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

(7) Laboratory requirements.

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

(b) The testing facility shall:

1. Maintain ISO 17025 accreditation; and

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

a. Cannabinoids;

b. Microbial impurities;

c. Mycotoxins;

d. Residual pesticides;

e. Heavy metals; and

f. Residual solvents, if applicable.

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

1. Is issued by an accreditation organization; and

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

(8) Testing requirements.

(a) A processing or manufacturing facility shall test every batch or process lot of cannabinoid product for sale or distribution prior to sell or transfer.

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

(c) Cannabinoid products shall be tested for:

1. Cannabinoids, which shall include all cannabinoids specified in 902 KAR 45:021, Section 1(4)(3)(a);

2. Microbial impurities;

3. Mycotoxins;

4. Residual pesticides;

5. Heavy metals; and

6. Residual solvents, if applicable.

(d) Infused cannabinoid products may not require additional testing for microbial impurities, mycotoxins, residual pesticides, heavy metals, or residual solvents, as applicable, if the cannabinoid distillate used to make an infused product was:

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

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

(e) An infused cannabinoid product shall be tested if the addition of ingredients or processing practice create a reasonable or foreseeable microbial impurity, mycotoxin, residual pesticide, heavy metals, or residual solvents hazard.

(f) All vaporizer delivery device or pressurized metered dose inhaler cartridge batches or process lots shall be tested for acetates.

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

Section 2. Standards for Cannabinoid Testing.

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

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

(a) Total tetrahydrocannabinol concentration, calculated in accordance with subsection (3) of this section and reported in percentages;

(b) Tetrahydrocannabinol-A concentration;

(c) Milligrams per serving for total tetrahydrocannabinol and the primary cannabinoid marketed, excluding cosmetics, as applicable;

(d) Milligrams per package for total tetrahydrocannabinol and the primary cannabinoid marketed, excluding cosmetics, as applicable; and

(e) The results of all other hemp-derived cannabinoids analyzed on the COA both as a percentage and milligrams per gram (mg/g).

(3) The following calculation shall be used for calculating total tetrahydrocannabinol concentration expressed in weight: Total cannabinoid concentration (mg/g) = (cannabinoid acid form concentration (mg/g) x 0.877) + cannabinoid concentration (mg/g) on a dry weight basis.

(4) For cannabinoid infused products, excluding cosmetics, potency shall be reported as milligrams of total tetrahydrocannabinol and the primary cannabinoid marketed, excluding cosmetics per gram.

(5) Cannabinoid products shall not contain a delta-9 tetrahydrocannabinol concentration of more than three-tenths of one percent (0.3) on a dry weight weigh basis.

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

Section 3. Standards for Microbial Impurities.

(1) Cannabinoid products shall be tested by a testing facility for the presence of microbial impurities.

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

(a) Total Escherichia coli is not detected above 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;

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

(e) **[Listeria Spp. is not detected in one (1) gram; and]**

[(f)] A total combined yeast and mold do not exceed 100,000 colony forming units per gram.

(3) The sample of ingestible or cosmetic cannabinoid products shall be deemed to have passed the microbial impurities testing if the following conditions are met:

(a) Total Escherichia coli is not detected above 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) **[Listeria Spp. is not detected in one (1) gram; and]**

[(e)] A total combined yeast and mold do not exceed 100,000 colony forming units per gram.

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

(5) If a sample from a batch or process lot of a cannabinoid product fails microbiological contaminant testing, the batch may be further processed if the processing method effectively sterilizes the batch.

(6) A batch or process lot that is sterilized in accordance with subsection (5) of this section shall be sampled and tested in accordance with this administrative regulation, if not otherwise required for that product, for microbiological contaminants, and residual solvents.

(7) A batch or process lot that fails microbiological contaminant testing after undergoing a sterilization process in accordance with subsection (5) of this section shall be destroyed in a manner that renders the batch or process lot denatured and unusable.

Section 4. Standards for Mycotoxin Testing.

(1) Cannabinoid products shall be tested by a testing facility for the following mycotoxins: aflatoxin B1, B2, G1, and G2 ochratoxin A.

(2) A batch or process lot 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.

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

Section 5. Standards for Testing Residual Pesticides.

(1) Cannabinoid products shall be tested by a testing facility for the following residual pesticides and shall not exceed the maximum allowable concentration for each:

Residual pesticide	Chemical Abstract Service (CAS) assigned number	Maximum allowable concentration stated in parts per million (ppm)
Abamectin	71751-41-2	0.5 ppm
Acephate	30560-19-1	0.4 ppm
Acequinocyl	57960-19-7	2.0 ppm
Acetamiprid	135410-20-7	0.2 ppm
Aldicarb	116-06-3	0.4 ppm
Azoxystrobin	131860-33-8	0.2 ppm
Bifenazate	149877-41-8	0.2 ppm
Bifenthrin	82657-04-3	0.2 ppm

Boscalid	188425-85-6	0.4 ppm
Carbaryl	63-25-2	0.2 ppm
Carbofuran	1563-66-2	0.2 ppm
Chlorantraniliprole	500008-45-7	0.2 ppm
Chlorfenapyr	122453-73-0	1.0 ppm
Chlormequat chloride	7003-89-6	0.2 ppm
Chlorpyrifos	2921-88-2	0.2 ppm
Clofentezine	74115-24-5	0.2 ppm
Cyfluthrin	68359-37-5	1.0 ppm
Cypermethrin	52315-07-8	1.0 ppm
Daminozide	1596-84-5	1.0 ppm
DDVP (Dichlorvos)	62-73-7	0.1 ppm
Diazinon	333-41-5	0.2 ppm
Dimethoate	60-51-5	0.2 ppm
Ethoprophos	13194-48-4	0.2 ppm
Etofenprox	80844-07-1	0.4 ppm
Etoazole	153233-91-1	0.2 ppm
Fenoxycarb	72490-01-8	0.2 ppm
Fenpyroximate	134098-61-6	0.4 ppm
Fipronil	120068-37-3	0.4 ppm
Fonicamid	158062-67-0	1.0 ppm
Fludioxonil	131341-86-1	0.4 ppm
Hexythiazox	78587-05-0	1.0 ppm
Imazail	35554-44-0	0.2 ppm
Imidacloprid	138261-41-3	0.4 ppm
Kresoxim-methy	143390-89-0	0.4 ppm
Malathion	121-75-5	0.2 ppm
Metalaxyl	57837-19-1	0.2 ppm
Methiocarb	2032-65-7	0.2 ppm
Methomyl	16752-77-5	0.4 ppm
Methyl parathion	298-00-0	0.2 ppm
Myclobutanil,	88671-89-0	0.2 ppm (prohibited at any concentration for inhalation)
Naled	300-76-5	0.5 ppm
Oxamyl	23135-22-0	1.0 ppm
Paclobutrazol	76738-62-0	0.4 ppm
Permethrins (measured as the cumulative residue of cis- and trans-isomers)	52645-531 (54774-45-7 and 51877-74-8)	0.2 ppm
Phosmet	732-11-6	0.2 ppm
Piperonyl butoxide	51-03-6	2.0 ppm
Prallethrin	23031-36-9	0.2 ppm
Propiconazole	60207-90-1	0.4 ppm
Propoxur	114-26-1	0.2 ppm
Pyrethrins (measured as the cumulative residue of pyrethrin 1, cinerin 1 and jasmolin 1)	8003-34-7 (121-21-1, 25402-06-6 and 4466-14-2)	1.0 ppm
Pyridaben	96489-71-3	0.2 ppm
Spinosad	168316-95-8	0.2 ppm
Spiromesifen	283594-90-1	0.2 ppm
Spirotetramat	203313-25-1	0.2 ppm
Spiroxamine	118134-30-8	0.4 ppm
Tebuconazole	107534-96-3	0.4 ppm
Thiacloprid	111988-49-9	0.2 ppm
Thiamethoxam	153719-23-4	0.2 ppm
Trifloxystrobin	141517-21-7	0.2 ppm

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

Section 6. Standards for Testing for Heavy Metals.

(1) Cannabinoid products shall be tested by a testing facility for the following metals and shall not exceed the maximum allowable concentration for each:

(a) Arsenic, maximum allowable concentration: one and five-tenths (1.5) ppm;

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- (b) Cadmium, maximum allowable concentration: zero and four-tenths (0.4) ppm;
- (c) Lead, maximum allowable concentration: one (1) ppm; and
- (d) Mercury, maximum allowable concentration: one and two-tenths (1.2) ppm.

(2) Cannabinoid distillate intended for inhalable products shall be tested by a testing facility for the following metals and shall not exceed the maximum allowable concentration for each:

- (a) Arsenic, maximum allowable concentration: zero and two-tenths (0.2) ppm;
- (b) Cadmium, maximum allowable concentration: zero and two-tenths (0.2) ppm;
- (c) Lead, maximum allowable concentration: zero and five-tenths (0.5) ppm; and
- (d) Mercury, maximum allowable concentration: zero and one-tenths (0.1) ppm.

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

Section 7. Standards for Testing Residual Solvents.

(1) Cannabinoid products shall be tested by a testing facility for residual solvents, as appropriate, and shall not exceed the maximum allowable concentration for each solvent used according to the table below:

Solvent	CAS assigned number	Maximum allowable concentration stated in parts per million (ppm)
Acetone	67-64-1	1,000 ppm
Benzene	71-43-2	2 ppm
Butanes, (measured as the cumulative residue of n-butane and iso-butane),	106-97-8 and 75-28-5	1,000 ppm
Ethanol	64-17-5	5,000 ppm
Ethyl Acetate	141-78-6	1,000 ppm
Heptane	142-82-5	1,000 ppm
Hexanes (measured as the cumulative residue of n-hexane, 2-methylpentane, 3-methylpentane, 2,2-dimethylbutane, and 2,3-dimethylbutane)	110-54-3, 107-83-5 and 79-29-8	60 ppm
Methanol	67-56-1	600 ppm
Pentanes (measured as the cumulative residue of n-pentane, iso-pentane, and neo-pentane)	109-66-0, 78-78-4 and 463-82-1	1,000 ppm
2-Propanol (IPA)	67-63-0	1,000 ppm
Propane	74-98-6	1,000 ppm
Toluene*	108-88-3	180 ppm
Total Xylenes* (measured as the cumulative residue of 1,2-dimethylbenzene, 1,3-dimethylbenzene, and 1,4-dimethylbenzene, and the non-xylene, ethylbenzene),	1330-20-7 (95-47-6, 108-38-3 and 106-42-3 and 100-41-4)	430 ppm

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

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

- (a) Did not use any solvent listed in subsection (1) of this section;
- (b) Used a mechanical extraction process to separate cannabinoids; or
- (c) Used only water, animal fat, or vegetable oil as a solvent to separate the cannabinoids.

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

(4) A batch or process lot that is remediated in accordance with

subsection (3) of this section shall be:

- (a) Sampled and tested in accordance with this administrative regulation; and
- (b) Tested for solvents if not otherwise required for that product under this administrative regulation.

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

Section 8. Standards for Water Activity.

(1) Plant material, such as flower, shake, and plant trim, used to process and manufacture hemp-derived cannabinoid products shall have a water activity (Aw) rate of less than 0.65.

(2) If the plant material sample fails testing for water activity, the batch from which the sample was taken may:

- (a) Be used to make a cannabinoid distillate; or
- (b) Continue to dry or cure.

(3) Plant material that undergoes additional drying or curing as described in subsection (2)(b) of this section shall be re-sampled and tested in accordance with this section.

Section 9. Failed Testing and Remediation.

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

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

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

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

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

(a) May be remediated or sterilized in accordance with this administrative regulation; or

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

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

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

Section 10. Certificate of Analysis.

- (1) The testing facility shall:
 - (a) Generate a certificate of analysis (COA) for each representative sample that the testing facility analyzes; and
 - (b) Ensure the COA contains the results of all required analyses performed for the representative sample.

(2) The COA shall contain, at minimum:

(a) The testing facility's name, premises address, and license number, processor's or manufacturer's name, and premises address;

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

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

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

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

(f) Analytes detected during the analyses of the sample that are unknown, unidentified, or injurious to human health if consumed, if any; and

(g) A chromatograph of the cannabinoid test results.

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

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

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

(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 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 testing facility did not perform.

(4)

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

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

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

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

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

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CONTACT PERSON: Julie Brooks, Policy Specialist, Dept. for Public Health, 275 East Main St., HS1GW-A, Frankfort, Kentucky 40621; Phone: (502) 564-3970; Email: julied.brooks@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(As Amended at ARRS, October 15, 2024)

907 KAR 1:044. Coverage provisions and requirements regarding community mental health center behavioral health services.

RELATES TO: KRS 194A.060, 202A.011,~~[205.520(3), 205.8451(7), (9), 205.622, 369.101 - 369.120, 422.317, 434.840-434.860, 42 C.F.R. Part 2, 400.203, 415.208, 431.17, 431.52, 431 Subpart F, 45 C.F.R. Parts 160 and 164, 42 U.S.C. 290ee-3, 1320d-2 to 1320d-8~~

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 210.450~~[, 42 U.S.C. 1396a-d]~~

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid program coverage provisions and requirements regarding community mental health center (CMHC) behavioral health services provided to Medicaid recipients.

Section 1. Definitions.

(1) "Approved behavioral health practitioner" means an independently licensed practitioner who is:

(a) A physician;

(b) A psychiatrist;

(c) An advanced practice registered nurse;

(d) A physician assistant;

(e) A licensed psychologist;

(f) A licensed psychological practitioner;

(g) A certified psychologist with autonomous functioning;

(h) A licensed clinical social worker;

(i) A licensed professional clinical counselor;

(j) A licensed marriage and family therapist;

(k) A licensed professional art therapist;

(l) A licensed clinical alcohol and drug counselor;

(m) A licensed behavior analyst; or

(n) A behavioral health associate.

(2) "Approved behavioral health practitioner under supervision"

means an individual who is under the billing supervision of an approved behavioral health practitioner and who is:

(a)

1. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

2. A certified psychologist working under the supervision of a board-approved licensed psychologist;

3. A marriage and family therapy associate;

4. A certified social worker;

5. A licensed professional counselor associate;

6. A licensed professional art therapist associate;

7. A licensed clinical alcohol and drug counselor associate;

8. A certified alcohol and drug counselor;

9. A licensed assistant behavior analyst;

10. A behavioral health associate; or

11. A licensed alcohol and drug counselor; and

(b) Employed by the same CMHC or under contract with the same CMHC as the billing supervisor.

(3) "ASAM Criteria" means the most recent edition of "The ASAM Criteria, Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions" published by the American Society of Addiction Medicine.

(4) "Behavioral health associate" means an individual:

(a) With a minimum of a Bachelor of Arts or Sciences degree in a human service field;

(b) Who only provides outpatient services;

(c)

1.

a. Who is currently enrolled in a graduate program for a master's degree or doctoral degree [in]:

[a.] Psychology;

[b.] Social work; or

[c.] in a behavioral science field that leads to a credential or license; and

b. Who is currently participating in an internship or practicum program as part of an accredited educational institution; or

2. Who is currently working toward a specialized credential [or licensure] in the field of [mental health or] substance use disorder, and is employed by a narcotic treatment program;

(d) Who has a collaborative educational agreement with the graduate program and the employing provider;

(e) Who complies with the supervision requirements of the collaborative educational agreement and complies with billing supervision requirements for rendering Medicaid services[That receives, at a minimum, weekly supervision by an approved behavioral health practitioner employed by the provider of services];

(f) Who is designated as a behavioral health associate by the department during the application process;

(g) Who does not render a diagnosis for a client;

(h) Who is designated as a behavioral health associate for no longer than five (5) years; and

(i)[(h)] That is currently employed by one of the following outpatient treatment providers:

1. A behavioral health services organization;

2. A behavioral health multi-specialty group;

3. A certified community behavioral health clinic;

4. A community mental health center;

5. A federally qualified health center or a federally qualified

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health center look-alike:

6. A rural health clinic;
7. A provider of crisis continuum services, such as:
 - a. A mobile crisis intervention service provider;
 - b. A crisis observation stabilization unit; or
 - c. A behavioral health crisis transportation provider; or
8. An outpatient behavioral health provider approved by the department.

(5) "Community mental health center" or "CMHC" means a facility ~~that~~[which] meets the community mental health center requirements established in 902 KAR 20:091.

(6)[(2)] "Department" means the Department for Medicaid Services or its designee.

(7)[(3)] "Enrollee" means a recipient who is enrolled with a managed care organization.

(8)[(4)] "Face-to-face" means occurring[-:]

[{a}] in person[-; or]

[{b}] [If authorized by 907 KAR 3:170, via a real-time, electronic communication that involves two (2) way interactive video and audio communication].

(9)[(5)] "Federal financial participation" is defined by ~~by~~[in] 42 C.F.R. 400.203.

(10)[(6)] "Medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

[(7)] [~~"Mental health associate" means an individual who meets the mental health associate requirements established in the Community Mental Health Center Behavioral Health Services Manual.~~]

(11) "Paraprofessional practitioner under supervision" means an individual who performs services under the billing supervision of an approved behavioral health practitioner who is employed by the same CMHC or under contract with the same CMHC as the billing supervisor. Paraprofessional practitioners include:

- (a) Peer support specialists;
- (b) Community support associates;
- (c) Registered behavior technicians; or
- (d) A targeted case manager, as established pursuant to 907

KAR Chapter 15.

(12)[(8)] "Professional equivalent" means an individual who:

(a) ~~Met~~[meets] the professional equivalent requirements established in the [Community Mental Health Center] Behavioral Health Services Manual for Community Mental Health Centers prior to January 1, 2018; and

(b) Performs services under the billing supervision of an approved behavioral health practitioner, who is employed by the same CMHC or under contract with the same CMHC as the billing supervisor.

(13)[(9)] "Provider" is defined by KRS 205.8451(7).

(14)[(10)] "Qualified mental health professional" means an individual who meets the requirements established in KRS 202A.011[202A.0011](12).

(15)[(11)] "Recipient" is defined by KRS 205.8451(9).

(16) "Telehealth" is defined by KRS 205.510(16).

Section 2. Requirements for a Psychiatric Nurse. A registered nurse employed by a participating community mental health center shall be considered a psychiatric or mental health nurse if the individual:

(1) Possesses a Master of Science in nursing with a specialty in psychiatric or mental health nursing;

(2)

(a) Is a graduate of a four (4) year nursing educational program with a Bachelor of Science in nursing; and

(b) Possesses at least one (1) year of experience in a mental health setting;

(3)

(a) Is a graduate of a three (3) year nursing educational program; and

(b) Possesses at least two (2) years of experience in a mental health setting; or

(4)

(a) Is a graduate of a two (2) year nursing educational program with an associate degree in nursing; and

(b) Possesses at least three (3) years of experience in a mental health setting.

Section 3. [~~Community Mental Health Center~~] Behavioral Health Services Manual for Community Mental Health Centers. The conditions for participation, services covered, and limitations for the community mental health center behavioral health services component of the Medicaid program shall be as specified in:

(1) This administrative regulation; and

(2) The [~~Community Mental Health Center~~] Behavioral Health Services Manual for Community Mental Health Centers.

Section 4. Covered Services.

(1) Behavioral health services covered pursuant to this administrative regulation and pursuant to the [~~Community Mental Health Center~~] Behavioral Health Services Manual for Community Mental Health Centers shall be rehabilitative mental health and substance use disorder services including:

- (a) Individual [~~outpatient~~]therapy;
- (b) Group [~~outpatient~~]therapy;
- (c) Family [~~outpatient~~]therapy;
- (d) Collateral [~~outpatient~~]therapy;
- (e) Therapeutic rehabilitation services;
- (f) Psychological testing;
- (g) Screening;
- (h) An assessment;
- (i) Crisis intervention;
- (j) Service planning;
- (k) A screening, brief intervention, and referral to treatment;
- (l) Mobile crisis services;
- (m) Assertive community treatment;
- (n) Intensive outpatient program services;
- (o) Residential crisis stabilization services;
- (p) Partial hospitalization;
- (q) Residential services for substance use disorders;
- (r) Day treatment;
- (s) Comprehensive community support services;
- (t) Peer support services;[-or]
- (u) ~~Withdrawal management;~~
- (v) Medication assisted treatment (MAT);
- (w) Applied behavior analysis;
- (x) Chemical dependency treatment center services;
- (y) Prevention education with substance use risk factors and case management services for pregnant or postpartum individuals with a substance use disorder; or

(z) A narcotic treatment program (NTP), if separately licensed pursuant to 908 KAR 1:374[~~Parent or family peer support services~~].

(2)

(a) To be covered under this administrative regulation, a service listed in subsection (1) of this section shall be:

1. Provided by a community mental health center that is:

a. Currently enrolled in the Medicaid program in accordance with 907 KAR 1:672; and

b. Except as established in paragraph (b) of this subsection, currently participating in the Medicaid program in accordance with 907 KAR 1:671;

2. Provided in accordance with:

a. This administrative regulation; and

b. The [~~Community Mental Health Center~~] Behavioral Health Services Manual for Community Mental Health Centers; and

3. Medically necessary.

(b) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid program.

Section 5. Electronic Documents and Signatures.

(1) The creation, transmission, storage, or other use of electronic signatures and documents shall comply with requirements established in KRS 369.101 to 369.120 and all applicable state and federal laws and regulations.

(2) A CMHC choosing to utilize electronic signatures shall:

(a) Develop and implement a written security policy ~~that~~[which] shall:

1. Be complied with by each of the center's employees, officers,

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agents, and contractors; and

2. Stipulate which individuals have access to which electronic signatures and password authorization;

(b) Ensure that electronic signatures are created, transmitted, and stored securely;

(c) Develop a consent form that shall:

1. Be completed and executed by each individual utilizing an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(d) Provide the department, immediately upon request, with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 6. No Duplication of Service.

(1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which the service is covered, on the same day of service.

(2) For example, if a recipient is receiving a behavioral health service from an independently enrolled approved behavioral health practitioner[behavioral health service provider], the department shall not reimburse for the same service provided to the same recipient by a community mental health center on the same day of service.

Section 7. Records Maintenance, Protection, and Security.

(1) A provider shall maintain a current health record for each recipient.

(2) A health record shall:

(a) Include:

1. An identification and intake record including:

a. Name;

b. Social Security number;

c. Date of intake;

d. Home (legal) address;

e. Health insurance information;

f. Referral source and address of referral source;

g. Primary care physician and address;

h. The reason the individual is seeking help including the presenting problem and diagnosis;

i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information, if available, regarding:

(i) Where the individual is receiving treatment for the physical health diagnosis; and

(ii) The name of the physical health provider; and

j. The name of the informant and any other information deemed necessary by the independent provider to comply with the requirements of:

(i) This administrative regulation;

(ii) The provider's licensure board;

(iii) State law; or

(iv) Federal law;

2. Documentation of the:

a. Screening if the community mental health center performed the screening;

b. Assessment; and

c. Disposition;

3. A complete history including mental status and previous treatment;

4. An identification sheet;

5. A consent for treatment sheet that is accurately signed and dated; and

6. The individual's stated purpose for seeking services;

(b) Be:

1. Maintained in an organized central file;

2. Furnished to the:

a. Cabinet for Health and Family Services upon request; or

b. Managed care organization in which the recipient is enrolled if the recipient is enrolled with a managed care organization;

3. Made available for inspection and copying by:

a. Cabinet for Health and Family Services' personnel; or

b. Personnel of the managed care organization in which the

recipient is enrolled if applicable;

4. Readily accessible; and

5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient; and

(c) Document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

(3) The individual who provided the service shall date and sign the health record within forty-eight (48) hours of the date that the individual provided the service.

(4)

(a) Except as established in paragraph (b) or (c) of this subsection, a provider shall maintain a health record regarding a recipient for at least six (6) years from the date of the service or until any audit dispute or issue is resolved beyond six (6) years.

(b) After a recipient's death or discharge from services, a provider shall maintain the recipient's health record for the longest of the following periods:

1. Six (6) years unless the recipient is a minor; or

2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

(c) If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) or (b) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(5) A provider shall comply with 45 C.F.R. Part 164.

(6) Documentation of a screening shall include:

(a) Information relative to the individual's stated request for services; and

(b) Other stated personal or health concerns if other concerns are stated.

(7)

(a) A provider's notes regarding a recipient shall:

1. Be made within forty-eight (48) hours of each service visit; and

2. Describe the:

a. Recipient's symptoms or behavior, reaction to treatment, and attitude;

b. Therapist's intervention;

c. Changes in the plan of care if changes are made; and

d. Need for continued treatment if continued treatment is needed.

(b) Include the following:

1. The specific service rendered;

2. The date and actual time the service or services were rendered;

3. The name and practitioner level of the individual who rendered the service;

4. The setting of the service rendered and the amount of time to deliver the service;

5. The relationship of the service or services to the treatment goals and objectives in the plan of care; and

6. The individual's progress toward the treatment goals and objectives in the plan of care.

(c)

1. Any edit to notes shall:

a. Clearly display the changes; and

b. Be initialed and dated.

2. Notes shall not be erased or illegibly marked out.

(d)[(e)] If services are provided by a practitioner working under supervision or a paraprofessional practitioner working under supervision, there shall be:

1. A billing supervisor co-signature on the service note within thirty (30) days; and

2. A monthly supervisory note recorded by the supervising professional reflecting consultations with the practitioner working under supervision or the paraprofessional practitioner working under supervision concerning the:

a.[1-] Case; and

b.[2-] Supervising professional's evaluation of the services being provided to the recipient.

(8) Immediately following a screening of a recipient, the provider

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shall perform a disposition related to:

- (a) A provisional diagnosis;
- (b) A referral for further consultation and disposition, if applicable; or

(c)

1. If applicable, termination of services and referral to an outside source for further services; or

2. If applicable, termination of services without a referral to further services.

(9) Any change to a recipient's plan of care shall be documented, signed, and dated by the:

- (a) Rendering practitioner; and
- (b) Recipient or recipient's representative.

(10)

(a) Notes regarding services to a recipient shall:

- 1. Be organized in chronological order;
- 2. Be dated;
- 3. Be titled to indicate the service rendered;
- 4. State a starting and ending time for the service; and
- 5. Be recorded and signed by the rendering provider and include the professional title (for example, licensed clinical social worker) of the provider.

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not covered under this administrative regulation, or other nonreimbursable contacts shall:

- 1. Be recorded in the notes; and
- 2. Not be reimbursable.

(11)

(a) A termination summary shall:

1. Be required, upon termination of services, for each recipient who received at least three (3) service visits; and

2. Contain a summary of the significant findings and events during the course of treatment including the:

a. Final assessment regarding the progress of the individual toward reaching goals and objectives established in the individual's plan of care;

- b. Final diagnosis of clinical impression; and
- 3. Individual's condition upon termination and disposition.

(b) A health record relating to an individual who was terminated from receiving services shall be fully completed within ten (10) days following termination.

(12) If an individual's case is reopened within ninety (90) days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(13)

(a) Except as established in paragraph (b) of this subsection, if a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring CMHC shall, if the recipient gives the CMHC written consent to do so, within ten (10) business days of the transfer or referral, transfer the recipient's health records in a manner that complies with the health records' use and disclosure requirements as established in or required by:

- 1.
- a. The Health Insurance Portability and Accountability Act;
- b. 42 U.S.C. 1320d-2 to 1320d-8; and
- c. 45 C.F.R. Parts 160 and 164; or

2.

- a. 42 U.S.C. 290ee-3; and
- b. 42 C.F.R. Part 2.

(b) If a recipient is transferred or referred to a residential crisis stabilization unit, a psychiatric hospital, a psychiatric distinct part unit in an acute care hospital, or an acute care hospital for care or treatment, the transferring CMHC shall, within forty-eight (48) hours of the transfer or referral, transfer the recipient's health records in a manner that complies with the health records' use and disclosure requirements as established in or required by:

- 1.
- a. The Health Insurance Portability and Accountability Act;
- b. 42 U.S.C. 1320d-2 to 1320d-8; and
- c. 45 C.F.R. Parts 160 and 164; or

2.

- a. 42 U.S.C. 290ee-3; and
- b. 42 C.F.R. Part 2.

(14)

(a) If a CMHC's Medicaid program participation status changes as a result of voluntarily terminating from the Medicaid program, involuntarily terminating from the Medicaid program, a licensure suspension, or death of a provider, the health records regarding recipients to whom the CMHC has provided services shall:

- 1. Remain the property of the CMHC; and
- 2. Be subject to the retention requirements established in subsection (4) of this section.

(b) A CMHC shall have a written plan addressing how to maintain health records if there is [in the event of] a provider's death.

Section 8. Medicaid Program Participation Compliance.

(1) A CMHC shall comply with:

- (a) 907 KAR 1:671;
- (b) 907 KAR 1:672; and
- (c) All applicable state and federal laws.

(2)

(a) If a CMHC receives any duplicate payment or overpayment from the department or managed care organization, regardless of reason, the CMHC shall return the payment to the department or managed care organization that issued the duplicate payment or overpayment.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

- 1. Interpreted to be fraud or abuse; and
- 2. Prosecuted in accordance with applicable federal or state law.

Section 9. Third Party Liability. A provider shall comply with KRS 205.622.

Section 10. Auditing Authority. The department or the managed care organization in which an enrollee is enrolled shall have the authority to audit any:

- (1) Claim;
- (2) Health record; or
- (3) Documentation associated with the claim or health record.

Section 11. Federal Approval and Federal Financial Participation.

~~(1)~~ The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

~~(1)(a)~~ Receipt of federal financial participation for the coverage; and

~~(2)(b)~~ Centers for Medicare and Medicaid Services' approval for the coverage.

~~(2)~~ ~~[The coverage of services provided by a licensed clinical alcohol and drug counselor or licensed clinical alcohol and drug counselor associate shall be contingent and effective upon approval by the Centers for Medicare and Medicaid Services.]~~

Section 12. Appeal Rights.

(1) An appeal of an adverse action by the department regarding a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

Section 13. Incorporation by Reference.

(1) The "Behavioral Health Services Manual for Community Mental Health Centers", November 2023["Community Mental Health Center Behavioral Health Services Manual", May 2015], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, 6th Floor West, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. or online at the department's Web site at <https://chfs.ky.gov/agencies/dms/dpo/bbp/Pages/cmhc.aspx> [~~http://www.chfs.ky.gov/dms/incorporated.htm~~].

Section 14. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on October 15, 2024.

FILED WITH LRC: October 15, 2024

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

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Health Care Policy
(As Amended at ARRS, October 15, 2024)**

907 KAR 15:005. Definitions for 907 KAR Chapter 15.

RELATES TO: KRS 194A.025(3), 205.510(11), 205.8451, 309.080, 309.130(2), (3), 311.840(3), 314.011(5), (7), 319.053, 319.056, 319.064, 319C.010(6), (7), 335.080, 335.100, 335.300(2), (3), 335.500(3), (4), 42 C.F.R. 400.203, 438.2, 441.540, 29 U.S.C. 794

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.6311, 42 U.S.C. 1396a

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the definitions for 907 KAR Chapter 15.

Section 1. Definitions.

(1) "Administrative Services Organization" means a business entity that:

(a) Is contracted with the department;

(b) Administers:

1. Mobile crisis services;

2. Crisis observation stabilization services;

3. Behavioral health crisis transportation; and

4. Associated crisis residential stabilization services.

(c) Is responsible for:

1. Oversight of crisis continuum services;

2. Required reporting related to crisis continuum services;

3. Billing for crisis continuum services; and

4. Developing a continuum of crisis services providers that is sufficient to ensure access to mobile crisis services, crisis observation stabilization services, behavioral health crisis transportation, and crisis residential services for all residents of the commonwealth on a twenty-four (24) hour, seven (7) day per week, 365 day per year basis.

(2) "Adult peer support specialist" means an individual who meets the certification requirements for an adult peer support specialist established in 908 KAR 2:220.

(3)(2) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(4)(3) "Approved behavioral health practitioner" means an independently licensed practitioner who is:

(a) A physician;

(b) A psychiatrist;

(c) An advanced practice registered nurse;

(d) A physician assistant;

(e) A licensed psychologist;

(f) A licensed psychological practitioner;

(g) A certified psychologist with autonomous functioning;

(h) A licensed clinical social worker;

(i) A licensed professional clinical counselor;

(j) A licensed marriage and family therapist;

(k) A licensed professional art therapist;

(l) A licensed clinical alcohol and drug counselor; or

(m) A licensed behavior analyst.

(5)(4) "Approved behavioral health practitioner under

supervision" means an individual under billing supervision of an approved behavioral health practitioner who is:

(a)

1. A licensed psychological associate working under the supervision of a board-approved licensed psychologist;

2. A certified psychologist working under the supervision of a board-approved licensed psychologist;

3. A marriage and family therapy associate;

4. A certified social worker;

5. A licensed professional counselor associate;

6. A licensed professional art therapist associate;

7. A licensed clinical alcohol and drug counselor associate;

8. A certified alcohol and drug counselor; ~~or~~

9. A licensed assistant behavior analyst; ~~and~~

10. A behavioral health associate; or

11. A licensed alcohol and drug counselor; and

(b) Employed by or under contract with the same billing provider as the billing supervisor.

(6)(5) "ASAM Criteria" means the most recent edition of "The ASAM Criteria, Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions" published by the American Society of Addiction Medicine.

(7) "Behavioral health associate" means an individual:

(a) With a minimum of a Bachelor of Arts or Sciences degree in a human service field;

(b) Who only provides outpatient services;

(c)

1.

a. Who is currently enrolled in a graduate program for a master's degree or doctoral degree in:

(a.) ~~Psychology;~~

(b.) ~~Social work; or~~

(c.) a behavioral science field that leads to a credential or license; and

b. Who is currently participating in an internship or practicum program as part of an accredited educational institution; or

2. Who is currently working toward a specialized credential ~~or licensure~~ in the field of ~~mental health or~~ substance use disorder, and is employed by a narcotic treatment program;

(d) Who has a collaborative educational agreement with the graduate program and the employing provider;

(e) ~~Who complies with the supervision requirements of the collaborative educational agreement and complies with billing supervision requirements for rendering Medicaid services~~ ~~That receives, at a minimum, weekly supervision by an approved behavioral health practitioner employed by the provider of services~~;

(f) Who is designated as a behavioral health associate by the department during the application process;

(g) Who does not render a diagnosis for a client;

(h) Who is designated as a behavioral health associate for no longer than five (5) years; and

(i)(h) That is currently employed by one of the following outpatient treatment providers:

1. A behavioral health services organization;

2. A behavioral health multi-specialty group;

3. A certified community behavioral health clinic;

4. A community mental health center;

5. A federally qualified Health Center or a federally qualified health center look-alike;

6. A rural health clinic;

7. A provider of crisis continuum services, such as:

a. A mobile crisis intervention service provider;

b. A crisis observation stabilization unit; or

c. A behavioral health crisis transportation provider; or

8. An outpatient behavioral health provider approved by the department.

(8) "Behavioral health crisis" means any behavioral, substance use disorder, or psychiatric situation perceived to be a crisis by the individual experiencing or witnessing it.

(9)(6) "Behavioral health multi-specialty group" means a group of more than one (1) individually licensed behavioral health

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practitioners of varying practitioner types who form a business entity to:

- (a) Render behavioral health services; and
- (b) Bill the Medicaid Program for services rendered to Medicaid recipients.

(10)[(7)] "Behavioral health provider group" means a group of more than one (1) individually licensed behavioral health practitioners of the same practitioner type who form a business entity to:

- (a) Render behavioral health services; and
- (b) Bill the Medicaid Program for services rendered to Medicaid recipients.

(11)[(8)] "Behavioral health crisis transportation" means the use of a behavioral health support vehicle, to transport a Medicaid recipient alleged to be in a behavioral health crisis to a higher level of care.

(12) "Behavioral health services organization" means an entity that is licensed as a behavioral health services organization pursuant to:

- (a) 902 KAR 20:430 for a behavioral health services organization tier I (BHSO I);
- (b) 908 KAR 1:370 and 908 KAR 1:374 for a behavioral health services organization tier II (BHSO II); or
- (c) 908 KAR 1:370 and 908 KAR 1:372 for a behavioral health services organization tier III (BHSO III).

(13)[(9)] "Behavioral health crisis transport vehicle" means an automobile that:

(a) Includes a driver's compartment that is separated from the passenger compartment in a way that allows the driver and passenger to communicate and visualize one another but that prohibits the passenger from easily accessing the driver or any control for operating the vehicle; and

(b) Has a passenger compartment with:

1. Two (2) or more traditional vehicle seats with appropriate seat belts;
2. No exposed sharp edges;
3. Doors that automatically lock and that are not capable of opening while the vehicle is in motion, such as a child lock feature.

(14) "Billing provider" means the individual, group of individual providers, or organization that:

- (a) Is authorized to bill the department or a managed care organization for a service; and
- (b) Is eligible to be reimbursed by the department or a managed care organization for a service.

(15)[(10)] "Billing supervisor" means an individual who[is]:

(a) Is:

1. A physician;
2. A psychiatrist;
3. An advanced practice registered nurse;
4. A physician assistant;
5. A licensed clinical alcohol and drug counselor;
6. A licensed psychologist;
7. A licensed clinical social worker;
8. A licensed professional clinical counselor;
9. A licensed psychological practitioner;
10. A certified psychologist with autonomous functioning;
11. A licensed marriage and family therapist;
12. A licensed professional art therapist; or
13. A licensed behavior analyst; ~~and~~

(b) Is employed by or under contract with the same billing provider as the behavioral health practitioner under supervision who renders services under the supervision of the billing supervisor;

(c) Conducts the following supervisory duties and requirements on behalf of the practitioner under supervision:

1. Records a co-signature on a service note within thirty (30) days; and

2. Prepares a monthly supervisory note that reflects consultations with the practitioner or paraprofessional working under supervision that includes the supervising professional's evaluation of the services being provided to each recipient;

(d) Is not required to be the same provider type as the practitioner under supervision.

(16)[(11)] "Certified alcohol and drug counselor" is defined by

KRS 309.083[309.080(2)].

(17)[(12)] "Certified psychologist" means an individual who is a certified psychologist pursuant to KRS 319.056.

(18)[(13)] "Certified psychologist with autonomous functioning" means an individual who is a certified psychologist with autonomous functioning pursuant to KRS 319.056.

(19)[(14)] "Certified social worker" means an individual who meets the requirements established in KRS 335.080.

(20)[(15)] "Chemical dependency treatment center" means an entity that is licensed as a chemical dependency treatment center pursuant to 902 KAR 20:160.

(21) "Community-based mobile crisis intervention services" or "(MCIS)" means a dispatch of a mobile crisis team to the location of an individual who is experiencing a behavioral health crisis.

(22)[(16)] "Community support associate" means a paraprofessional who meets the application, training, and supervision requirements of 908 KAR 2:250.

(23)[(17)] "Co-occurring disorder" means a mental health and substance use disorder.

(24)[(18)] "Department" means the Department for Medicaid Services or its designee.

(25)[(19)] "Electronic signature" is defined by KRS 369.102(8).

(26)[(20)] "Enrollee" means a recipient who is enrolled with a managed care organization.

(27)[(21)] "Face-to-face" means occurring in person.

(28)[(22)] "Family peer support specialist" means an individual who meets the certification requirements for a Kentucky family peer support specialist established in 908 KAR 2:230.

(29)[(23)] "Federal financial participation" is defined by 42 C.F.R. 400.203.

(30)[(24)] "Healthcare common procedure coding system" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or items.

(31)[(25)] "Kentucky-specific Medicare Physician Fee Schedule" means the list or process by which current reimbursement rates for physician services are established or published by the department.

(32)[(26)] "Level I psychiatric residential treatment facility" means an entity that is licensed as a Level I psychiatric residential treatment facility pursuant to 902 KAR 20:320.

(33)[(27)] "Level II psychiatric residential treatment facility" means an entity that is licensed as a Level II psychiatric residential treatment facility pursuant to 902 KAR 20:320.

(34)[(28)] "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

(35)[(29)] "Licensed behavior analyst" is defined by KRS 319C.010(6).

(36)[(30)] "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(8)[(4)].

(37)[(31)] "Licensed clinical alcohol and drug counselor associate" is defined by KRS 309.080(9)[(5)].

(38)[(32)] "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(39)[(33)] "Licensed marriage and family therapist" is defined by KRS 335.300(2).

(40)[(34)] "Licensed professional art therapist" is defined by KRS 309.130(2).

(41)[(35)] "Licensed professional art therapist associate" is defined by KRS 309.130(3).

(42)[(36)] "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(43)[(37)] "Licensed professional counselor associate" is defined by KRS 335.500(4).

(44)[(38)] "Licensed psychological associate" means an individual who meets the requirements established in KRS 319.064.

(45)[(39)] "Licensed psychological practitioner" means an individual who meets the requirements established in KRS 319.053.

(46)[(40)] "Licensed psychologist" means an individual who currently possesses a licensed psychologist license in accordance with KRS 319.010(6) and (9).

(47)[(41)] "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve

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as a managed care organization as defined by 42 C.F.R. 438.2.

(48)[(42)] "Marriage and family therapy associate" is defined by KRS 335.300(3).

(49)[(43)] "Medicaid-covered service" means a service covered by the department as established in Title 907 of the Kentucky Administrative Regulations.

(50)[(44)] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(51)[(45)] "Medication assisted treatment" means the treatment of a substance use disorder with approved medications in combination with counseling, behavioral therapies, and other supports.

(52) "Mobile crisis team" means a professional working group that performs a mobile crisis intervention service prior to provision of a behavioral health secure transportation service and that consists of at least:

(a) One (1) approved behavioral health practitioner who is licensed to perform an assessment; and

(b) One (1) approved behavioral health practitioner or approved behavioral health practitioner under supervision.

(53)[(46)] "Physician" is defined by KRS 205.510(12)[(14)].

(54)[(47)] "Physician assistant" is defined by KRS 311.840(3).

(55)[(48)] "Practitioner working under supervision" means:

(a) An approved behavioral health practitioner under supervision;

(b) A registered behavior technician;

(c) A community support associate;[-or]

(d) A peer support specialist; or

(e) A targeted case manager, as established pursuant to this chapter.

(56)[(49)] "Provider" is defined by KRS 205.8451(7).

(57)[(50)] "Provider abuse" is defined by KRS 205.8451(8).

(58)[(51)] "Psychiatric hospital" means an entity licensed as a psychiatric hospital pursuant to 902 KAR 20:180.

(59)[(52)] "Recipient" is defined by KRS 205.8451(9).

(60)[(53)] "Recipient abuse" is defined by KRS 205.8451(10).

(61)[(54)] "Recipient's representative" means:

(a) For a recipient who is authorized by Kentucky law to provide written consent, an individual acting on behalf of, and with written consent from, the recipient; or

(b) A legal guardian.

(62)[(55)] "Registered alcohol and drug peer support specialist" is defined by KRS 309.080(8).

(63)[(56)] "Registered behavior technician" means an individual who meets the following requirements provided by the Behavior Analyst Certification Board:

(a) Be at least eighteen (18) years of age;

(b) Have a high school diploma or its equivalent; and

(c) Within six (6) months of hire for a new employee or within six (6) months of the effective date of this administrative regulation for an existing employee:

1. Complete a training program that is:

a. Approved by the Behavior Analyst Certification Board;

b. Based on the current edition of the RBT Task List endorsed by the Behavior Analyst Certification Board; and

c. Conducted by Behavior Analyst Certification Board certificants;

2. Pass the Registered Behavior Technician Competency Assessment administered by a Behavior Analyst Certification Board certificant or by an assistant assessor overseen by a Behavior Analyst Certification Board certificant; and

3. Pass the Registered Behavior Technician exam provided by the Behavior Analyst Certification Board.

(64)[(57)] "Registered nurse" is defined by KRS 314.011(5).

(65)[(58)] "Residential crisis stabilization unit" means an entity that is licensed as a residential crisis stabilization unit pursuant to 902 KAR 20:440.

(66)[(59)] "Section 504 plan" means a plan developed:

(a) Under the auspices of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (Section 504); and

(b) To ensure that a child who has a disability identified under the law and is attending an elementary or secondary educational

institution receives accommodations to ensure the child's academic success and access to the learning environment.

(67)[(60)] "Telehealth" is defined by KRS 205.510(16)[(45)].

(68)[(61)] "Withdrawal management" means a set of interventions aimed at managing acute intoxication and withdrawal based on the severity of the illness and co-occurring conditions identified through a comprehensive biopsychosocial assessment with linkage to addiction management services, and incorporated into a recipient's care as needed throughout the appropriate levels of care.

(69)[(62)] "Youth peer support specialist" means an individual who meets the requirements established for a Kentucky youth peer support specialist established in 908 KAR 2:240.

Section 2. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on October 15, 2024.

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

**CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary
(As Amended at ARRS, October 15, 2024)**

915 KAR 1:010. Initial and renewal applications for cannabis business licenses.

RELATES TO: KRS Chapter 13B, Chapter 218B, 523.100

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 initial application and renewal procedures for cannabis business licenses. This administrative regulation establishes those procedures.

Section 1. Types of Applications for Cannabis Business Licenses.

(1) The cabinet shall accept the following types of applications for cannabis business licenses:

(a) Initial application; and

(b) Renewal application.

(2) By submitting an initial or renewal application to the cabinet, an applicant consents to any investigation of the applicant's ability to meet the requirements of KRS Chapter 218B and 915 KAR Chapter 1.

(3) An application for an initial license or renewal license **shall be incomplete[is not complete]** and shall be rejected by the cabinet unless:

(a) The payment of the applicable fee **established[provided]** in Section 2 or Section 4 **of this administrative regulation** is submitted with the application; and

(b) All required information for each section of the application, including attachments and any supplemental information requested by the cabinet, is submitted to the cabinet within the allowable time period.

(4) An application submitted under this administrative regulation shall contain the following statement acknowledged by the applicant: "A false statement made in this application is punishable under the applicable provisions of KRS 523.100."

Section 2. Initial License Application Fees. An applicant for an initial cannabis business license shall pay the applicable application fee by credit card or automated clearing house (ACH) transfer at the time of application submission to the cabinet. The initial application fee **shall be[is]** nonrefundable except as **established[indicated below]** in Section 3(6) of this administrative regulation. The initial license application fees shall be:

(1) Tier I cultivator: \$3,000;

(2) Tier II cultivator: \$10,000;

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- (3) Tier III cultivator: \$20,000;
- (4) Tier IV cultivator: \$30,000;
- (5) Processor: \$5,000;
- (6) Producer: \$5,000 plus the applicable cultivator tier application fee;
- (7) Dispensary: \$5,000; and
- (8) Safety Compliance Facility: \$3,000.

Section 3. Initial Applications for Cannabis Business Licenses.

(1) An initial license ~~shall be~~ **is** valid for one (1) year from the date of issuance shown on the license. The cabinet shall publish notice of initial license application availability on the Web site for the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>, including the time frame during which initial license applications shall be accepted. This notice shall also state the category and number of cannabis business licenses available for issuance at the close of the application period.

(2) An applicant shall only use the initial license application form prescribed by the cabinet and made available through the Web site for the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>.

(3) An applicant shall submit an initial license application to the cabinet in the manner prescribed by the application instructions.

(4) An applicant shall apply for a separate license for each location where it intends to operate a cannabis business. During an initial license application availability period, an applicant shall only apply for a license in one (1) cannabis business license type (cultivator, processor, producer, dispensary, or safety compliance facility) being offered at that time. An applicant may submit multiple applications for a license within one (1) cannabis business license type ~~if so long as~~ the following criteria is met:

(a) Each application ~~shall contain~~ **contains** a separate and distinct physical address where the applicant proposes to conduct cannabis business activities;

(b) Each application ~~shall contain~~ **contains** documentation of sufficient capital in accordance with subsection (5)(q) of this section and the applicant shall not use the same capital for more than one (1) application;

(c) For the four (4) cannabis cultivator tiers, an applicant shall only submit one (1) application per cultivation tier; and

(d) For dispensaries, an applicant shall only submit one (1) application per medicinal cannabis region as identified in 915 KAR 1:020, Section 3 and shown on the map published on the Web site of the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>.

(5) **In the initial license application**, the applicant shall submit ~~the following in the initial license application~~:

(a) The legal name, business type, any trade or doing business as (DBA) name, mailing address, federal tax identification number, Web site (if any), email address, and phone number of the proposed cannabis business and confirmation that the entity is registered with the Kentucky Secretary of State in good standing and authorized to do business in Kentucky;

(b) The type of cannabis business license requested;

(c) **The** business entity formation documents such as articles of incorporation, articles of organization, or bylaws;

(d) **The** proposed location of cannabis business activities, including the physical address of the proposed cannabis business and the global positioning system (GPS) coordinates for any proposed cannabis business activities as well as:

1. Documentation such as a contingent agreement for property sale or lease or an existing deed or lease that shows the applicant has the authority to use the proposed location as a cannabis business for, at a minimum, the term of the license; and

2. A site plan for the proposed cannabis business.

(e) The name, address, date of birth, and curricula vitae or resume of each principal officer and board member of the proposed cannabis business as well as any additional information required by the cabinet;

(f) Disclosure of any individual or business entity with an ownership interest of at least ten (10) percent equity or similar interest in the proposed cannabis business and each identified individual or entity's ownership percentage as well as any additional

information required by the cabinet;

(g) Disclosure of any parent company or parent individual that has an ownership interest in the proposed cannabis business and each identified individual or entity's ownership percentage as well as any additional information required by the cabinet;

(h) A document showing the ownership organizational structure of the proposed cannabis business;

(i) The name and address of any individual or entity providing financial support to the proposed cannabis business that are not involved in the day-to-day operations beyond providing financial resources as well as any additional information required by the cabinet;

(j) The name and address of any physician or advanced practice registered nurse that has an ownership or investment interest in or compensation agreement with the proposed cannabis business as well as any additional information required by the cabinet;

(k) Disclosure of whether any principal officer or board member of the applicant has been convicted of a felony criminal offense, and if so, a description of each felony offense;

(l) Disclosure of any instances in which a business or not-for-profit entity that any of the applicant's board members managed or served on the board of was convicted, fined, censured, or had a registration or license suspended or revoked in any administrative or judicial proceeding;

(m) If applicable, documentation that the applicant is capable of successfully establishing and operating a cannabis business in the Commonwealth, including:

1. Demonstrated experience establishing and operating a for-profit or nonprofit organization or other business within Kentucky or any other jurisdiction, and the nature of the business conducted by the organization;

2. Any history relating to receipt of a similar license or other authorization in other jurisdictions, including provisional licenses, suspensions, revocations, or disciplinary actions to include civil monetary fines or warnings; and

3. Any history of response to suspensions, revocations, disciplinary actions, civil monetary fines, or warnings imposed relating to any similar license or other authorization in another jurisdiction, and the plans of correction or other responses made to those actions.

(n) A description of the duties, responsibilities, and roles of each principal officer, board member, employee, and any other individual or entity with a financial interest in the proposed cannabis business who are not involved in the day-to-day operations of the business;

(o) A timeline showing the steps and estimated amount of time the applicant shall take to begin cannabis business activities in the Commonwealth;

(p) **A** financial plan for the proposed cannabis business, including budget and cash flow planning and debt management;

(q) Documentation of sufficient capital available to the applicant, either on deposit or through extension of credit from one (1) or more financial institutions, in the following amounts as applicable:

- 1. Tier I cultivator: \$50,000;
- 2. Tier II cultivator: \$200,000;
- 3. Tier III cultivator: \$500,000;
- 4. Tier IV cultivator: \$1,000,000;
- 5. Processor: \$150,000;
- 6. Producer: \$150,000 plus the applicable cultivator tier amount;
- 7. Dispensary: \$150,000; or
- 8. Safety Compliance Facility: \$150,000.

(r) A summary of the intended plan of operation that describes, at a minimum, how the applicant's proposed cannabis business operations shall address:

- 1. Security;
- 2. Employee qualifications, supervision, and training;
- 3. Transportation of medicinal cannabis;
- 4. Storage and labeling of medicinal cannabis;
- 5. Inventory management;
- 6. Recordkeeping;
- 7. Preventing unlawful diversion of medicinal cannabis; and
- 8. Workforce development and job creation.

(s) The name, mailing address, business title, phone number, and email address of the primary contact for the application as well

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as the name, address, and email address of any entity or individual who assisted the applicant with preparing the application;

(t) Documentation of any management service agreement in place for the proposed cannabis business;

(u) A notarized signature page signed by the applicant; and

(v) An attestation that:

1. The site of the proposed cannabis business is not within 1,000 feet of an existing elementary or secondary school or a daycare center. For the purpose of this administrative regulation, 1,000 feet shall be measured in a straight line from the nearest property line of an existing elementary school, secondary school, or daycare center to the nearest property line of the applicant's proposed place of business;

2. The applicant can continuously maintain sufficient capital for operations of its proposed cannabis business for, at a minimum, the term of the initial license;

3. The applicant can continuously maintain effective security, surveillance, and accounting control measures to prevent diversion, abuse, and other illegal conduct regarding medicinal cannabis;

4. The applicant shall comply with KRS Chapter 218B and 915 KAR Chapter 1;

5. The applicant consents to the cabinet verifying information provided in the application with any relevant governmental agency or third party;

6. If issued a license, the applicant shall pay the applicable license fee within fifteen (15) calendar days of notification in a manner prescribed by the cabinet.[-]

7. If issued a license, the applicant shall conduct a criminal background check into the criminal history of each person seeking to be a principal officer, board member, agent, volunteer, or employee of the cannabis business before that person begins work and shall not employ, take on as a volunteer, or have as a board member, principal officer, or agent any person who was convicted of a disqualifying felony offense or is younger than twenty-one (21) years of age;

8. The applicant consents to reasonable inspections, examinations, searches, and seizures as contemplated by KRS Chapter 218B and 915 KAR Chapter 1;

9. The applicant shall obtain and maintain workers' compensation insurance for all employees in the Commonwealth and shall pay all required employer contributions to the Kentucky Office of Unemployment Insurance;

10. The applicant shall obtain and maintain commercial general liability insurance for \$1,000,000 per occurrence and \$2,000,000 per aggregate and commercial automobile insurance for any vehicle used to transport medicinal cannabis or medicinal cannabis products;

11. The applicant shall complete all trainings required by the cabinet for the proposed cannabis business's principals, agents, employees, and volunteers;

12. The applicant shall establish any standard operating procedures required by KRS Chapter 218B and 915 KAR Chapter 1 prior to the first date of cannabis business activities in the Commonwealth, including those specific to its cannabis business category. The standard operating procedures that apply to cannabis businesses include:

- a. Security;
- b. Recordkeeping;
- c. Employee qualifications, supervision, and training;
- d. Quality assurance;
- e. Adverse event reporting and recall;
- f. Waste disposal and sanitation;
- g. Transportation of medicinal cannabis;
- h. Inventory management, including storage and labeling of medicinal cannabis;
- i. Cash management and anti-fraud procedures; and
- j. Preventing unlawful diversion of medicinal cannabis.

13. For an applicant seeking a safety compliance facility license, one (1) or more of its prospective principal officers or board members shall not be a principal officer or board member of a cultivator, processor, producer, or dispensary applying to operate in the Commonwealth;

14. For an applicant seeking a cultivator, processor, producer,

or dispensary license, one (1) or more of its prospective principal officers or board members shall not be a principal officer or board member of a safety compliance facility applying to operate in the Commonwealth;

15. The applicant consents to sharing medicinal cannabis sales data with law enforcement;

16. The applicant shall use the Commonwealth's designated electronic monitoring system and seed to sale tracking system required by KRS 218B.140 in the manner prescribed by the cabinet;

17. The applicant has disclosed all individuals and entities with an ownership interest of at least ten (10) percent equity or similar interest in the proposed cannabis business as well as any parent companies and parent company individuals with an ownership interest in its proposed cannabis business; and

18. The applicant swears ~~or and~~ affirms that all information and documentation provided with the initial license application is true and correct.

(6) An initial license application received after the submission time frame stated in the published notice of initial license application availability shall be rejected by the cabinet without further consideration along with the return of the initial application fee.

(7) The cabinet shall acknowledge receipt of an initial application for a cannabis business license within fifteen (15) calendar days of submission by the applicant. The cabinet shall review each application to determine whether the application is complete. The cabinet shall provide written notice to an applicant when it has determined the application is complete. If the cabinet determines an application is not complete, the cabinet shall provide written notice to the applicant of the identified deficiencies in the application. The applicant shall have ten (10) calendar days from the date of the deficiency notification to cure the identified deficiencies and provide any missing information or documentation to the cabinet in the manner prescribed by the cabinet. If the applicant fails to cure any deficiency within ten (10) calendar days from the date of the deficiency notification, the cabinet shall reject the application as incomplete.

(8) The cabinet shall provide notification to applicants as to whether an application for a license has been approved or denied within forty-five (45) calendar days of receiving an application and determining ~~it is~~ complete. Any application denials shall be done in accordance with KRS 218B.090(2) and (4), including providing written notice to the applicant that he or she may file a written request for an administrative hearing on the application within thirty (30) calendar days after the mailing date of the notice. Any hearing resulting from the applicant's written request shall be conducted in accordance with KRS Chapter 13B.

Section 4. License Renewal Fees. An applicant for renewal of a cannabis business license shall pay the applicable annual renewal fee by credit card or ACH transfer at the time of application submission to the cabinet. The annual renewal fee ~~shall be~~ refundable if the renewal application is denied. The annual renewal fees ~~shall be~~:

- (1) Tier I cultivator: \$12,000;
- (2) Tier II cultivator: \$25,000;
- (3) Tier III cultivator: \$50,000;
- (4) Tier IV cultivator: \$100,000;
- (5) Processor: ~~\$25,000~~ \$15,000;
- (6) Producer: ~~\$25,000~~ \$15,000 plus the applicable cultivator tier annual renewal fee;
- (7) Dispensary: ~~\$30,000~~ \$15,000; and
- (8) Safety Compliance Facility: \$12,000.

Section 5. Renewal Applications for Cannabis Business Licenses.

(1) A renewal license ~~shall be~~ valid for one (1) year from the date of issuance shown on the license. The requirements that a licensed cannabis business shall meet to receive an initial license are continuing requirements to maintain the license. A cannabis business shall continuously comply with the licensing requirements of KRS Chapter 218B and 915 KAR Chapter 1 during the initial licensure period and any subsequent renewal period.

(2) The cabinet shall notify each licensee at least ninety (90) calendar days prior to the date the license expires to allow the

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licensee to begin the renewal process if the licensee so chooses.

(3) A licensee shall only use the license renewal application form prescribed by the cabinet and made available through the Web site of the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>.

(4) A license renewal application shall be submitted to the cabinet at least sixty (60) calendar days prior to the expiration of the license. The cabinet shall reject a license renewal application if it is not submitted at least sixty (60) calendar days prior to the expiration of the license and shall return the annual renewal fee to the licensee along with written notice of the rejection.

(5) A licensee shall submit a license renewal application to the cabinet in the manner prescribed by the application instructions.

(6) A licensee shall include the following information with a license renewal application:

(a) Information regarding any charge, or any initiated, pending, or concluded investigation or proceeding, during the period of the initial license or prior renewal period, by any governmental or administrative agency, including an investigation or proceeding involving theft, loss, or possible diversion of medicinal cannabis by the licensee or from the licensee's facility;

(b) Information regarding the licensee's ability to continue with licensed activities, including any staffing issues, delays, medicinal cannabis shortages, medicinal cannabis product recalls, location issues, and financial issues that occurred since the license was issued;

(c) The licensee's history of compliance with KRS Chapter 218B and 915 KAR Chapter 1, including a summary of any noncompliance and corrective action taken during the current and any previous licensing period or a statement indicating that the licensee has not violated KRS Chapter 218B or 915 KAR Chapter 1 as of the date the renewal application is submitted; and

(d) Any additional information required by the cabinet.

(7) The cabinet shall acknowledge receipt of a renewal license application within fifteen (15) calendar days of submission by the applicant. The cabinet shall review each application to determine whether the application is complete. If the cabinet determines an application is not complete, the cabinet shall provide written notice to the applicant of the identified deficiencies in the application. The applicant shall have ten (10) calendar days from the date of the deficiency notification to cure the identified deficiencies and provide any missing information or documentation to the cabinet in the manner prescribed by the cabinet. If the applicant fails to cure any deficiency within ten (10) calendar days from the date of the deficiency notification, the cabinet shall reject the application as incomplete.

(8) If the cabinet determines that a license renewal application is lacking sufficient information upon which to make a renewal determination, the cabinet shall notify the licensee in writing of the factors that require additional information and documentation. The licensee shall have ten (10) calendar days from the date of the notice to provide the requested information and documentation to the cabinet. A licensee's failure to provide the requested information to the cabinet by the deadline shall be grounds for denial of the license renewal application.

(9) The cabinet may conduct an onsite inspection of the licensee's facilities and records to assist with determining continuing compliance with KRS Chapter 218B and 915 KAR Chapter 1.

(10) An existing cannabis business license shall be is immediately invalid upon expiration if the licensee has not filed a license renewal application and paid the required renewal fee in accordance with Section 4 of this administrative regulation. If a licensee properly submits a timely renewal application with applicable renewal fee, the cabinet may extend its existing license from the date the existing license expires until the cabinet can complete its renewal application review and issue a determination.

Section 6. Minimum Performance Standards for License Renewal.

(1) Pursuant to KRS 218B.080(5)(b), the renewal of a cannabis business license shall be contingent upon successful achievement of minimal performance standards established by the cabinet. The minimum performance standards for licensees participating in the Kentucky Medical Cannabis Program shall be that are:

(a) The licensee has, and is likely to continue to maintain,

effective controls against diversion of medicinal cannabis at its facility;

(b) The licensee has not made false or misleading statements in:

- 1. A renewal application or any other application submitted to the cabinet;
- 2. Any document or written communication submitted to the cabinet; or
- 3. Any verbal communication to the cabinet.

(c) The licensee has a documented history of compliance with the licensee requirements in KRS Chapter 218B and 915 KAR Chapter 1;

(d) The licensee has effectively addressed any identified compliance issues through corrective action;

(e) The licensee has shown it has the ability to continue to comply with all state and local laws and administrative regulations applicable to the activities in which it may engage under the license, if renewed;

(f) The licensee has a documented history of successfully addressing and mitigating any quality or safety issues with its medicinal cannabis or medicinal cannabis products;

(g) The licensee timely completes all reporting required by KRS Chapter 218B and 915 KAR Chapter 1; and

(h) The licensee participates in surveys distributed by the cabinet and provides full, complete, and timely responses.

(2) The cabinet shall deny a renewal application for a cannabis business license if it determines the licensee has failed to:

(a) Meet one (1) or more of the minimum performance standards established in this section; or

(b) Any additional basis established provided in KRS 218B.090.

(3) The cabinet shall provide written notification to a licensee as to whether its renewal application has been approved or denied within forty-five (45) calendar days of receiving an application and determining it is its complete. Any renewal application denials shall be done in accordance with KRS 218B.090(4), including providing written notice to the applicant that he or she may file a written request for an administrative hearing on the application within thirty (30) calendar days after the mailing date of the notice. Any hearing resulting from the applicant's written request shall be conducted in accordance with KRS Chapter 13B.

Section 7. Duty to Report. During the application process, an applicant for an initial cannabis business license or renewal license shall, upon discovery of any change in facts or circumstances reflected in the initial application or renewal 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 by via electronic mail to kymedcanreporting@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.

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CONTACT PERSON: Oran S. McFarlan, III, Kentucky Medical Cannabis Program, Cabinet for Health and Family Services, 275 E. Main Street, 5th Floor, Frankfort, KY 40621; Phone Number: (502) 564-5313; Email: oran.mcfarlan@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary
(As Amended at ARRS, October 15, 2024)

915 KAR 1:020. Cannabis business licenses.

RELATES TO: KRS Chapter 13B, Chapter 218B, 304.39-110, 523.100

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,

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renewal, suspension, and revocation of cannabis business licenses. This administrative regulation establishes those procedures.

Section 1. General Requirements for Cannabis Business Licenses.

(1) The cabinet shall issue a license, by name and address, to a cannabis business only for the specific location identified by the cannabis business during the application and issuance process. A license ~~shall only be~~**is only** valid for the person or entity named in the license and only for the activity and location specified in the license.

(2) A licensed cannabis business shall conspicuously display its license within the premises of the cannabis business in a manner that is visible to visitors upon initial entry into its facility.

(3) A license shall not be issued to a cannabis business for operation within a personal residence or any other location where the cabinet or its authorized agents or law enforcement have limited access.

(4) A license shall not be issued to a cannabis business for a site or facility located on lands owned by the United States of America or the Commonwealth of Kentucky.

(5) A license ~~shall be~~**is** valid for one (1) year from the date of issuance as shown on the license.

Section 2. License Fees for Cannabis Businesses.

(1) A cannabis business shall pay the applicable license fee by credit card or automated clearing house (ACH) transfer to the cabinet within fifteen (15) calendar days of receipt of the invoice from the cabinet. The cabinet shall not issue a license to a cannabis business that fails to timely pay the applicable license fee.

(2) The initial nonrefundable license fees shall be:

- (a) Tier I cultivator: \$12,000;
- (b) Tier II cultivator: \$25,000;
- (c) Tier III cultivator: \$50,000;
- (d) Tier IV cultivator: \$100,000;
- (e) Processor: \$25,000;
- (f) Producer: \$25,000 plus the applicable cultivator tier initial license fee;

- (g) Dispensary: \$30,000; and
- (h) Safety compliance facility: \$12,000.

(3) The annual renewal license fees, which ~~shall be~~**are** refundable if the renewal application is denied, shall be:

- (a) Tier I cultivator: \$12,000;
- (b) Tier II cultivator: \$25,000;
- (c) Tier III cultivator: \$50,000;
- (d) Tier IV cultivator: \$100,000;
- (e) Processor: ~~\$25,000~~**\$15,000**;
- (f) Producer: ~~\$25,000~~**\$15,000** plus the applicable cultivator tier renewal license fee;
- (g) Dispensary: ~~\$30,000~~**\$15,000**; and
- (h) Safety compliance facility: \$12,000.

Section 3. Initial Licensure of Cannabis Businesses and Use of Lottery.

(1) The cabinet shall publish notice of the number and category of cannabis business licenses available for distribution at the close of an initial license application period and provide the time frame during which initial license applications shall be accepted by the cabinet. This notice shall be published on the Web site of the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>.

(2) ~~In order~~ To promote patient access to medicinal cannabis across the Commonwealth, the cabinet shall issue dispensary licenses within designated regions. The cabinet shall publish a map clearly identifying the medicinal cannabis regions on the Web site of the Kentucky Medical Cannabis Program. The eleven (11) medicinal cannabis regions in the Commonwealth ~~shall be~~**are**:

(a) Region 1 (Bluegrass): The geographical region comprised of the counties of Anderson, Bourbon, Boyle, Clark, Fayette, Franklin, Garrard, Harrison, Jessamine, Madison, Mercer, Scott, and Woodford;

(b) Region 2 (Kentuckiana): The geographical region comprised of the counties of Bullitt, Henry, Jefferson, Oldham, Shelby, Spencer, and Trimble;

(c) Region 3 (Northeast): The geographical region comprised of

the counties of Bath, Boyd, Carter, Elliott, Fleming, Greenup, Lewis, Mason, Menifee, Montgomery, Morgan, Nicholas, Robertson, and Rowan;

(d) Region 4 (South Central): The geographical region comprised of the counties of Allen, Barren, Butler, Edmonson, Logan, Metcalfe, Monroe, Simpson, and Warren;

(e) Region 5 (Cumberland): The geographical region comprised of the counties of Bell, Casey, Clinton, Cumberland, Harlan, Knox, Laurel, Lincoln, McCreary, Pulaski, Rockcastle, Russell, Wayne, and Whitley;

(f) Region 6 (Mountain): The geographical region comprised of the counties of Breathitt, Clay, Estill, Floyd, Jackson, Johnson, Knott, Lawrence, Lee, Leslie, Letcher, Magoffin, Martin, Owsley, Perry, Pike, Powell, and Wolfe;

(g) Region 7 (Pennyrile): The geographical region comprised of the counties of Caldwell, Christian, Hopkins, Lyon, Muhlenberg, Todd, and Trigg;

(h) Region 8 (West Kentucky): The geographical region comprised of the counties of Ballard, Calloway, Carlisle, Crittenden, Fulton, Graves, Hickman, Livingston, McCracken, and Marshall;

(i) Region 9 (Lincoln Trail): The geographical region comprised of the counties of Adair, Breckinridge, Grayson, Green, Hardin, Hart, Larue, Marion, Meade, Nelson, Taylor, and Washington;

(j) Region 10 (Northern Kentucky): The geographical region comprised of the counties of Boone, Bracken, Campbell, Carroll, Gallatin, Grant, Kenton, Owen, and Pendleton; and

(k) Region 11 (Green River): The geographical region comprised of the counties of Daviess, Hancock, Henderson, McLean, Ohio, Union, and Webster.

(3) The cabinet shall issue at least four (4) dispensary licenses per medicinal cannabis region. For regions containing an urban-county government or a consolidated local government, the cabinet shall issue at least six (6) dispensary licenses, two (2) of which shall be issued to eligible cannabis businesses that physically locate their dispensary in the counties with an urban-county government or a consolidated local government. For all counties without an urban-county government or a consolidated local government, there shall ~~not be~~**be** more than one (1) dispensary per county.

(4) A dispensary licensee shall not change its retail location to another location within the same region without prior cabinet approval. A dispensary licensee shall not change its retail location to outside of the region where it was initially licensed.

(5) The licenses for cultivators, processors, producers, and safety compliance facilities are not subject to regional restrictions within the Commonwealth, and those licensees shall operate at the physical address identified on their respective licenses.

(6) Applicants for initial cannabis business licenses who comply with all application requirements contained in KRS Chapter 218B and 915 KAR 1:010, and whose applications are deemed complete by the cabinet, shall be eligible to receive the license requested. If the number of eligible applications does not exceed the maximum number of licenses available within a cannabis business category following the close of an initial license application period, the cabinet shall provide written notice to the eligible applicants that a license shall be issued to them upon timely payment of the applicable license fee. When an eligible applicant timely pays the applicable license fee, the cabinet shall issue a copy of the license to the applicant that contains the cannabis business's name, license number, physical location, issue date, and expiration date.

(7) If the number of eligible applications exceeds the maximum number of licenses available within a cannabis business category following the close of an initial license application period, the cabinet shall conduct a lottery to issue the licenses for that cannabis business category. The cabinet shall notify the eligible applicants of their entry into the lottery and publicly announce the date, time, and manner of randomly selecting eligible applicants for the requested license. A lottery to select the licensees in each cannabis business category, as needed, shall be held in a manner that can be observed by the public.

(8) The cabinet may consult or contract with a third-party lottery operator or other public agencies with relevant expertise in conducting lotteries. The entity selected to conduct the lottery shall conduct an independent lottery for each cannabis business category

where the number of eligible applicants exceeds the number of available licenses. The cabinet shall assign a number to each eligible applicant in each license lottery and maintain the confidentiality of ~~[the list(s) containing]~~ the eligible applicants and their assigned numbers until after the random drawings have occurred.

(9) The cabinet shall provide written notice to the eligible applicants selected through the lottery process that a license shall be issued to them upon timely payment of the applicable license fee. When an eligible applicant timely pays the applicable license fee, the cabinet shall issue a copy of the license to the applicant that contains the cannabis business's name, license number, physical location, issue date, and expiration date.

(10) Prior to license issuance, if an eligible applicant selected through the lottery process needs to change their location for cannabis business activities due to a local government prohibiting all cannabis business operations within its territory as authorized by KRS 218B.130 or other circumstances, a provisional license may be issued to the eligible applicant upon timely payment of the applicable license fee.

(a) Pursuant to KRS Chapter 218B and this administrative regulation, if a provisional license is issued, the provisional licensee shall have a maximum of 120 calendar days from issuance to request a change of location to an allowable county or city under KRS Chapter 218B and this administrative regulation. If the new location is approved by the program, a new license shall be issued that contains the cannabis business's name, license number, physical location, issue date, and an expiration date which shall be one (1) year from the date of provisional license issuance.

(b) If the provisional licensee fails to request a location change within 120 calendar days from issuance or the request is denied, the cabinet shall revoke their provisional license and the license fee shall not be refunded.

(c) Provisional licenses shall not be sold or transferred to another individual or entity and shall not authorize a provisional licensee to begin any cannabis business activities.

(11) The cabinet shall provide written notice to eligible applicants that were not selected through the lottery process informing them of the same.

(12)(14) If at the conclusion of the lottery selection process an eligible applicant declines the license or fails to pay its license fee within the required timeframe, the cabinet may conduct supplemental license lotteries as needed until all available cannabis business licenses have been issued and initial license fees paid. For any supplemental lottery for a license within a cannabis business category, eligible applicants who were not previously issued a license through the lottery process for that cannabis business category shall be entered into the supplemental lottery ~~[if their selection would comply with any applicable geographic restrictions contained in this administrative regulation].~~

Section 4. Requirements for Licensees Prior to First Day of Cannabis Business Activities.

(1) Prior to its first day of cannabis business activities in the Commonwealth, a licensee shall provide written confirmation to the cabinet that:

(a) The licensee has complied and ~~shall~~**will** continue to comply with all applicable requirements of KRS Chapter 218B, including KRS 218B.095 and 915 KAR Chapter 1, and shall make available all records and documentation verifying ~~[such]~~ compliance upon the request of the cabinet;

(b) The licensee has submitted its complete physical address and the global positioning system (GPS) coordinates for any cannabis business activities to the cabinet and confirmed its business is not located within 1,000 feet of an existing elementary or secondary school or a daycare center. For the purpose of this administrative regulation, 1,000 feet shall be measured in a straight line from the nearest property line of an existing elementary school, secondary school, or daycare center to the nearest property line of the licensee's place of business. The cabinet shall have an opportunity to inspect the location prior to the first day of cannabis

business activities at that location ~~[in order]~~ to identify any deficiencies for correction;

(c) The licensee has conducted and shall continue to conduct criminal background checks of each person seeking to be a principal officer, board member, agent, volunteer, or employee of the cannabis business before that person begins work and shall not employ, take on as a volunteer, or have as a board member, principal officer, or agent any person who was convicted of a disqualifying felony offense or is younger than twenty-one (21) years of age. The licensee shall maintain records of these background checks and provide ~~the records~~**same** to the cabinet during subsequent inspections or upon request;

(d) The licensee has obtained and shall maintain workers compensation insurance for all employees in the Commonwealth and shall pay all required employer contributions to the Kentucky Office of Unemployment Insurance;

(e) The licensee has obtained and shall maintain, at a minimum, commercial general liability insurance for \$1,000,000 per occurrence and \$2,000,000 per aggregate and commercial automobile insurance as required by Kentucky law, specifically KRS 304.39-110, for any vehicle used to transport medicinal cannabis or medicinal cannabis products;

(f) The licensee has established written standard operating procedures required by KRS Chapter 218B and 915 KAR Chapter 1, including those specific to its cannabis business category, and shall provide written or electronic copies of the procedures to the cabinet during inspections or upon request. The standard operating procedures that apply to cannabis businesses **shall** include:

1. Security;
2. Recordkeeping;
3. Employee qualifications, supervision, and training;
4. Quality assurance;
5. Adverse event reporting and recall;
6. Waste disposal and sanitation;
7. Transportation of medicinal cannabis;
8. Inventory management, including storage and labeling of medicinal cannabis;
9. Cash management and anti-fraud procedures;
10. **Odor mitigation and control;**
11. Preventing unlawful diversion of medicinal cannabis; and
12. ~~[44.]~~ Incident reporting procedures to notify the cabinet. ~~[7]~~

(g) The licensee continues to maintain sufficient capital for operations of its cannabis business for, at a minimum, the term of the license;

(h) The licensee has implemented appropriate security measures to deter and prevent theft of medicinal cannabis and unauthorized entrance into areas containing medicinal cannabis;

(i) The licensee has and shall continue to display its license at all times in a conspicuous location within the premises of the cannabis business in a manner that is visible to visitors upon initial entry into its facility;

(j) The licensee's principals, agents, employees, and volunteers have completed all trainings required by the cabinet to be completed prior to its first day of cannabis business activities in the Commonwealth;

(k) The licensee understands how to properly use the Commonwealth's designated electronic monitoring system and seed to sale tracking system for medicinal cannabis and shall use those systems as required throughout the entirety of its licensure period;

(l) The licensee has implemented appropriate odor mitigation procedures or techniques to ensure the capture of any potential fugitive odors emitted by the facility;

(m) The licensee consents to reasonable inspections, examinations, searches, and seizures; and

(n)(m) The licensee swears ~~or~~**and** affirms that all information and documentation provided to the cabinet is true and correct and that any false statement made to the cabinet by the licensee is punishable under the applicable provisions of KRS 523.100.

(2) A licensee shall also provide the cabinet with thirty (30) calendar days advance notice of its intended first day of cannabis business activities in the Commonwealth and allow the cabinet an opportunity to inspect the licensee's site and facility prior to the first day of cannabis business activities. The licensee shall promptly

correct any deficiencies identified by the cabinet during this inspection and shall not commence operations until deficiencies are corrected and approved by the cabinet. If the licensee fails to provide the notice required under this ~~subsection~~**[section]** or fails to correct identified deficiencies, the cabinet may take one (1) or more of the actions described in Section 12 of this administrative regulation.

(3) Once a cultivator or producer has received approval from the cabinet to commence operations, the cultivator or producer shall:

(a) Bring a start-up inventory of medicinal cannabis seeds, seedlings, **tissue cultures, clones,** and plants into its facility;

(b) Submit a written request to the cabinet ~~by~~**[via]** electronic mail to kymedcanreporting@ky.gov requesting that the cabinet open a window in the state's designated seed to sale tracking system for the cultivator or producer to enter its start-up inventory of medicinal cannabis seeds, seedlings, **tissue cultures, clones,** and plants into the system. ~~The~~**This** written request shall include the number and strain of all medicinal cannabis seeds, seedlings, **tissue cultures, clones,** and plants brought into the facility;

(c) Have fourteen (14) calendar days from receipt of the cabinet's approval of the cultivator or producer's written request in which to enter its start-up inventory into the state's designated seed to sale tracking system. A cultivator or producer shall enter its start-up inventory into the state's designated seed to sale tracking system as follows:

1. Seeds shall be entered into the system as a package; ~~and~~
2. Seedlings, **tissue cultures, and clones**~~and plants~~ shall be entered into the system as a batch; and

(d) Notify the cabinet in writing ~~by~~**[via]** electronic mail to kymedcanreporting@ky.gov when all its start-up inventory has been fully and accurately entered into the state's designated seed to sale tracking system and confirm the number and strain of medicinal cannabis seeds, seedlings, **tissue cultures, clones,** and plants brought into the facility.

(4) Following acquisition of its start-up inventory, a cultivator or producer may submit a written request to the cabinet ~~by~~**[via]** electronic mail to kymedcanreporting@ky.gov requesting that the cabinet open a window in the state's designated seed to sale tracking system for the cultivator or producer to enter new medicinal cannabis seeds, seedlings, **tissue cultures, clones,** or plants into the system. This written request shall:

(a) State the proposed date to bring new inventory into the facility; and

(b) Provide the number and strain of all new medicinal cannabis seeds, seedlings, **tissue cultures, clones,** and plants that the cultivator or producer requests to bring into the facility.

(5) Upon receipt of the cabinet's approval of a written request made pursuant to subsection (4)~~of this section~~, the cultivator or producer shall have seven (7) calendar days to enter its new inventory into the state's designated seed to sale tracking system. A cultivator or producer shall enter its new inventory into the state's designated seed to sale tracking system as described in subsection 3(c)~~of this section~~. A cultivator or producer shall notify the cabinet in writing ~~by~~**[via]** electronic mail to kymedcanreporting@ky.gov when all new inventory has been fully and accurately entered into the state's designated seed to sale tracking system and confirm the number and strain of medicinal cannabis seeds, seedlings, **tissue cultures, clones,** and plants brought into the facility.

Section 5. Requirements for Licensees During Licensure Period.

(1) ~~Except as provided in Section 10(4) of this administrative regulation,~~ a licensee shall only hold licenses in one (1) cannabis business category at any given time~~[-except as provided in Section 10(4) of this administrative regulation]~~. A licensee may hold multiple licenses in the same cannabis business category ~~if as long as~~ each license contains a separate and distinct physical address where the cannabis business conducts licensed cannabis activities and the licensee is otherwise in compliance with the requirements of KRS Chapter 218B and 915 KAR Chapter 1, including any geographic restrictions contained in this administrative regulation.

(2) Duty to Report.

(a) During the licensure period, a licensee shall notify the cabinet in writing of any change in facts or circumstances reflected

in the initial license application, supplemental written confirmations, or any license renewal application submitted to the cabinet, or any newly discovered fact or circumstance which would have been included in the application or information provided to the cabinet if known at the time the information was submitted. ~~The~~**This** duty to report ~~shall include~~**[includes]**:

1. Notifying the cabinet of any physical change, alteration, or modification to a licensed facility that materially or substantially alters the facility or its usage, including an increase or decrease in the total square footage of the facility;

2. Significant electrical modifications that require inspection by local authorities; and

3. Sealing off, creation of, or relocation of a common entryway, doorway, passage, or other means of ingress or egress when the common entryway, doorway, or passage alters or changes limited access areas.

(b) During the licensure period, a licensee shall notify the cabinet following knowledge or discovery of the following events:

1. Inventory discrepancies;
2. Diversion, theft, or loss of any medicinal cannabis or medicinal cannabis product;
3. Unauthorized destruction of medicinal cannabis;

4. Any criminal proceeding involving the licensee's owners, principal officers, board members, employees, volunteers, financial backers, or agents arising out of actions taken on the licensee's premises or while using licensee property;

5. Security alarm activation or other event that requires response by law enforcement or security personnel;

6. Any loss, unauthorized dissemination, or unauthorized alteration of records related to medicinal cannabis, cardholders, employees, volunteers, or agents;

7. Accidents involving transport vehicles that occur while the licensee is transporting or delivering medicinal cannabis;

8. Any act involving cultivating, processing, producing, testing, transporting, or dispensing medicinal cannabis by any person that may create a health or safety risk to cardholders or the general public;

9. A dispensary declines the sale of medicinal cannabis to a cardholder; ~~or~~**and**

10. A dispensary desires to prohibit a cardholder from entering its premises.

(c) The notifications required under this subsection shall be:

1. Provided on a form prescribed by the cabinet and available on the Web site of the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>, that includes time and date of the event, individuals involved, and a detailed description of the event; and

2. Sent ~~by~~**[via]** electronic mail to kymedcanreporting@ky.gov ~~or through the cannabis business licensing portal~~ within twenty-four (24) hours of discovery or knowledge of the event.

(d) If ~~a~~**the** licensee fails to provide the notice required under this section, the cabinet may take one (1) or more of the actions described in Section 12 of this administrative regulation.

(e) ~~If in the event~~ a local government prohibits all cannabis business operations within its territory in accordance with KRS 218B.130, a licensee located within the affected territory shall notify the cabinet in writing ~~by~~**[via]** electronic mail to kymedcanreporting@ky.gov within twenty-four (24) hours of notification or discovery of this prohibition, including all information known regarding the prohibition, and may make a written request to the cabinet to change its cannabis business location in accordance with Section 9 of this administrative regulation.

(3) Inspection and investigation.

(a) The cabinet may conduct announced or unannounced inspections or investigations to determine the licensee's compliance with KRS Chapter 218B and 915 KAR Chapter 1. ~~The~~**These** investigations and inspections may occur during regular working hours and at other reasonable times ~~in order~~ to inspect the licensee's place of business, question privately any ~~such~~**[such]** principal officer, board member, agent, employee, or employee's representative, and investigate ~~such~~**[such]** facts, conditions, practices, or other matters deemed appropriate to determine whether the licensee is operating in compliance with KRS Chapter 218B and 915 KAR Chapter 1. If a licensee refuses ~~such~~**[such]** entry onto its premises,

the cabinet may apply to the circuit court in the county in which the licensee is located for an order to enforce the right of entry.

(b) Following completion of an inspection or investigation, the cabinet shall have the authority to confiscate, possess, transport, and destroy any medicinal cannabis that has been deemed noncompliant with the standards established by KRS Chapter 218B and 915 KAR Chapter 1.

(c) The cabinet's authorized representatives shall also have the authority to:

1. Administer oaths;
2. Examine witnesses under oath;
3. Take depositions;
4. Certify to official acts;
5. Review records and accounts;
6. Take photographs;
7. Secure any other evidence deemed necessary to evaluate compliance with KRS Chapter 218B and 915 KAR Chapter 1; and
8. Issue subpoenas to compel the attendance of witnesses and parties and the production of books, accounts, correspondence, memoranda, and other records considered necessary and relevant to the matter under investigation by the cabinet.

(d) When a witness or party fails to comply with a subpoena issued by the cabinet, the circuit court in the county in which the witness or party is located may compel ~~compliance~~**[obedience]** by proceedings for contempt ~~[as in the case of disobedience]~~ of a subpoena or order issued from ~~the~~**[such]** court or a refusal to testify therein, and may adjudge ~~a~~**[such]** person guilty of contempt of court and punish him or her as provided by law in other contempt cases. In any proceeding brought under this paragraph, a circuit court may modify or set aside the subpoena.

(e) An investigation or inspection may include:

1. Inspection of a licensee's site, facility, vehicles, equipment, books, records, papers, documents, data, and other physical or electronic information;
2. Interviews of licensee's principal officers, board members, agents, employees, volunteers, or employee representatives;
3. Interviews of licensee's former principal officers, board members, agents, employees, volunteers, or employee representatives; and
4. Inspection of equipment, instruments, tools, machinery, and vehicles that are used to grow, process, package, transport, and test medicinal cannabis.

(f) The cabinet and its authorized agents shall have free access to review and, if necessary, make copies of books, records, papers, documents, data, or other physical or electronic information that relates to the business of the licensee, including financial data, sales data, shipping data, pricing data, and employee data.

(g) Failure of a licensee to provide the cabinet and its authorized agents immediate access to any part of a licensee's site or facility, requested material, physical or electronic information, or individual as part of an inspection or investigation may result in the imposition of a civil monetary fine, suspension, or revocation of its license, or an immediate cessation of operations pursuant to a cease-and-desist order issued by the cabinet if continued operations would present a risk to the health, safety, or welfare of cardholders or the public.

(h) The cabinet and its authorized agents shall have access to any area within a licensee's site or facility, including any area being used to store medicinal cannabis, and ~~shall be~~**[are]** authorized to collect samples and test samples for testing.

(4) Training.

(a) Every principal, agent, employee, and volunteer of a licensee who has direct contact with cardholders, or physically handles cannabis seeds, seedlings, tissue cultures, clones, mature cannabis plants, medicinal cannabis, or medicinal cannabis products, shall complete applicable training required by the cabinet, which may include trainings for cultivating, processing, testing, and retail sale of medicinal cannabis and usage of the Commonwealth's designated electronic monitoring system and seed to sale tracking system required by KRS 218B.140. The cabinet shall provide written notice to licensees of the availability of any required training and the frequency to complete the training.

(b) The cabinet shall publish a Guide to Worker Safety and

Health in the Kentucky Medical Cannabis Industry on the Web site of the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>. Licensees shall maintain a physical copy of the Guide to Worker Safety and Health in the Kentucky Medical Cannabis Industry in their facility in a manner that is readily accessible to its employees or agents and ensure that employees receive annual training on the contents of the guide.

(c) A licensee shall train its principals, agents, employees, and volunteers on its established standard operating procedures within thirty (30) days of starting employment and once every calendar year thereafter.

(d) A licensee shall retain any training participation records of its principals, agents, employees, and volunteers and make them available for inspection by the cabinet upon request for a period of five (5) years.

(5) Insurance requirements.

(a) A licensee shall obtain and maintain commercial general liability insurance for, at a minimum, \$1,000,000 per occurrence and \$2,000,000 per aggregate.

(b) A licensee shall obtain and maintain commercial automobile insurance as required by Kentucky law, specifically KRS 304.39-110, for any vehicle used to transport medicinal cannabis or medicinal cannabis products.

(c) A licensee shall obtain and maintain workers' compensation insurance coverage for employees in the Commonwealth and shall pay all required employer contributions to the Kentucky Office of Unemployment Insurance.

(d) The insurance requirements contained in this section shall begin prior to the licensee's first day of cannabis business activities in the Commonwealth and continue for as long as the licensee is operating under a license issued by the cabinet.

(6) Reports.

(a) The cabinet may require ongoing reporting of operational and financial information from the licensee in a form and manner prescribed by the cabinet.

(b) The cabinet shall require any reports necessary to carry out its responsibilities under KRS Chapter 218B and 915 KAR Chapter 1.

Section 6. Failure to be Operational.

(1) If a licensee has not met the timeline estimates provided in its initial license application to begin cannabis business activities in the Commonwealth, the licensee shall notify the cabinet ~~by~~**[via]** electronic mail to kymedcanreporting@ky.gov within two (2) calendar days of determining a need to adjust its timeline. In its written notice to the cabinet, the licensee shall identify any operational deficiencies and provide an explanation for failing to adhere to its timeline estimates.

(2) Within seven (7) calendar days of providing the written notice required under this section, the licensee shall submit a corrective action plan to the cabinet that sets forth the licensee's updated timeline and a date certain for correcting the identified operational deficiencies.

(3) If the licensee fails to comply with its corrective action plan, the cabinet may impose penalties or sanctions as outlined in Section 12 of this administrative regulation.

Section 7. Closure of a Licensed Cannabis Business Location.

(1) A licensee shall notify the cabinet ~~by~~**[via]** electronic mail to kymedcanreporting@ky.gov ~~at least~~**[immediately, but in no event fewer than]** thirty (30) calendar days prior to the projected date of closure, upon making a determination that it intends to close a cannabis business location.

(2) A licensee shall not accept or purchase seeds, seedlings, tissue cultures, clones, medicinal cannabis plants, medicinal cannabis, medicinal cannabis products, medicinal cannabis accessories, equipment, or medicinal devices or instruments for the closing location as of the date of closure notice submitted to the cabinet.

(3) The notice shall be accompanied by the licensee's written plan for closing its cannabis business location that includes:

(a) The projected date of closure;

(b) How the licensee intends to notify, prior to the projected date for closure, any person or entity to which the licensee provides

medicinal cannabis or medicinal cannabis services from the closing location;

(c) How the licensee intends to dispose of seeds, seedlings, tissue cultures, clones, medicinal cannabis plants, medicinal cannabis, medicinal cannabis products, or other plant matter projected to still be at the closing location at the time of the projected closure; and

(d) How the licensee intends to dispose of equipment, devices, instruments, or medicinal cannabis accessories at the closing location.

(4) A licensee shall not remove or destroy any seeds, seedlings, tissue cultures, clones, medicinal cannabis plants, medicinal cannabis, other plant matter, medicinal cannabis products, equipment, medicinal cannabis accessories, or medicinal devices or instruments until the cabinet has approved its plan for closing the location and shall comply with all applicable requirements regarding disposal of medicinal cannabis contained in 915 KAR Chapter 1.

(5) The cabinet may enter and inspect the cannabis business location and facilities following receipt of the licensee's closure plan to determine whether to approve the closure plan. If the cabinet denies the closure plan, it shall notify the licensee in writing and require the licensee to submit a revised closure plan within seven (7) calendar days of the date of the denial notice. The cabinet shall review and consider the revised closing plan and issue a determination within seven (7) calendar days of receipt.

(6) If the cabinet approves the licensee's closure plan, the licensee shall surrender its license for the closing location to the cabinet on or before the date for closure provided in the plan.

Section 8. Request for Approval of a Change in Cannabis Business Ownership.

(1) If there is a pending[an impending] change in ownership of a licensee from the ownership listed in the initial license application, the licensee shall submit a written request for approval of a change in ownership to the cabinet by[via] electronic mail to kymedcanreporting@ky.gov. The cabinet shall consider the requirements for ownership of a cannabis business contained in KRS Chapter 218B and 915 KAR Chapter 1 as well as any other factors that the cabinet deems relevant in making its determination on the request. The cabinet shall review the request and notify the licensee in writing whether the request is approved or denied.

(2) For each new individual or entity that is part of the proposed change in ownership, the licensee shall include in its request the information required of owners in the initial license application. The licensee shall also provide the cabinet with the names of all outgoing individuals or entities previously listed as owners.

(3) If the cabinet determines that a request for approval of a change in ownership is lacking sufficient information upon which to make a determination, the cabinet shall notify the licensee in writing of the areas that require additional information and documentation. The licensee shall have fifteen (15) calendar days from the mailing date of the notice to provide the requested information and documentation to the cabinet. A licensee's failure to provide the required information and documentation to the cabinet by the deadline shall be grounds for the denial of the requested change in ownership.

Section 9. Request for Approval of a Change in Cannabis Business Location.

(1) A licensee desiring to change the location of a site or facility shall submit a written request for approval of a change in location to the cabinet by[via] electronic mail to kymedcanreporting@ky.gov. A change in location of a site or facility shall not occur unless the cabinet approves the change in writing. The cabinet shall consider the location requirements for a cannabis business contained in KRS Chapter 218B and 915 KAR Chapter 1 in making its determination on the request, and any other factors that the cabinet deems relevant. The cabinet shall review the request and notify the licensee in writing whether the request is approved or denied.

(2) A written request for approval of a change in location shall include the reason(s) for requesting the change and other information about the proposed new location, including:

(a) The proposed new physical address of the cannabis business and the GPS coordinates for any proposed cultivation,

processing, producing, testing, or dispensing activities;

(b) Evidence that the licensee has the authority to use the proposed site as a cannabis business;

(c) Confirmation that the proposed location is not within 1,000 feet of an existing elementary or secondary school or a daycare center at the time the request is made; and

(d) A site plan for the cannabis business.

(3) If the cabinet in its discretion approves the request, the cabinet shall issue an amended license to the licensee reflecting the new physical address of the cannabis business. The expiration date of the amended license shall be the same as the expiration date of the previous license.

(4) Within ninety (90) calendar days of the issuance by the cabinet of an amended license under this section, the licensee shall change the location of its operation to the new location designated in the new license. Simultaneously, the licensee shall cease to operate at the former location and surrender its existing license to the cabinet. The following conditions shall apply:

(a) ~~[At no time may]~~ A licensee shall not operate or exercise any of the privileges granted under the license in both locations;

(b) The cabinet may extend the ninety (90) day deadline for relocation for up to an additional ninety (90) calendar days;

(c) The licensee shall notify the cabinet by[via] electronic mail to kymedcanreporting@ky.gov at least fifteen (15) calendar days prior to beginning cannabis business activities at the new location; and

(d) The cabinet may conduct an inspection to determine the appropriateness of the new location, and upon notification from the cabinet, the licensee shall immediately correct any deficiencies identified by the cabinet during this inspection and shall not commence operations at the new location until the deficiencies have been corrected and approved by the cabinet.

(5) For dispensary licenses, the cabinet shall not approve a change of location that is outside the boundaries of the medicinal cannabis region for which the license was issued or that otherwise is not in compliance with the location restrictions contained in Section 3(3) of this administrative regulation.

Section 10. Request to Sell Cannabis Business License.

(1) A licensee desiring to sell its cannabis business license shall submit to the cabinet by electronic mail to kymedcanreporting@ky.gov a written request for approval of the sale ~~[to][the cabinet via electronic mail to kymedcanreporting@ky.gov]~~. The sale of a cannabis business license shall not occur unless the cabinet approves the sale in writing. The cabinet shall review the request and notify the licensee in writing whether the proposed sale is approved or denied. The cabinet shall consider the initial license application requirements for a cannabis business contained in KRS Chapter 218B and 915 KAR 1:010, and any other factors that the cabinet deems relevant in making its determination on the request.

(2) A written request to approve a license sale shall include the sale price, the reason(s) for requesting the sale, and information about the proposed purchaser, including:

(a) All information and documentation required to be submitted by a cannabis business as part of the initial license application process ~~[in order]~~ to show the proposed purchaser would be eligible for entry into a license lottery conducted according to this administrative regulation;

(b) Signed attestations from the proposed purchaser that are required as part of the initial license application process;

(c) A transition plan for transferring the license from the licensee to the proposed purchaser; and

(d) A notarized affidavit from the proposed purchaser swearing or[and] affirming that all information and documentation provided to the cabinet along with the request is true and correct, and an acknowledgement that any false statement made to the cabinet as part of the proposed sale process is punishable under the applicable provisions of KRS 523.100.

(3) The cabinet shall approve a licensee's sale of a license if the proposed purchaser and any new location or facilities meet the requirements of KRS Chapter 218B and 915 KAR Chapter 1.

(4) The cabinet shall deny a licensee's sale of a license to any

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proposed purchaser who currently holds a license in a different cannabis business category than ~~that being the one~~ offered for sale (such as the proposed purchaser seeks to purchase a dispensary license while currently licensed as a tier I cultivator), except that a cultivator may sell its license to another licensed cultivator in the same or different cultivator tier (such as the proposed purchaser may purchase a tier II cultivator license while currently licensed as a tier I cultivator). Cultivators may hold licenses in more than one (1) cultivator tier at any given time ~~if as long as~~ each license contains a separate and distinct physical address where cultivator conducts licensed cannabis activities and the licensee is otherwise in compliance with the requirements of KRS Chapter 218B and 915 KAR Chapter 1.

Section 11. Issuance of Additional Cannabis Business Licenses.

(1) Beginning January 1, 2025, the cabinet shall, on a quarterly basis, review the need for issuance of new licenses in each cannabis business category.

(2) In making its determination whether to issue new licenses, the cabinet may consider:

- (a) The population of the Commonwealth;
- (b) The number of active cardholders;
- (c) Changes to the list of qualifying medical conditions for medicinal cannabis;
- (d) Market supply and demand;
- (e) Geographic distribution of dispensaries and other cannabis businesses;
- (f) Workforce development opportunities; and
- (g) Any other factors that the cabinet deems relevant to its analysis.

(3) If the cabinet determines there exists a need for additional cannabis business licenses in the Commonwealth, the cabinet shall issue a notice documenting the basis for this determination, including a list of the factors it considered to arrive at that determination.

(4) The cabinet shall publish on the Web site of the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>, the notice required by this Section as well as a notice of initial license application availability. This notice shall provide the timeframe during which initial license applications shall be accepted by the cabinet and the category and number of cannabis business licenses available for distribution at the close of the application period. Applicants for new cannabis business licenses shall adhere to the requirements of 915 KAR 1:010 regarding initial license applications and follow the initial license application instructions. The process for issuing new licenses shall comply with the requirements of this administrative regulation.

Section 12. Penalties and Sanctions.

(1) In addition to any other penalty imposed by law for violations of KRS Chapter 218B and 915 KAR Chapter 1, the cabinet may take one (1) or more of the following actions:

(a) Suspend or revoke a license ~~if any of the following occur~~:

1. The licensee or any of its agents commit multiple violations or a serious violation of the requirements of KRS Chapter 218B and 915 KAR Chapter 1;
2. The licensee or any of its agents fail to maintain effective control against diversion of medicinal cannabis from its facility or under its control;
3. The licensee or any of its agents violate a provision of other state or local laws regarding the operation of its cannabis business;
4. The licensee or any of its agents engage in conduct, or an event occurs, that would have disqualified the cannabis business from being issued a license or having its license renewed; or
5. The licensee submitted false or misleading information on any application submitted to the cabinet.

(b) Impose a civil fine of not more than \$10,000 for each violation and an additional fine of not more than \$1,000 for each day of the continuing violation. In determining the amount of each fine, the cabinet shall ~~consider take the following into consideration~~:

1. The seriousness of the violation;
2. The potential harm resulting from the violation to cardholders or the general public;
3. The willfulness of the violation;

4. Previous violations, if any, by the licensee being assessed;
5. The economic benefit to the licensee being assessed for failing to comply with the requirements of KRS Chapter 218B, 915 KAR Chapter 1, or an order issued by the cabinet; and
6. The economic deterrent to the licensee.

(c) Issue a cease-and-desist order to immediately stop or restrict the operations of a licensee to protect the public's health, safety, and welfare. The following applies to issuing a cease-and-desist order:

1. An order may include a requirement that a licensee cease or restrict some or all of its operations. In addition, the order may prohibit the use of some or all of the medicinal cannabis grown, processed, or to be sold by the licensee;

2. An order may be issued by an authorized agent of the cabinet immediately upon the completion of an inspection or investigation if the agent observes or suspects an operational failure or determines that the conditions will likely create a diversion of medicinal cannabis, contamination of medicinal cannabis, or a risk to cardholders or the general public;

3. An order may be issued by an authorized agent of the cabinet in circumstances where a licensee fails to provide timely notice of closure of a cannabis business location in accordance with Section 7 of this administrative regulation and the cabinet suspects the imminent closure of the cannabis business shall likely create a diversion of medicinal cannabis or a risk to cardholders or the general public;

4. An order may include:

- a. An immediate evacuation of the site and facility, and the sealing of the entrances to the facility;
- b. A quarantine of some or all of the medicinal cannabis found at the facility; and
- c. The suspension of the sale or shipment of some or all of the medicinal cannabis found at the facility.

(d) Issue a written warning if the cabinet determines that either:

1. The public interest shall be adequately served under the circumstances by the issuance of the warning; or
2. The violation does not threaten the safety or health of cardholders or the general public, and the licensee shall take immediate action to remedy the violation.

(e) Require a licensee develop and adhere to a corrective action plan approved by the cabinet. The cabinet shall monitor compliance with the corrective action plan. Failure to comply with the corrective action plan may result in the cabinet taking additional action under the applicable provisions of this section as it deems appropriate.

(2) A person who aids, abets, counsels, induces, procures, or causes another person to violate KRS Chapter 218B or 915 KAR Chapter 1, or an order issued by ~~the~~ cabinet, shall be subject to the civil penalties provided for under this section.

(3) Before the cabinet may revoke or suspend a license, the cabinet shall provide the licensee with written notice specifying the nature of the alleged violation(s) and allow the licensee an opportunity to appear and be heard pursuant to KRS Chapter 13B. Any resulting hearing shall be conducted in compliance with the requirements of KRS Chapter 13B.

(4) The cabinet shall provide a licensee with written notice of imposition of a civil fine, order of restitution, cease-and-desist order, written warning, or corrective action plan ~~by via~~ certified mail to the address on the license. The licensee 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 regarding the action taken. The hearing shall be conducted in compliance with the requirements of KRS Chapter 13B.

Section 13. Technical Advisories.

(1) The cabinet may issue technical advisories by memorandum to assist licensees in complying with the KRS Chapter 218B and 915 KAR Chapter 1.

(2) Technical advisories shall not have the force of law or regulation, but shall provide guidance on the cabinet's interpretation of, and how a licensee may maintain compliance with, KRS Chapter 218B and 915 KAR Chapter 1.

(3) Notice of the availability of a technical advisory shall be published on the Web site of the Kentucky Medical Cannabis Program, <https://kymedcan.ky.gov>.

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Section 14. Minimal Performance Standards for Biennial Accreditation.

(1) As part of the license renewal process, licensees shall meet the minimum performance standards established in 915 KAR 1:010, Section 6 [in order] to be approved for a renewal license.

(2) If a licensee successfully meets the minimum performance standards established in 915 KAR 1:010, Section 6 over a two (2) year period, the cabinet shall recognize the licensee as an accredited cannabis business in the Commonwealth.

(3) The recognition provided under this section shall expire two (2) years after the date of issuance, and shall be renewed if the licensee continues to:

(a) Operate in the Commonwealth as of the expiration date; and

(b) Meet the minimum performance standards established in 915 KAR 1:010, Section 6.

FILED WITH LRC: October 15, 2024

CONTACT PERSON: Oran S. McFarlan, III, Kentucky Medical Cannabis Program, Cabinet for Health and Family Services, 275 E. Main Street, 5th Floor, Frankfort, Kentucky 40621; Phone Number: (502) 564-5313; Email: oran.mcfarlan@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(As Amended at ARRS, October 15, 2024)

922 KAR 1:350. Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers.

RELATES TO: KRS 2.015, 61.870-61.884, 194A.005(1), 194A.060, 189.125, 199.011, 199.430(3), 199.802, 258.015, 258.035, 311.720(12), 311.840(3), 314.011(5), (7), [(9),]527.100, 527.110, 600.020, 605.090, 610.110, 620.030, 620.050, 620.140(1)(d), 620.360, 620.363, [Chapter 625,]16 C.F.R. 1219-1220, 1632-1633, 42 C.F.R. 435.407, 45 C.F.R. Parts 160, 164, 8 U.S.C. 1151, 1181, 42 U.S.C. 671, 672

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472(1), 605.100(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet and to implement programs mandated by federal law or to qualify for the receipt of federal funds. KRS 605.100(1) requires the cabinet to arrange programs designed to provide for classification, segregation, and specialized treatment of children according to their respective problems, needs, and characteristics. KRS 199.472(1) requires the cabinet to promulgate administrative regulations to establish the process of determining an applicant's capacity for foster or adoptive parenthood. This administrative regulation establishes criteria for public agency foster homes, adoptive homes, and respite care providers caring for foster or adoptive children.

Section 1. Definitions.

(1) "Adoptive home" means a home in which a parent is approved by the cabinet to provide services as specified in Section 2(11)(42) of this administrative regulation.

(2) "Applicant" means an individual or family subject to approval by the cabinet as a foster or adoptive home.

(3) "Cabinet" is defined by KRS 194A.005(1) and 600.020(7).

(4) "Care Plus" means a foster care program for a child who is determined to have specialized care needs as specified in Section 7(5) of this administrative regulation.

(5) "Child" means:

(a) A child as defined by KRS 199.011(4) and 600.020(9);

(b) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(d); or

(c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.

(6) ["Child specific foster home" means an individual or family

subject to approval by the cabinet as a foster family home for a relative or fictive kin placement.]

[(7)] "Child with medical complexity" means a child who has a medical condition in accordance with Section 6(4)(1)(b) of this administrative regulation.

[(7)][(8)] "Commissioner" means commissioner of the Department for Community Based Services.

[(8)][(9)] "Department" means the Department for Community Based Services.

[(9)] "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).

[(10)] "Foster home" means:

(a) A "foster family home" as defined by KRS 199.011(10) and 600.020(30), if referring to a physical structure; or

(b) If referring to an individual, any individual approved as a foster parent by the cabinet to provide services as specified in Section 2(11)(42) of this administrative regulation.

[(11)] "Health professional" means a person actively licensed as

a:

(a) Physician as defined by KRS 311.720(12);

(b) Physician assistant as defined by KRS 311.840(3);

(c) Advanced practice registered nurse as defined by KRS 314.011(7); or

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

[(12)] "Home study" means an assessment done on a prospective foster or adoptive home by a social services worker.

[(13)] "Independent living services" means services provided to an eligible child to assist the child in the natural progression from adolescence to adulthood.

[(14)] "Nonfamilial" means:

(a) Not related; and

(b) Not fictive kin.

[(15)] "Placement" means the physical change in the location and living arrangement of a child in the custody of the cabinet removed from the child's home of origin.

[(16)] "Relative" means an individual related to a child by blood, marriage, or adoption.

[(17)][(45)] "Respite care" means temporary care provided by a provider, as specified in Section 19(47) of this administrative regulation, to meet the needs of the child or provide relief to the foster or adoptive parents with the expectation of a child's return to the current foster or adoptive home.

Section 2. General Requirements for a Nonfamilial Foster or Adoptive Parent.

(1) This section establishes the requirements for a foster or adoptive parent applicant who is nonfamilial to a child in state custody.

[(2)][(a)] [Unless an exception is approved pursuant to paragraph (b) of this subsection by designated cabinet staff, a] foster or adoptive parent applicant shall be at least twenty-one (21) years of age.

[(3)][(b)] [A foster or adoptive parent applicant between eighteen (18) and twenty-one (21) years of age may be approved as a foster or adoptive parent if:]

[1.] [The foster or adoptive parent applicant is related to the child under the custodial control of the cabinet;]

[2.] [The foster or adoptive parent applicant can meet the needs of the child; and]

[3.] [Cabinet staff determines the placement is in the best interest of the child.]

[(2)] A foster or adoptive parent applicant shall provide proof of the applicant's United States citizenship or legal immigrant status, as described in 8 U.S.C. 1151, 8 U.S.C. 1181, and 42 C.F.R. 435.407.

[(3)] [A department employee who provides protection and permanency services may apply to adopt a child in the care and custody of the cabinet if the commissioner approves the employee to adopt and the adoption is in the best interest of the child.]

(4)

(a) [A department employee who provides protection and permanency services shall be approved as a respite care provider or foster parent for a child in the care and custody of the cabinet if

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prior approval by the commissioner or designee is granted in writing through the service region administrator in the region of employment.]

~~[(b)] [If approval is granted, the department shall:]~~

~~[1.] [Ensure the employee completes pre-service training outside the region of employment;]~~

~~[2.] [Assign a social services worker outside of the applicant employee's region of employment to complete the home study;]~~

~~[3.] [Maintain the case outside of the applicant employee's region of employment; and]~~

~~[4.] [Ensure that the employee shall not accept the placement of a child from within the region of employment unless:]~~

~~[a.] [The employee is related to the child; or]~~

~~[b.] [The employee is determined to be fictive kin as the result of a relationship developed outside of employment prior to the child being placed in the custody of the cabinet.]~~

~~[(5)] A married couple may apply to become foster or adoptive parents; or[-]~~

~~[(b)][(6)] A single, unmarried person may apply to become a foster or adoptive parent.~~

~~[(5)][(7)] The decision to foster or adopt a child shall be agreed to by each adult member of the applicant's household.~~

~~[(6)] A foster or adoptive applicant shall participate in the home study process and complete required questionnaires, screening, and individual interviews and may be required to provide additional documentation in order to mitigate needs or concerns identified in the home study process.~~

~~[(7)][(8)]~~

(a) Each foster or adoptive applicant and adult member of the applicant's family shall submit a DPP-107, Health Information Required for Foster or Adoptive Parents, Applicants, or Adult Household Members, completed:

1. By a health professional who is not a member of the applicant's household, based upon health information within the past year, documenting:

a. The individual has no illness or condition that would present a health or safety risk to a child placed in the applicant's home, which may include a communicable disease; and

b. That there are no known health factors that would interfere with the applicant's ability to become a foster or adoptive parent;

2. As part of:

a. The initial application;

b. The reevaluation; or

c. A foster or adoptive home review pursuant to Section 15[43] of this administrative regulation; and

3. By all household members in which the household member discloses mental health and substance abuse issues, including any history of drug or alcohol abuse or treatment.

(b) The department shall require further documentation or evaluation to determine the suitability of the home if there is an indicator of current or past mental health or substance abuse issues in a household member.

~~[(8)][(9)] Each foster or adoptive parent applicant shall submit a DPP-108, Health Information Required for Foster or Adoptive Parents or Applicants Regarding Dependent Children, for each child member of the applicant family.~~

~~[(9)][(40)] A foster or adoptive parent applicant shall have a source of income:~~

(a) Sufficient to meet the applicant's household expenses; and

(b) Separate from:

1. Foster care reimbursement; or

2. Adoption assistance.

~~[(10)][(44)] Unless specified in a contract between the cabinet and a child welfare agency that provides foster care services, a foster or adoptive parent shall accept a child for foster care only from the cabinet.~~

~~[(11)][(42)] An approved foster or adoptive parent shall be willing to:~~

(a) Provide foster care services for a child placed in out-of-home care by the cabinet;

(b) Adopt a child:

1. Whose parent's parental rights have been terminated; and

2. Who is under the custodial control of the cabinet;

(c) Provide respite care for a child under the custodial control of the cabinet; or

(d) Provide any combination of the services described in paragraphs (a) through (c) of this subsection.

~~[(12)][(43)] A foster or adoptive applicant shall provide to the cabinet:~~

(a)

1. The names of three (3) personal references including:

a. One (1) relative reference; and

b. Two (2) non-relative references.

2. The references required by subparagraph 1. of this paragraph shall:

a. Be interviewed by cabinet staff in person or by telephone; or

b. Provide letters of reference for the applicant; and

(b) Two (2) credit references or a credit report.

~~[(13)][(44)] Unless a documented exception exists and is approved by designated cabinet staff due to inaccessibility, each adult child of the foster or adoptive parent applicant who does not live in the home shall be interviewed by cabinet staff in person or by telephone regarding the applicant's parenting history.~~

~~[(14)][(45)] If applicable, verification shall be obtained from the foster or adoptive parent applicant regarding:~~

(a) Previous divorce;

(b) Death of a spouse; and

(c) Present marriage.

~~[(15)][(46)] A foster or adoptive parent applicant who does not have custody of his or her own child shall provide:~~

(a) A copy of the visitation order, if applicable;

(b) A copy of the child support order, if applicable; and

(c) Proof of current payment of child support, if applicable.

~~[(16)][(47)] A foster or adoptive parent applicant and any member of the applicant's household shall submit to the background checks required by 922 KAR 1:490.~~

~~[(18)] [The cabinet shall perform background checks in accordance with criteria established in 922 KAR 1:490.]~~

Section 3. General Requirements for a Relative or Fictive Kin Foster or Adoptive Parent.

(1) This section establishes the requirements for a foster or adoptive parent applicant who is a relative or fictive kin to a child in state custody.

(2)

(a) Unless an exception is approved pursuant to paragraph (b) of this subsection, a foster or adoptive parent applicant shall be at least twenty-one (21) years of age.

(b) A foster or adoptive parent applicant between eighteen (18) and twenty-one (21) years of age may be approved as a foster or adoptive parent if cabinet staff determine the placement is in the best interest of the child.

(3) A foster or adoptive parent applicant shall provide proof of the applicant's United States citizenship or legal immigrant status, as described in 8 U.S.C. 1151, 8 U.S.C. 1181, and 42 C.F.R. 435.407.

(4)

(a) A married couple may apply to become foster or adoptive parents; or

(b) A single, unmarried person may apply to become a foster or adoptive parent.

(5) The decision to foster or adopt a child shall be agreed to by each adult member of the applicant's household.

(6) Unless specified in a contract between the cabinet and a child welfare agency that provides foster care services, a foster or adoptive parent shall accept a child for foster care only from the cabinet.

(7) A foster or adoptive applicant shall participate in the home study process and complete required questionnaires, screening, and individual interviews and may be required to provide additional documentation to mitigate needs or concerns identified in the home study process.

(8) An approved foster or adoptive parent shall be willing to:

(a) Provide foster care services for a child placed in out-of-home care by the cabinet;

(b) Adopt a child:

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1. Whose parent's parental rights have been terminated; and
2. Who is under the custodial control of the cabinet;
(c) Provide respite care for a child under the custodial control of the cabinet;

(d) Enter into a subsidized permanent custody agreement; or
(e) Provide any combination of the services described in paragraphs (a) through (d) of this subsection.

(9) A foster or adoptive parent applicant who does not have custody of his or her own child shall provide:

(a) A copy of the visitation order, if applicable;

(b) A copy of the child support order, if applicable; and

(c) Proof of current payment of child support, if applicable.

(10) A foster or adoptive parent applicant and any member of the applicant's household shall submit to the background checks required by 922 KAR 1:490.

Section 4. Department Staff Applying to be a Foster or Adoptive Parent.

(1) A department employee who provides protection and permanency services may apply to adopt a child in the care and custody of the cabinet pursuant to Section 2 or 3 of this administrative regulation if the commissioner or designee approves the employee to adopt and the adoption is in the best interest of the child.

(2)

(a) A department employee who provides protection and permanency services may apply to be a respite care provider or foster parent for a child in the care and custody of the cabinet pursuant to Section 2 or 3 of this administrative regulation and shall be approved if applicable requirements are met and prior approval by the commissioner or designee is granted in writing through the service region administrator in the region of employment.

(b) If approval is granted, the department shall:

1. Ensure the employee completes pre-service training outside the region of employment, as applicable pursuant to 922 KAR 1:495;

2. Assign a social services worker outside of the applicant employee's region of employment to complete the home study;

3. Maintain the case outside of the applicant employee's region of employment; and

4. Ensure that the employee shall not accept the placement of a child from within the region of employment unless:

a. The employee is related to the child; or

b. The employee is determined to be fictive kin as the result of a relationship developed outside of employment prior to the child being placed in the custody of the cabinet.

Section 5. Home Environment.

(1) The foster or adoptive parent shall request written approval from designated cabinet staff to provide services as a:

(a) Certified provider of supports for community living in accordance with 907 KAR 12:010;

(b) Certified family child care home in accordance with 922 KAR 2:100; or

(c) Provider of child-care center services in accordance with 922 KAR 2:090.

(2) If the foster or adoptive home adjoins a place of business open to the public, potential negative impact on the family and the child shall be examined including the:

(a) Hours of operation;

(b) Type of business; and

(c) Clientele.

(3) The foster or adoptive parent shall have access to:

(a) Reliable transportation that meets the child's needs, including restraint requirements pursuant to KRS 189.125;

(b) School;

(c) Recreation;

(d) Medical care; and

(e) Community facilities.

(4) A foster or adoptive parent who drives shall:

(a) Possess a valid driver's license;

(b) Possess proof of liability insurance; and

(c) Abide by passenger restraint laws.

(5)

(a) More than four (4) children, including the foster or adoptive parent's own children, shall not share a bedroom, with thorough consideration given to each child's age, gender, and background.

(b) Children of different genders over the age of five (5) shall not share a bedroom except as approved by designated department staff if:

1. Necessary to facilitate the placement of a sibling group or children who are related and share a sibling-like relationship, such as cousins; and

2. There are no high-risk behaviors.

(6) Each child shall have:

(a) A separate bed that is age and size appropriate for the child;

or

(b) If the child is under age one (1), a crib that meets Consumer Products Safety Commission standards pursuant to 16 C.F.R. 1219-1220.

(7) A child's mattress shall:

(a) Meet current Consumer Products Safety Commission Standards in 16 C.F.R. Parts 1632 and 1633;

(b) Be in good repair; and

(c) Have a clean fitted sheet that shall be changed:

1. Weekly; or

2. Immediately if it is soiled or wet.

(8) Except as approved by designated cabinet staff, a foster or adoptive parent shall not share a bedroom with a child under the custodial control of the cabinet unless necessary due to the needs of the child.

(9) A bedroom used by a child under the custodial control of the cabinet shall be comparable to other bedrooms in the house.

(10) The physical condition of the foster or adoptive home shall:

(a) Not present a hazard to the safety and health of a child;

(b) Be well heated and ventilated;

(c) Comply with state and local health requirements regarding water and sanitation;

(d) Provide access to indoor and outdoor recreation space appropriate to the developmental needs of a child placed in the foster or adoptive home;

(e) Provide functioning kitchen facilities; and

(f) Provide a functioning bathroom, including a:

1. Toilet;

2. Sink; and

3. Bathtub or shower.

(11) The following shall be inaccessible to a child:

(a) Medication, unless an exception is granted pursuant to subsection (12) of this section;

(b) Alcoholic beverage;

(c) Poisonous or cleaning material;

(d) Ammunition; and

(e) Firearms in accordance with KRS 527.100 and 527.110.

(12) An exception may be provided by designated cabinet staff to subsection (11)(a) of this section if:

(a)

1. The child is approved by a health care professional to self-administer medicine under the supervision of the foster or adoptive parent; or

2. Emergency access to the medication may be necessary to save the child's life, such as in the case of severe allergic reaction or asthma attack; and

(b) Measures are taken to prevent unauthorized access by another child in the same home.

(13) Any household animal shall be vaccinated in accordance with KRS 258.015 and 258.035.

(14) A dangerous animal shall not be allowed near the child.

(15) First aid supplies shall be available and stored in a place easily accessible to an adult.

(16) A working telephone shall be accessible.

(17) The home shall be equipped with a working smoke alarm within ten (10) feet of each bedroom and on each floor of the home.

(18) A home with gas heating or appliances shall be equipped with a working carbon monoxide detector.

(19) Safety precautions related to an accessible swimming pool or body of water shall be documented, if applicable.

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Section 6.~~[Section 4.]~~ Medically Complex Foster or Adoptive Home.

(1) An applicant shall be approved by cabinet staff as a medically complex home if the foster or adoptive parent:

(a) Meets the requirements in Sections 2 ~~or~~and 3 ~~and~~ 5 of this administrative regulation, except for Section 2(9)~~[(40)]~~, which may be considered as an exclusion on a case-by-case basis by designated cabinet staff based on the best interests or needs of the child;

(b) Cares for a child in the custody of the cabinet who is determined to be medically complex by designated cabinet staff due to:

1. Significant medically oriented care needs related to a serious illness or condition diagnosed by a health professional that may become unstable or change abruptly, resulting in a life-threatening event;

2. A chronic condition that is expected to be life-long and progressive and to require extensive services;

3. An acute, time-limited condition requiring additional oversight; or

4. A severe disability that requires the routine use of medical devices or assistive technology to compensate for the loss of a vital body function needed to participate in activities of daily living and significant and sustained care to avert death or further disability;

(c) Is a primary caretaker who is not employed outside the home, except as approved by designated cabinet staff and based on the needs of the child;

(d) Completes training in accordance with 922 KAR 1:495, Section 4;

(e) Receives training with documentation of completion from a health professional or a previous caregiver that was trained by a health professional in how to care for the specific child with medical complexity who shall be placed in the foster or adoptive parent's care;

(f) Maintains current certification in:

1. Infant, child, and adult CPR; and

2. First aid; and

(g) Has a home within:

1. One (1) hour of a medical hospital with an emergency room; and

2. Thirty (30) minutes of a local medical facility.

(2) Except for a sibling group or unless approved by designated cabinet staff in accordance with Section 18~~[46]~~ of this administrative regulation, more than four (4) children, including the foster or adoptive parent's own children, shall not reside in a medically complex foster or adoptive home.

(3) Unless an exception is approved pursuant to Section 18~~[46]~~(2) of this administrative regulation and a medically complex foster or adoptive home has daily support staff to meet the needs of a child with medical complexity:

(a) A one (1) parent medically complex foster or adoptive home shall:

1. Not care for more than one (1) child with medical complexity; and

2. Demonstrate access to available support services; and

(b) A two (2) parent medically complex foster or adoptive home shall:

1. Not care for more than two (2) children with medical complexity; and

2. Demonstrate access to available support services.

(4) Unless an exception pursuant to Section 18~~[46]~~(2) of this administrative regulation is approved, a child with medical complexity shall be placed in an approved medically complex foster or adoptive home.

(5) Unless the home is closed pursuant to Section 16~~[44]~~ of this administrative regulation, an approved medically complex foster or adoptive parent shall receive reapproval by the cabinet as a medically complex home if the parent:

(a) Annually completes training specified in 922 KAR 1:495, Section 4; and

(b) Continues to meet the requirements of this section.

(6) An approved medically complex foster or adoptive parent shall cooperate in carrying out the child's health plan.

Section 7.~~[Section 5.]~~ Care Plus Home.

(1) An applicant shall be approved by cabinet staff as a care plus parent if the foster or adoptive parent:

(a) Meets the requirements of Sections 2 ~~or~~and 3 ~~and~~ 5 of this administrative regulation, except for Section 2(9)~~[(40)]~~ which may be considered as an exclusion on a case-by-case basis by designated cabinet staff based on the best interests or needs of the child;

(b) Agrees to care for a child in the custody of the cabinet approved by cabinet staff as a care plus child. The child shall be approved as a care plus child if at least one (1) of the following criteria has been met: The child~~[because the child]:~~

1. Has a diagnosed emotional or behavioral problem;

2. Is due to be released from a treatment facility;

3. Is aggressive~~[Displays aggressive]~~, destructive, or displays disruptive behavior;

4. Is at risk of being placed in a more restrictive setting;

5. Is at risk of institutionalization; or

6. Has experienced numerous placement failures;

(c) Is a primary caretaker who is not employed outside the home, unless the cabinet determines that the child's needs continue to be met;

(d) Completes training in accordance with 922 KAR 1:495, Section 6; and

(e) Agrees to maintain a weekly record of the care plus child's activities and behaviors~~[-and]~~

~~[(f)] [Agrees to attend case planning conferences].~~

(2) Unless an exception is approved pursuant to Section 18~~[46]~~(2) of this administrative regulation and the care plus home parent can demonstrate access to available support services:

(a) No more than four (4) children, including the foster or adoptive parent's own children, shall reside in a care plus home;

(b) A one (1) parent care plus home shall not care for more than one (1) care plus child as described in subsection (1)(b) of this section; and

(c) A two (2) parent care plus home shall not care for more than two (2) care plus children as described in subsection (1)(b) of this section.

(3) Unless the home is closed pursuant to Section 16~~[44]~~ of this administrative regulation, an approved care plus foster or adoptive parent shall receive reapproval by the cabinet as a care plus home, if the parent:

(a) Annually completes training in accordance with 922 KAR 1:495, Section 6;

(b) Submits to a review of the parent's:

1. Strengths and needs;

2. Records maintained on services provided to the child; and

3. Ability to meet the goals established for the child; and

(c) Continues to meet the requirements of this section.

Section 8.~~[Section 6.]~~ Preparation and Selection of a Foster or Adoptive Home.

(1) The cabinet shall recruit a foster or adoptive home and approve the home prior to the placement of a child, except in the case of a ~~[child-specific]~~ placement with a relative or fictive kin caregiver.

(2) Upon recruitment of a foster home, the cabinet shall register the foster home in the foster care registry within fourteen (14) days.

(3) Prior to approval as a foster or adoptive parent, the cabinet shall check the foster care registry for information relating to a previous closure or corrective action.

(4) If an applicant previously approved to foster or adopt by a child-placing agency or the cabinet was:

(a) Closed pursuant to 922 KAR 1:310 or Section 16~~[44]~~ of this administrative regulation, the home shall be reviewed by the cabinet, including reviewing agency records relating to the cause for closure, and may be approved and operated as a cabinet foster home; or

(b) Under a corrective action plan issued by a child-placing agency or the cabinet prior to closure, the cabinet shall review and approve the home study prior to the home being approved.

(5) Prior to approval as a foster or adoptive parent, an applicant shall complete training requirements in accordance with 922 KAR 1:495, if applicable.

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(6) If a new adult moves into an approved foster or adoptive home where a child is already placed by the cabinet, the child may remain and additional children may be placed if the new adult:

(a) Completes training in accordance with subsection (5) of this section within six (6) months of entering the home; and

(b) Meets the applicable requirements [specified in Sections 2 and 3] of this administrative regulation.

(7) An adult child or incapacitated person who resides in the foster or adoptive home shall not be required to complete training in accordance with 922 KAR 1:495 if that individual shall not be responsible for routine daily care of a child placed in the home by the cabinet.

(8) The cabinet shall not be obligated to grant foster or adoptive home approval or placement of a specific child to an individual or family that completes pre-service training.

(9) In addition to completion of training in accordance with 922 KAR 1:495, at least one (1) [~~two~~ (2)] family consultation[consultations] shall be conducted by cabinet staff in the home of an applicant, to include:

(a) Documentation that the applicable requirements [in Sections 2 and 3] of this administrative regulation have been met;

(b) Documentation that a personal interview with each member of the applicant's household has been completed;

(c) Discussion of the attitude of each member of the applicant's household toward placement of a child;

(d) Observation of the functioning of the applicant's household, including interpersonal relationships and patterns of interaction; and

(e) Assurance that the applicant is willing to accept a child's relationship with the child's family of origin.

(10) An applicant approved as a foster or adoptive parent or respite care provider by another state or by a child-placing agency as defined in KRS 199.011(6) shall:

(a) Meet the applicable requirements established[provided] within [Sections 2 and 3 of] this administrative regulation;

(b) Be assessed by cabinet staff to ascertain the applicant's level of skill as a potential Kentucky foster or adoptive parent;

(c) Provide verification of the closure and a statement to indicate whether the closure was at the request of the foster or adoptive parent, the other state, or the agency; and

(d) Not be required to complete training in accordance with 922 KAR 1:495 for approval as a Kentucky foster or adoptive parent if cabinet staff:

1. Determine that the applicant possesses the necessary skills for fostering; and

2. Obtain records and recommendation from the other state or child-placing agency.

(11) Following initial training as specified in 922 KAR 1:495, if cabinet staff determines that an applicant or adult household member lacks the necessary skills to become a foster or adoptive parent, an individualized training curriculum shall be developed to fulfill unmet training needs.

(12)

(a) A foster or adoptive parent shall request the recommendation of cabinet staff prior to enrolling in training specified in 922 KAR 1:495, Section 4(1) or 6(1); and

(b) Cabinet staff may recommend the foster or adoptive parent to receive training specified in 922 KAR 1:495, Section 4(1) or 6(1), if the parent possesses the aptitude to care for a child described in Section 6[4](1)(b) or 7[5](1)(b) of this administrative regulation.

Section 9.[~~Section 7.~~] Completion of the Foster or Adoptive Approval Process.

(1) Designated cabinet staff in a supervisory role shall approve a foster or adoptive applicant if:

(a) The applicant meets all applicable requirements of this administrative regulation[provides written and signed information pertaining to family history and background;]

[~~(b) [The applicant completes training requirements as required by 922 KAR 1:495;]~~

[~~(c) [The information required in Section 2(8) through (10) and (13) through (17) of this administrative regulation has been obtained, unless a waiver has been granted for a child specific placement with a relative or fictive kin caregiver;]~~

[~~(d) [Background checks have been completed pursuant to 922 KAR 1:490 and did not result in a disqualifying background check result];~~

[~~(e) [Designated cabinet staff recommends approval; and (f) [The applicant's ability to provide a foster, adoptive, or respite care service is consistent with the:~~

1. Cabinet's minimum foster or adoptive home requirements established in this administrative regulation; and

2. Needs of the families and children served by the cabinet.

(2) If the designated cabinet staff determines that an applicant does not meet the minimum requirements for approval as a foster or adoptive parent, the cabinet shall:

(a) 1. Recommend that the applicant withdraw the application; or

2. Deny the application pursuant to Section 10[8] of this administrative regulation; and

(b) Document the recommendation or denial in the foster care registry[.]

Section 10.[~~Section 8.~~] Denial of a Foster or Adoptive Home Application[.]

(1) Designated cabinet staff shall notify an applicant, in writing, if the application to become a foster or adoptive parent is not recommended or denied for one (1) of the following reasons:

(a) The applicant is unwilling to withdraw the application to become a foster or adoptive parent after receiving a recommendation to withdraw; or

(b) The applicant desires to adopt, but is unwilling to adopt a child under the custodial control of the cabinet.

(2) If the foster or adoptive applicant disagrees with the cabinet's recommendation to not accept the applicant as a foster or adoptive home or denial, designated cabinet staff shall review the application to become a foster or adoptive parent and issue a final written determination regarding the cabinet's recommendation or denial.

(3) Cabinet staff shall enter information regarding the recommendation, denial, and final determination, if written, into the foster care registry.

Section 11.[~~Section 9.~~] Expectations of a Foster or Adoptive Home. A foster or adoptive home providing services for a child in the custody of the cabinet shall:

(1) Provide a child placed by the cabinet with a family life, including:

(a) Nutritious food;

(b) Clothing comparable in quality and variety to that worn by other children with whom the child may associate;

(c) Affection;

(d) Life skills development;

(e) Recreational opportunities;

(f) Educational opportunities;

(g) Nonmedical transportation;

(h) Independent living services for a child age fourteen (14) and older;

(i) Opportunities for development consistent with their religious, ethnic, and cultural heritage;

(j) Adequate supervision; and

(k) Refraining from smoking in the direct presence of a child for whom the child's physician recommends, in writing, a smoke-free environment[.]

(2) Permit cabinet staff to visit;

(3) Share with cabinet staff pertinent information about a child placed by the cabinet;

(4) Comply with the general supervision and direction of the cabinet concerning the care of a child placed by the cabinet;

(5) Report immediately to the cabinet if there is a:

(a) Change of address;

(b) Hospitalization or life-threatening accident or illness of a child placed by the cabinet;

(c) Change in the number of people living in the home;

(d) Significant change in circumstances in the foster or adoptive home, such as income loss, marital separation, or other household stressor;

(e) Child placed in the home that is absent without official leave;

(f) Suicide attempt of a child placed by the cabinet; or

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- (g) Criminal activity by the child placed by the cabinet;
- (6) Notify the cabinet if:
 - (a) Leaving the state with a child placed by the cabinet for more than twenty-four (24) hours; or
 - (b) A child placed by the cabinet is to be absent from the foster or adoptive home for more than twenty-four (24) hours;
- (7) Cooperate with the cabinet if a contact is arranged by cabinet staff between a child placed by the cabinet and the child's birth family including:
 - (a) Visits;
 - (b) Telephone calls;[-or]
 - (c) Mail; or
 - (d) Other method approved by the cabinet;[-]
- (8) Surrender a child to the authorized representative of the cabinet upon request;
- (9) Keep confidential all personal or protected health information as shared by the cabinet, in accordance with KRS 194A.060, 620.050, and 45 C.F.R. Parts 160 and 164 concerning a child placed by the cabinet or the child's birth family;
- (10) Support an assessment of the service needs of a child placed by the cabinet;
- (11) Participate in case-planning conferences concerning a child placed by the cabinet;
- (12) Cooperate with the implementation of the permanency goal established for a child placed by the cabinet;
- (13) Notify the cabinet at least fourteen (14) calendar days in advance of the home's intent to become certified to provide foster care or adoption services through a private child-placing agency in accordance with 922 KAR 1:310;
- (14) Treat a child placed by the cabinet with dignity;
- (15) Provide trauma-informed discipline;
- (16) Arrange for respite care services in accordance with Section 12[(10)](5) of this administrative regulation;
- (17)[(16)] Ensure that a child in the custody of the cabinet receives the child's designated per diem allowance;
- (18)[(17)] Facilitate the delivery of medical care to a child placed by the cabinet as needed, including:
 - (a) Administration of medication to the child and daily documentation of the medication's administration; and
 - (b) Physicals and examinations for the child;
- (19)[(18)] Report suspected incidents of child abuse, neglect, and exploitation in accordance with KRS 620.030;
- (20)[(19)] Comply with KRS 620.360(2);
- (21)[(20)] Be informed of and comply with KRS 620.363;
- (22)[(21)] Have appeal rights in accordance with 922 KAR 1:320; and
- (23)[(22)] Demonstrate functional literacy.

Section 12.[Section 10.] Reimbursements for Foster Homes.

- (1) Types of per diem reimbursement. ~~If the [The] cabinet approves [shall approve] a foster home pursuant to [as specified in Sections 2 and 3 of] this administrative regulation, it shall [and] authorize a per diem reimbursement as established in this subsection.~~
 - (a) ~~[A child-specific per diem reimbursement shall be made to a foster home that:]~~
 - [1.] ~~[Has been approved pursuant to Section 7 of this administrative regulation; and]~~
 - [2.] ~~[Meets initial training requirements for a child-specific foster home.]~~
 - (b) A basic per diem reimbursement shall be:
 - 1. Based on the age of a child placed by the cabinet in the foster home; and
 - 2. Made to the foster home that meets annual training requirements in accordance with 922 KAR 1:495, Section 3.
 - (b)[(e)] An advanced per diem reimbursement shall be:
 - 1. Made to a foster home that has:
 - a. Been approved for two (2) years as a foster or adoptive parent; and
 - b. Met training requirements in accordance with 922 KAR 1:495, Section 3; and
 - 2. Based on the age of the child placed by the cabinet.
 - (c)[(d)] A basic medically complex per diem reimbursement shall

- be made to a foster parent who:
 - 1. Meets criteria specified in Section 6[4] of this administrative regulation; and
 - 2. Provides for the care of a child with medical complexity.
 - (d)[(e)] An advanced medically complex per diem reimbursement shall be made to a foster parent who:
 - 1. Meets criteria specified in Section 6[4] of this administrative regulation;
 - 2. Has been approved for one (1) year as a medically complex foster or adoptive parent;
 - 3. Has met training requirements in accordance with KRS 922 KAR 1:495, Section 3; and
 - 4. Provides for the care of a child with medical complexity.
 - (e)[(f)] A degreed medically complex per diem reimbursement shall be made to a foster parent who:
 - 1. Meets criteria specified in Section 6[4] of this administrative regulation;
 - 2. Maintains a current license as a health professional; and
 - 3. Provides for the care of a child with medical complexity.
 - (f)[(g)] A basic care plus foster home per diem reimbursement shall be made to a foster parent who:
 - 1. Meets criteria specified in Section 7[5] of this administrative regulation; and
 - 2. Provides for the care of a child described in Section 7[5](1)(b) of this administrative regulation.
 - (g)[(h)] An advanced care plus foster home per diem reimbursement shall be made to a foster parent who:
 - 1. Meets criteria specified in Section 7[5] of this administrative regulation;
 - 2. Has been approved for one (1) year as a care plus foster or adoptive parent;
 - 3. Has met training requirements in accordance with 922 KAR 1:495, Section 3(1); and
 - 4. Provides for the care of a child described in Section 7[5](1)(b) of this administrative regulation.
 - (h)[(i)] A specialized medically complex per diem reimbursement shall be made to a foster parent who:
 - 1. Meets criteria specified in Section 6[4] of this administrative regulation; and
 - 2. Provides for the care of a child with medical complexity determined by designated cabinet staff to meet specialized medically complex criteria due to a required higher level of medical care or oversight, which may also include behavioral or emotional needs related to the medical condition.
 - (i)[(j)] A degreed specialized medically complex per diem reimbursement shall be made to a foster parent who:
 - 1. Maintains a current license as a health professional;
 - 2. Meets criteria specified in Section 6[4] of this administrative regulation; and
 - 3. Provides for the care of a child with medical complexity determined by designated cabinet staff to meet specialized medically complex criteria due to a required higher level of medical care or oversight, which may also include behavioral or emotional needs related to the medical condition.
 - (j)[(k)] Upon placement of a child by the cabinet, a per diem reimbursement shall:
 - 1. Be specified in a contract between an approved foster home and the cabinet; and
 - 2. Provide for the care of a child placed by the cabinet, to include:
 - a. Housing expenses;
 - b. Food-related expenses;
 - c. Nonmedical transportation;
 - d. Clothing;
 - e. Allowance;
 - f. Incidentals;
 - g. Babysitting, excluding childcare authorized in subsection (4)(b) of this section;
 - h. Sports, recreation, and school activities;
 - i. One (1) day of respite care per child per month; and
 - j. School expenses.
 - (2) Medical coverage.
 - (a) Cabinet staff may authorize payment for medical expenses

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for a child in the custody of the cabinet after verification is provided that the child is not covered by health insurance, Medicaid, or the Kentucky Children's Health Insurance Program (K-CHIP).

(b) Designated cabinet staff shall approve or deny authorization of payment for a medical treatment greater than \$500.

(3) Child care services.

(a) The cabinet shall review requests for child care services every six (6) months for a working foster parent.

(b) Designated cabinet staff may approve requests for child care services for a nonworking foster parent if:

1. A medical crisis affects the foster parent; or
2. The child care is appropriate to support the foster home or child.

(c) Designated cabinet staff shall review approved requests for child care services for a nonworking foster parent every three (3) months.

(d) Reimbursements shall not be made simultaneously to the same provider for foster care and child care services.

(e) A foster parent shall not simultaneously be used as a licensed or certified health care or social service provider for a child placed in the foster parent's care by the cabinet.

(4) Training. To the extent funds are available, the cabinet shall provide a reimbursement to an approved foster or adoptive home for ongoing training expenses commensurate with the foster or adoptive parent's training needs, including:

- (a) Mileage;
- (b) Babysitting; and
- (c) Tuition or fees up to the amount of:
 1. \$100 per parent per year; or
 2. \$200 per parent per year for a:
 - a. Medically complex foster or adoptive home; or
 - b. Care plus foster or adoptive home.
- (5) Respite care.

(a) Respite care shall be available for a child placed by the cabinet in a foster home.

(b) A foster home shall be eligible for one (1) day of respite care per month per child.

(c) A foster home that cares for a child in the custody of the cabinet and meets criteria established in Sections 6[4] and 7[5] of this administrative regulation shall be eligible for three (3) days of respite care per month per child.

(d) Designated cabinet staff may extend a foster parent's respite care use to fourteen (14) days if designated cabinet staff document that the:

1. Foster parent requires the additional respite care:
 - a. To stabilize the child's placement in the foster home; or
 - b. Due to unforeseen circumstances that may occur, such as:
 - (i) Death in the family;
 - (ii) Surgery; or
 - (iii) Illness; or
2. Child placed in the foster home requires additional respite care to allow for a period of adjustment.

(e) The cost of respite care shall not exceed the per diem for the child.

(f) A respite care provider shall be approved in accordance with Section 19[47] of this administrative regulation.

(6) Appeals. A foster or adoptive parent may appeal the timeliness of reimbursement in accordance with 922 KAR 1:320.

Section 13.~~[Section 14.]~~ Home Study Requests.

(1) Upon receipt of a request from another state's Interstate Compact on the Placement of Children Administrator in the interest of a child in the legal custody of that state's public agency, the cabinet shall complete the foster or adoptive home approval process as specified in Section 9[7] of this administrative regulation.

(2) The cabinet shall share a previously approved home study in accordance with the Kentucky Open Records Act, KRS 61.870-61.884, and 42 U.S.C. 671(a)(23).

(3) An individual may request an administrative hearing in accordance with 922 KAR 1:320 for failure of the cabinet to act in accordance with subsections (1) and (2) of this section.

Section 14.~~[Section 12.]~~ Foster or Adoptive Home Reevaluation.

(1) Prior to or during the month of the anniversary date of the

initial approval as a foster or adoptive parent, the foster or adoptive parent shall be required to complete annual training requirements as specified in 922 KAR 1:495, if applicable.

(2)

(a) Failure to meet training requirements specified in subsection (1) of this section shall lead to closure unless an exception is granted by the designated cabinet staff for a foster parent caring for a child in the custody of the cabinet and it is determined that it is in the best interest of a child placed in the foster home.

(b) If an exception is approved as specified in paragraph (a) of this subsection, a new or additional child shall not be placed in the home until the foster parent has met the training requirement.

(3) A cabinet staff member shall conduct a personal, in-home interview with a foster or adoptive parent prior to or during the month of the anniversary date of the third year of the initial approval as a foster or adoptive home. The interviewer shall assess:

- (a) Any change in the foster or adoptive home;
- (b) The ability of the foster or adoptive home parent to meet the needs of a child placed in the home; and

(c) Continuing compliance with the applicable requirements of ~~[Sections 2 and 3 of]~~ this administrative regulation.

(4) The cabinet staff member shall document requirements of subsection (3) of this section to include:

- (a) A list of persons residing in or frequently in the home since the initial approval or reevaluation;
- (b) A list of all foster children placed in the home since the initial approval or reevaluation and exit reasons for the children no longer in the home;
- (c) Use of formal and informal support systems including:
 1. Respite;
 2. Extended family support; and
 3. Friends or community partners;
- (d) Description of parenting and discipline strategies;
- (e) Changes in the physical environment including:
 1. Address change; and
 2. School district change;
- (f) Discussion of stressors within the home to include:
 1. Pregnancy or birth;
 2. Physical or mental health conditions;
 3. Employment changes;
 4. Financial changes;
 5. Death, grief, or loss;
 6. Childhood trauma; and
 7. Divorce or personal relationship changes;
- (g) Alcohol or drug use and any substance abuse treatment;
- (h) Functioning of relationships within the household;
- (i) Assessment of the family's ability to meet the needs of the children placed in the home;
- (j) List of foster or adoptive home reviews;
- (k) Areas of concern or actions to be addressed that may exist within the household; and
- (l) Placement recommendations.

Section 15.~~[Section 13.]~~ Foster or Adoptive Home Reviews.

(1) Upon notification of a factor that may place unusual stress on the foster or adoptive home or create a situation that may place a child at risk, cabinet staff shall:

- (a) Immediately assess the health and safety risk of the child; and
 - (b) Complete a review of the foster or adoptive home within thirty (30) calendar days.
- (2) Factors that shall result in a review of a foster or adoptive home shall include:
- (a) Death or disability of a family member;
 - (b) Sudden onset of a health condition that would impair a foster or adoptive parent's ability to care for a child placed in the home by the cabinet;
 - (c) Change in marital status or home address;
 - (d) Sudden, substantial decrease in, or loss of, income;
 - (e) Childbirth;
 - (f) Use of a form of punishment or discipline that includes at least one (1) of the following:

1. Cruel, severe, or humiliating actions;

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2. Corporal punishment inflicted in any manner;
3. Denial of food, clothing, or shelter;
4. Penalties for bedwetting or actions related to toilet training;
5. Withholding implementation of the child's treatment plan;
- 6.[5.] Denial of visits, telephone, or mail contacts with family members, unless authorized by a court of competent jurisdiction; or[and]

7.[6.] Assignment of extremely strenuous exercise or work;

(g) A report of abuse, neglect, or dependency that results in a finding that:

1. Is substantiated; or
 2. Reveals concern relating to the health, safety, and well-being of the child;
- (h) Termination of parental rights (including a voluntary action);
- (i) If the foster or adoptive parent is cited with, charged with, or arrested due to a violation of law other than a minor traffic offense;
- (j) Other factor identified by cabinet staff that jeopardizes the physical, mental, or emotional well-being of the child; or
- (k) Failure to meet annual training requirements, if applicable.

(3) The narrative of the review shall contain:

- (a) Identifying information;
- (b) Current composition of the household;
- (c) Description of the situation that initiated the review;
- (d) An evaluation of the foster or adoptive home's family functioning to determine if the child's needs are met; and
- (e) A plan for corrective action that may include a recommendation for closure of the foster or adoptive home.

Section 16.[~~Section 14.~~] Closure of an Approved Foster or Adoptive Home.

(1) A foster or adoptive home shall be closed if:

- (a) Cabinet staff determines that the family does not meet the general requirements[, as specified in Sections 2 and 3] of this administrative regulation, for a foster or adoptive home;
- (b) A situation exists that is not in the best interest of a child;
- (c) Sexual abuse or exploitation by the foster or adoptive parent or by another resident of the household is substantiated;
- (d) Substantiated child abuse or neglect by a resident of the household occurs that is serious in nature or warrants removal of a child;
- (e) A serious physical or mental illness develops that may impair or preclude adequate care of the child by the foster or adoptive parent; or
- (f) The cabinet has not placed a child in the home within the preceding twelve (12) months, unless a written exception is provided by the service region administrator or designee.

(2) A foster or adoptive home may be closed according to the terms of the contract between the cabinet and the foster or adoptive home.

(3) If it is necessary to close an approved foster or adoptive home, the reason shall be stated by cabinet staff in a personal interview with the family, unless the family refuses or declines the personal interview.

(4) The cabinet shall:

- (a) Confirm, in a written notice to the foster or adoptive parent, the decision to close a home;
- (b) Deliver the notice to the foster or adoptive home within fourteen (14) calendar days of the interview with a foster or adoptive parent; and
- (c) Submit closure information, including the cause for closure pursuant to subsection (1) of this section, in the foster care registry.

(5) The written notice for closure of a foster or adoptive home shall include:

- (a) Notice that the cabinet shall not place a child in the home; and
- (b) The reason why the foster or adoptive home is being closed.

Section 17.[~~Section 15.~~] Reapplication.

(1) A former foster or adoptive home parent whose home was closed pursuant to Section 16[44](1)(a) through (f) of this administrative regulation may be considered for reapproval if the cause of closure has been resolved.

(2) To reapply, a former foster or adoptive parent shall:

- (a) Make a formal inquiry to the cabinet[~~Attend an informational~~

meeting]; and

(b) Meet the requirements of:

1. Section 2 or 3 of this administrative regulation; and
 2. Section 5 of this administrative regulation[~~Submit the:~~]
- [1.] [~~Names of references specified in Section 2(13) of this administrative regulation; and~~]
- [2.] [~~Authorization for criminal records release specified in Section 2(17) of this administrative regulation.~~]

(3) A reapplying former foster or adoptive parent shall reenroll and complete training requirements, as specified in Section 8[6] of this administrative regulation, unless:

(a) The former foster or adoptive parent has previously completed training requirements, as specified in Section 8[6](5) of this administrative regulation; and

(b) An exception to reenrollment is provided by designated cabinet staff that have ascertained that the former foster or adoptive parent otherwise meets the necessary skill level.

(4) The foster care registry requirements of Section 8[6] of this administrative regulation shall be met.

Section 18.[~~Section 16.~~] Placement Considerations.

(1) Unless an exception is approved pursuant to subsections (2) or (3) of this section because a placement is in the best interest of the child and specific support services shall be provided, the requirements established by this subsection shall apply to foster homes.

(a) More than six (6) children, including children under the custodial control of the cabinet and the foster parent's own children living in the home, shall not reside in a foster home.

(b) More than two (2) children under age two (2), including children under the custodial control of the cabinet and the foster parent's own children living in the home, shall not reside in a foster home.

(c) A child with medical complexity shall be placed in an approved medically complex home.

(2) To request an exception to the criteria established by subsection (1) of this section, cabinet staff shall submit the DPP-112A, DCBS Placement Exception Request, to designated cabinet staff prior to the proposed placement documenting:

(a) The reason the placement is in the best interest of the child; and

(b) Specific support services to be provided.

(3) The number of foster children residing in a foster family home may exceed the limitation established in subsection (1)(a) of this section with documentation on the DPP-112A in order to allow:

(a) A parenting youth in foster care to remain with the child of the parenting youth;

(b) Siblings to remain together;

(c) A child with an established meaningful relationship with the family to remain with the family;

(d) A family with special training or skills to provide care to a child who has a severe disability; or

(e) Other circumstances noted in the DPP-112A and approved by the service region administrator or designee.

(4) If an exception to subsection (1) or (2) of this section is necessary for a placement to occur outside of normal business hours:

(a) Cabinet staff shall verbally provide all information contained within the DPP-112A to designated cabinet staff prior to the placement;

(b) A verbal approval from designated cabinet staff shall be required prior to the placement occurring; and

(c) The completed DPP-112A shall be submitted on the first business day following placement.

(5) Cabinet staff shall inform the foster parent of conditions related to the child in accordance with:

(a) KRS 605.090(1)(b); and

(b) KRS 605.090(6).

(6) Cabinet staff shall place a child with higher level needs in an advanced level home or above if a relative or fictive kin placement has not been identified.

(7) A foster or adoptive parent may adopt a child for whom parental rights have been terminated if:

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- (a) Foster or adoptive parent adoption is determined by cabinet staff to be in the best interest of the child;
 - (b) The child resides in the foster or adoptive home; and
 - (c) Criteria in 922 KAR 1:100 are met.
- (8) If a foster or adoptive parent expresses interest in adopting a foster child currently placed in the home and an alternative permanent placement is in the child's best interest, cabinet staff shall meet with the foster or adoptive parent prior to selection of an adoptive home to explain:
- (a) Why an alternative permanent placement is in the child's best interest; and
 - (b) The foster or adoptive parent's right to submit a request to the cabinet to reconsider the recommendation.

Section 19.~~[Section 17.]~~ Requirements for Respite Care Providers.

- (1) A respite care provider shall:
 - (a) Be:
 - 1. An approved foster or adoptive home; or
 - 2. Approved in accordance with subsection (2) of this section; and
 - (b) Receive preparation for placement of a child, including information in accordance with:
 - 1. KRS 605.090(1)(b); and
 - 2. Section 6[4](1)(e) through (g) of this administrative regulation, if the child is designated as medically complex.
- (2) If a foster or adoptive parent chooses a respite care provider who is not an approved foster or adoptive home, the respite care provider shall:
 - (a)
 - 1. Be at least twenty-one (21) years of age;
 - 2. Provide proof of the applicant's United States citizenship or legal immigrant status, as described in 8 U.S.C. 1151, 8 U.S.C. 1181, and 42 C.F.R. 435.407;
 - 3. Meet the background check requirements established in 922 KAR 1:490 for the applicant and his or her household; and
 - 4. Meet the requirements of Section 5~~[Meet criteria established in Sections 2(1), (2), (17), (18) and 3]~~ of this administrative regulation if respite care is provided outside the home of the foster or adoptive parent~~;~~ or
 - [2.] ~~[Meet criteria established in Section 2(1), (2), (17), and (18) of this administrative regulation if respite care is provided inside the home of the foster or adoptive parent]; and~~
 - (b)
 - 1. If providing respite care for a child described in Section ~~5~~15(1)(b) of this administrative regulation, have:
 - a. Child-specific training in the mental health treatment of children or their families; or
 - b. A certificate of completion for twelve (12) hours of care plus training specified in 922 KAR 1:495, Section 6(1); or
 - 2. If providing respite care for a child with medical complexity or specialized medical complexity:
 - a. Meet training requirements in accordance with 922 KAR 1:495, Section 7;
 - b. Hold a current certificate in first aid;
 - c. Hold a current certificate in infant, child, and adult CPR; and
 - d. Receive child specific training from a health professional or a foster parent who has been trained by a health professional in how to care for the specific medical needs of the child.
 - (3) A respite care provider:
 - (a) May attend pre-service training as specified in Section ~~8~~6 of this administrative regulation; and
 - (b) Shall comply with Sections ~~18~~14 and ~~19~~17 of this administrative regulation.

Section 20.~~[Section 18.]~~ [Waiver Review Process.]

- [1.] ~~[The department may waive requirements for a relative or fictive kin seeking approval as a child specific foster home if the removal of those requirements does not jeopardize the health, safety, or welfare of the child being placed.]~~
- [2.] ~~[The department shall not grant a waiver to the requirements established in the following sections of this administrative regulation:]~~
- [a.] ~~[Section 2, subsections (1)(a) through (7), (10) through (12),~~

- ~~(16) through (18); or]~~
- ~~[(b)] [Section 3, subsections (1) through (5), (6)(b), (7) through (10)(c), (10)(e) through (10)(f), (11) through (18).]~~
- ~~[(3)] [An applicant may request a waiver of non-safety standards. A representative of the department shall submit a written request that states the:]~~
- ~~[(a)] [Specific provision(s) for which a waiver is requested; and]~~
- ~~[(b)] [Justification for the requested waiver.]~~
- ~~[(4)] [A child specific foster home that seeks approval as a basic foster home or higher level shall complete all prior waived training and meet the requirements established in Sections 2 and 3 of this administrative regulation.]~~

~~[Section 19.]~~ Emergency Preparedness. Each foster home shall submit an emergency preparedness plan to the department that would allow the department to identify, locate, and ensure continuity of services to children who are in the custody of the cabinet.

Section 21.~~[Section 20.]~~ Maintenance of a Foster Care Record.

- (1) The cabinet shall maintain a record on each foster home, including medically complex foster homes and care plus foster care homes, if applicable.
- (2) A foster home's record shall be maintained in conformity with existing laws and administrative regulations pertaining to confidentiality, pursuant to KRS 199.430(3), 199.802, and 45 C.F.R. Parts 160 and 164.
- (3) A foster home may request and receive documentation from their record.

Section 22.~~[Section 21.]~~ Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "DPP-107, Health Information Required for Foster or Adoptive Parents, Applicants, or Adult Household Members", 10/15;
 - (b) "DPP-108, Health Information Required for Foster or Adoptive Parents or Applicants Regarding Dependent Children", 10/15; and
 - (c) "DPP-112A, DCBS Placement Exception Request", 11/22.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbs/Pages/default.aspx>.

FILED WITH LRC: October 15, 2024

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

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

BOARDS AND COMMISSIONS
BOARD OF PHARMACY
(Amended After Comments)

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. ~~[C.F.R. 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)]~~~~[(+)]~~ 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

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inappropriate.

(3)(b) If deemed impractical or inappropriate, the offer to counsel may be made:

(a)(1-) By the pharmacy technician or pharmacist intern[pharmacist designee];

(b)(2-) In written communication;

(c)(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

(d)(4-) In another manner determined by the pharmacist to be appropriate.

(4)(3) Patient counseling shall be:

(a) In person if[when] practical; or

(b) With reasonable effort, by telephone or real-time video.

(5)(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.

(6)(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.

(7)(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 6(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 a hospital or institution if other licensed health-care professionals are authorized to administer the drugs; and

(2) Compliance with 902 KAR 20:0116, 201 KAR 2:074 and 201 KAR 2:076 is maintained. [To inpatients of a hospital or institution, if other licensed health-care professionals are authorized to administer the drugs; or]

(2) [If there is documentation that the patient or caregiver refused consultation.]

CHRISTOPHER HARLOW, Pharm.D., Executive Director

APPROVED BY AGENCY: October 7, 2024

FILED WITH LRC: October 8, 2024 at 1:35 p.m.

CONTACT PERSON: Christopher Harlow, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Christopher.harlow@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christopher Harlow

(1) Provide a brief summary of:

(a) What this administrative regulation does: This 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 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 (Amended After Comments)

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)~~][~~(d)~~] BEI Advanced or better achieved within three (3) years of application; [~~or~~]

(d) Another current certification from a nationally recognized organization at the requisite level for sign language interpreters, oral interpreters, or cued speech transliterators as determined by the board; or

(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. **Individuals who are [These] fully licensed with an EIPA level 4.0 or 3.5 and passage of the EIPA written on or before January 1, 2025, shall remain entitled to full licensure if they continue to renew the license annually in compliance with all other licensure requirements. Failure to annually renew a license shall result in an applicant for reinstatement being required to meet the requirement [shall have until July 1, 2030,] to achieve a nationally recognized certification as identified in Section 1 of this administrative regulation.**

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Section 4. Incorporation by Reference.

(1) "Application for Full Licensure", DPL-KBI-001, ~~October~~~~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 website at www.kbi.ky.gov.

MARVA JOHNSON, Chair

APPROVED BY AGENCY: October 14, 2024

FILED WITH LRC: October 14, 2024 at 11:10 a.m.

CONTACT PERSON: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the 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 grandfather clause for current licensees who qualified for full licensure with only the EIPA. Additionally, amendment has also been made to provide authority for the board to accept new certifications from nationally recognized organizations which is authorized by statute and will not delay approval of applications by restricting the board to only certifications now in existence, thus requiring a regulation change to give approval.

(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. 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 twenty-one (21) known fully licensed interpreters with the EIPA of 4.0 or 3.5 who will not be affected. Additionally, any applicant for licensure with the EIPA of 4.0 or greater who applies and is issues a full licensure before the effective date of this administrative regulation will not 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: This applicant for full licensure will be required to complete the application for consideration by the board.

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

(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
(Amended After Comments)**

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 fundamentals of interpreting, the NIC, or EIPA Skills and Knowledge Assessment[Exam] for anyone working in the K-12 school setting, within the last five (5) years of application or another current certification from a nationally recognized organization at the requisite level for sign language interpreters, oral interpreters, or cued speech transliterators as determined by the board. 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) ~~[SGPI Advanced or better, within three (3) years of application];~~

~~[(e)] SLPI Advanced or better, within three (3) years of application;~~

~~[(d)] ASLPI of three and one-half (3.5) or better, within three~~

(3) years of application;

~~[(e)] EIPA of three and one-half (3.5) or better, within three (3) years of application[three (3.0) or better]; or~~

~~[(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 may, 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 within the timeframe set forth in (1) and (2) above, grant an extension of temporary licensure for one (1) additional one (1) year period for applicants who submit to the board:

(a) A written request for a one (1) time, one (1) year extension of the temporary licensure term identified in (1) and (2) above, 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.

~~[(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;

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(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[10/2014], is incorporated by reference.

(3) "Temporary License Extension Application", DPL-KBI-06, October[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,[911 Leawood Drive,] Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. and can be found on the board Web site at kbi.ky.gov.

MARVA JOHNSON, Chair

APPROVED BY AGENCY: October 11, 2024

FILED WITH LRC: October 14, 2024 at 11:10 a.m.

CONTACT PERSON: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: 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
(Amended After Comments)

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. **To be approved:**~~

(a) The program title shall contain the word "ethics"; or,
(b) The licensee shall submit the course description for the board to review to determine whether the program relates to the code of ethics for interpreters.

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

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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. **To be approved:**

- (a) The program title shall contain the word "ethics"; or,**
- (b) The licensee shall submit the course description for the board to review to determine whether the program relates to the code of ethics for interpreters.**

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 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[40/2044], 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: October 11, 2024

FILED WITH LRC: October 14, 2024 at 11:10 a.m.

CONTACT PERSON: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709, fax (502) 564-4818, email Sara.Janes@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sara Boswell Janes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This 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

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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.

PUBLIC PROTECTION CABINET
Department of Financial Institutions
Division of Depository Institutions
(Amended After Comments)

808 KAR 3:050. Conduct of credit unions.

RELATES TO: KRS 286.6-095, 286.6-100, 286.6-225, 286.6-585, 286.6-715, 12 C.F.R. Part 701, 702, 704, 705, 723, 20 U.S.C. 1071

STATUTORY AUTHORITY: KRS 286.1-020, 286.6-070, 286.6-095, 286.6-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.6-070 authorizes the Department of Financial Institutions to promulgate administrative regulations necessary for the proper conduct and regulation of credit unions. This administrative regulation establishes requirements to ensure the proper conduct of

credit unions. KRS 286.6-095 states that, notwithstanding any other provision of law, the commissioner may make reasonable rules authorizing credit unions to exercise any of the powers conferred upon federal credit unions if the commissioner deems it reasonably necessary for the well-being of such credit unions. This administrative regulation enables the Department of Financial Institutions to recognize the National Credit Union Administration's low-income designation of state-chartered credit unions and affirms the ability of these credit unions to avail themselves of the low-income designation benefit of accepting non-member deposits.

Section 1. Definition. A "corporate credit union" means a credit union that:

- (1) Is operated primarily for the purpose of serving other credit unions;
(2) Is designated by the National Credit Union Administration as a corporate credit union; and
(3) Limits natural person members to the minimum required by state or federal law to charter and operate the credit union.

Section 2. Refund of Interest. When an interest refund is authorized by the board of directors under KRS 286.6-225(3), it shall be recorded in the books of the credit union as a reduction of interest income from loans for that year or period.

Section 3. Fidelity Bond.

(1) The minimum blanket fidelity bond required by KRS 286.6-225(2) shall be as follows:

Table with 2 columns: Assets and Minimum Bond. Rows include asset ranges from \$0 to \$10,000 up to over \$295,000,000 and corresponding bond amounts.

(2) The board of directors of every credit union shall review their blanket fidelity bond coverage at least once each year to ascertain its adequacy.

Section 4. Stocks and Bonds. A credit union may invest a maximum of five (5) percent of members' shares in:

- (1) Stock of a corporation rated A+ by Standard and Poor's at the date of acquisition of the stock; and
(2) A corporate bond rated AAA or higher by Standard and Poor's, or rated AAA by Moody's at the date of acquisition of the bond.

Section 5. State-chartered credit unions may invest their funds in any investment that is permissible for a federally chartered credit union under 12 C.F.R. Part 703.

Section 6. Risk Asset. For the purpose of establishing the regular reserve, an asset shall be a risk asset except for the following:

- (1) Cash on hand;
(2) A share or deposit in a federally or state-insured bank, savings and loan association, or credit union that has a remaining maturity of five (5) years or less;
(3) An asset, including a collateralized mortgage obligation that is comprised of government guaranteed mortgage loans, that has a remaining maturity of five (5) years or less and is insured by, is fully guaranteed as to principal and interest by, or is due from the U.S. Government, its agencies, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association;
(4) A loan to another credit union that has a remaining maturity of five (5) years or less;
(5) A student loan that has a remaining maturity of five (5) years or less and that is insured under the provisions of Title IV, Part B of the Higher Education Act of 1965 (20 U.S.C. 1071, et seq.) or similar state insurance programs;
(6) A loan that has a remaining maturity of five (5) years or less

and that is fully insured or guaranteed by the federal or a state government or any agency of either;

(7) A share or deposit in a corporate credit union that has a remaining maturity of five (5) years or less, other than a Membership Capital Share Deposit account as defined in 12 C.F.R. Part 704;

(8) A common trust investment, including a mutual fund, which deals exclusively in investments authorized by the Federal Credit Union Act, 12 U.S.C. 1751 et seq., that are either carried at the lower cost or market, or are marked to market value monthly;

(9) A prepaid expense;

(10) Accrued interest on a non-risk investment;

(11) A loan fully secured by a pledge of shares in the lending credit union, equal to and maintained to at least the amount of the loan outstanding;

(12) A loan purchased from a liquidating credit union and guaranteed by the National Credit Union Administration;

(13) A National Credit Union Share Insurance Fund Guaranty Account established with the authorization of the National Credit Union Administration under the authority of Section 203(a)(1) of the Federal Credit Union Act;

(14) An investment in shares of the National Credit Union Administration Central Liquidity Facility;

(15) An asset included in subsections (2), (3), (4), (5), (6), and (7) of this section with a maturity greater than five (5) years, is not a risk asset if the asset is being carried on the credit union's records at the lower of cost or market, or is being marked to market value monthly;

(16) An asset included in subsections (2), (3), (4), (5), (6), and (7) of this section, with a remaining maturity of greater than five (5) years, is not a risk asset, whether or not the asset is being carried on the credit union's records at the lower of cost or market or is being marked to market value monthly, provided the asset meets the criteria established in paragraphs (a) through (c) of this subsection.

(a) The interest rate shall be reset at least annually.

(b) The interest rate of the instrument shall be less than the maximum allowable interest rate for the instrument on the date of the required reserve transfer.

(c) The interest rate of the instrument varies directly (not inversely) with the index upon which it is based and is not reset as a multiple of the change in the related index;

(17) A fixed asset that includes an office, branch office, suboffice, service center, parking lot, or real estate in which the credit union transacts or will transact business; and office furnishing, office machine, computer hardware and software, automated terminal, and heating and cooling equipment; and

(18) A deposit in the National Credit Union Share Insurance Fund representing a federally insured credit union's capitalization account balance of one (1) percent of insured shares.

Section 7. Charitable Contribution. Only the board of directors shall have the power to authorize a contribution to a civic, charitable, or service organization.

Section 8. Conversion. A state-chartered credit union may convert to another charter.

(1) The board of directors shall first put the question of conversion to a vote of the members. Written notice of the proposed conversion shall be given to all members, which shall include a statement including the reasons for the proposed conversion. The notice shall be mailed to the last known address or hand delivered to the members. The notice shall state the date and place for the meeting called to vote on the proposed conversion, which shall be at least fifteen (15) days after the date of the notice.

(2) Approval of the proposed conversion shall be by a vote of the majority of the members who vote on the proposed conversion, in person or by absentee ballot if the bylaws of the credit union allow voting by absentee ballot.

(3) A statement of the results of the vote, verified by the president and secretary, shall be filed with the commissioner.

(4) The commissioner shall issue an order to the effect that, on the effective date of the conversion, the credit union is no longer incorporated under the laws of Kentucky. A copy of the order shall be forwarded to the Secretary of State.

Section 9. Low-Income Designation.

(1) A credit union chartered by the Commonwealth of Kentucky that is made up of a simple majority of low-income members, as defined in 12 C.F.R. Part 701.34(a)(2), may obtain low-income designation from the National Credit Union Administration and concurrence in that designation from the Kentucky Department of Financial Institutions. In order to obtain that designation, a credit union shall receive approval from the National Credit Union Administration, either via notification or through the request process prescribed in 12 C.F.R. Part 701.34(3). Following this approval by the National Credit Union Administration, a credit union shall submit a written request for concurrence of its low-income designation to the Kentucky Department of Financial Institutions along with documentation of its low-income designation approval from the National Credit Union Administration. The Kentucky Department of Financial Institutions shall issue a concurrence within thirty (30) days of a credit union's completed submission, if the credit union has demonstrated it has received approval as a low-income designated credit union from the National Credit Union Administration.

(2) A credit union that has obtained a low-income designation from the National Credit Union Administration and subsequent concurrence from the Department of Financial Institutions may accept non-member deposits [from any source except for "public funds" as defined by KRS 446.010(41)].

(3) A low-income designated credit union that accepts non-member deposits shall be subject to the non-member share limitations stated in 12 C.F.R. Part 701.32(b).

(4) A low-income designated credit union that accepts non-member deposits shall maintain eligibility for its low-income designation through continued fulfillment of the requirements stated in 12 C.F.R. Part 701.34.

(5) A low-income designated credit union that does not maintain eligibility for its low-income designation shall not be permitted to accept non-member deposits during the time it is ineligible for a low-income designation.

(6) A credit union that has obtained low-income designation may:

(a) Offer secondary capital accounts and include these accounts in the credit union's net worth subject to the requirements set forth under 12 C.F.R. Part 702, Subpart D.

(b) Qualify for the exception from the aggregate member business loan limit outlined in 12 C.F.R. Part 723.8(d); and

(c) Participate in the Community Development Revolving Loan Fund for Credit Unions subject to the requirements in 12 C.F.R. Part 705.

MARNI R. GIBSON, Commissioner

RAY PERRY, Secretary

APPROVED BY AGENCY: October 14, 2024

FILED WITH LRC: October 15, 2024 at 8:30 a.m.

CONTACT PERSON: Kathryn Adams-Cornett, Staff Attorney, and Marni Gibson, Commissioner, Dept. of Financial Institutions, 500 Mero Street, 2SW19, Frankfort, Kentucky 40601, phone 502-782-9065, fax 502-573-8787, email katie.adams@ky.gov, Marni.Gibson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kathryn Adams-Cornett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates a process by which Kentucky state-chartered credit unions may obtain approval from the Kentucky Department of Financial Institutions (the "Department") to accept non-member deposits if these credit unions have obtained Low-income Designation ("LID") through the National Credit Union Association's ("NCUA"). Currently, nine (9) state-charted Kentucky credit unions have obtained LID through the NCUA. However, these credit unions are currently not able to take advantage of the LID benefit of accepting non-member deposits, as this is not specified as an allowable activity under KRS 286.6. This regulation enables the Department to acknowledge the NCUA's LID designation of a Kentucky state-chartered credit union and affirms the ability of these credit unions to accept non-member deposits.

(b) The necessity of this administrative regulation: Nine (9) Kentucky state-chartered credit unions have obtained LID through the NCUA. These credit unions are not currently able to take advantage of the LID benefit of accepting non-member deposits as KRS 286.6 does not expressly permit them to do so. This regulation enables the Department to acknowledge the NCUA's LID designation of a state-chartered credit union and affirms the ability of these credit unions to accept non-member deposits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 286.6-070 authorizes the Department to promulgate administrative regulations necessary for the proper conduct and regulation of credit unions. This administrative regulation establishes requirements to ensure the proper conduct of credit unions. KRS 286.6-095 states that, notwithstanding any other provision of law, the Commissioner may make reasonable rules authorizing credit unions to exercise any of the powers conferred upon federal credit unions if the commissioner deems it reasonably necessary for the well-being of such credit unions. This regulation enables the Department to acknowledge the NCUA's LID designation of state-chartered credit unions and allows Kentucky state-chartered credit unions to fully participate in the federal LID program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of the statutes by setting forth rules and regulations for the proper conduct of credit unions.

(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 adds a provision affirming that Kentucky state-chartered credit unions may fully participate in the NCUA's LID program, thus allowing these credit unions to take advantage of certain benefits available to the credit unions that participate in the LID program. This administrative regulation creates a process by which state-chartered credit unions may receive acknowledgment by the Department of their NCUA LID designation and may then accept non-member deposits.

(b) The necessity of the amendment to this administrative regulation: Currently, Kentucky state-chartered credit unions are unable to fully avail themselves of the benefits of LID program participation and are therefore at a competitive disadvantage when compared to federally chartered credit unions and credit unions chartered in other states. This regulation will also encourage state-chartered credit unions to offer financial products and services in economically disadvantaged areas of Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 286.6-070 authorizes the Department to promulgate administrative regulations necessary for the proper conduct and regulation of credit unions. This amendment establishes requirements to ensure the proper conduct of credit unions. KRS 286.6-095 states that, notwithstanding any other provision of law, the commissioner may make reasonable rules authorizing credit unions to exercise any of the powers conferred upon federal credit unions if the commissioner deems it reasonably necessary for the well-being of such credit unions. This regulation enables the Department to acknowledge the NCUA's LID designation of a Kentucky state-chartered credit union and affirms the ability of these credit unions to accept non-member deposits.

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment would affirm the ability of eighteen (18) state-chartered credit unions to fully participate in the federal LID program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment creates an entirely optional process by which state-chartered credit unions may seek

Department concurrence of their federal LID designation and affirmation from the Department that they may accept non-member deposits under the LID program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): LID designation is entirely optional. If a credit union wishes to request a LID from the NCUA, the cost to the applicant will be minimal. These entities would possibly incur minimal costs in completing their request to the Department to recognize their LID designation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): State-chartered credit union that obtain a LID from the NCUA, and concurrence from the Department, will be able to avail themselves of benefits of LID designation including the ability to accept non-member deposits.

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

(a) Initially: Costs to implement this regulation amendment are minimal, if any.

(b) On a continuing basis: Costs for subsequent years are minimal, if any.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied. The regulation did not require tiering to be applied to implement.

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 286.6-070 and KRS 286.6-095 authorize this regulation.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Department of Financial Institutions (the "Department").

(a) Estimate the following for the first year:

Expenditures: see statement below

Revenues: see statement below

Cost Savings: see statement below. The effect on overall revenue for the Department will be minimal; this regulation will not have a substantial impact on the Department's budget.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The effect on overall revenue for the Department will be minimal; this regulation will not have a substantial impact on the Department's budget.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This regulation will not impact any local entities.

(a) Estimate the following for the first year:

Expenditures: see statement below

Revenues: see statement below

Cost Savings: see statement below

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This regulation will not impact regulated local entities.

(4) Identify additional regulated entities not listed in questions (2) or (3): This regulation will not impact any additional regulated entities. (a) Estimate the following for the first year:

(a) Estimate the following for the first year:

Expenditures: see statement below

Revenues: see statement below

Cost Savings: see statement below

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This regulation will not impact any additional

regulated entities.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There will be minimal fiscal impact from this regulation on the Department and on regulated entities. It is unclear how much cost savings this administrative regulation will generate for regulated credit unions, however this optional program will allow these credit unions to take advantage of economically advantageous benefits as part of the LID program.

(b) Methodology and resources used to determine the fiscal impact: Requirements put in place by this regulation were examined and found to create negligible financial burden or revenue in regard to the Department or regulated entities.

(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 amended regulation will not have a major economic impact on the regulated entities or the Department. Further, LID designation is entirely optional.

(b) The methodology and resources used to reach this conclusion: Requirements put in place by this regulation were examined and found to create negligible financial burden as to the impacted entities.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)**

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 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)]~~

~~[1.] [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 216B.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(21);]~~

~~[(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

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~~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 in writing 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~~~~[\$1,000]~~ 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 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

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(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 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: October 4, 2024

FILED WITH LRC: October 9, 2024 at 1:30 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the state-funded adoption assistance program for children who would otherwise grow up in foster care to the extent funds are available. The administrative regulation is being amended for clarity as a result of comments received during the public comment period.

(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 authorized 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. The administrative regulation is also being amended for clarity as a result of written comments received during the public comment period.

(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. The administrative regulation is also being amended for clarity as a result of written comments received during the public comment period.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes through 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
(Amended After Comments)**

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,

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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~~[-fragile]~~, specialized medically 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

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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) ~~No~~An ~~[No]~~ adoptive parent who signed the adoption assistance agreement remains~~[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 in writing 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 11.] 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;

(b) In accordance with 922 KAR 1:330.

LESA DENNIS, Commissioner
ERIC C. FRIEDLANDER, Secretary
APPROVED BY AGENCY: October 11, 2024
FILED WITH LRC: October 14, 2024 at 10:50 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 CHFRegs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rachael Ratliff or Krista Quarles

(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. This administrative regulation is also being amended for clarity in updated changes to existing language as a result of written comments received during the public comment period.

(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 administrative 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. This administrative regulation is also being amended for clarity as a result of written comments received during the public comment period.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reflect federal eligibility

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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.

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](#).

**FINANCE AND ADMINISTRATION CABINET
KENTUCKY TEACHERS' RETIREMENT SYSTEM
(Amendment)**

102 KAR 1:195. Employer[Payroll] reports.

RELATES TO: KRS 161.560, 161.643.

STATUTORY AUTHORITY: KRS 161.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.560 provides that employers shall submit payroll reports, contribution lists, and other data as may be required by administrative regulation of the board of trustees. KRS 161.643 provides that employers shall submit an annual summary report of days employed, compensation paid, and other data as required by administrative regulation of the board of trustees. This administrative regulation sets out the procedures to be followed and data to be provided by employers in their[forwarding payroll] reports to the Teachers' Retirement System.

Section 1. Employers shall submit a complete report of all member contributions to the Teachers' Retirement System at the close of each fiscal year. These reports must be received by the Teachers' Retirement System no later than August 1 of each year. The Teachers' Retirement System shall determine the information required in the reports.

Section 2. Employers shall provide to the Teachers' Retirement System, upon request, information relating to the dates that the members are paid and other information related to the payroll deduction of member contributions to the Teachers' Retirement System.

Section 3. The Teachers' Retirement System may require special reports of all member contributions to the system at the times it is deemed necessary and in the best interest of the system.

Section 4. School districts and education cooperatives shall provide to Teachers' Retirement System no later than August 1 of each year the following:

(1) The total accumulated sick leave days as of June 30 for all employees participating in Teachers' Retirement System in a covered position;

(2) A copy of all leave policies; and

(3) A copy of all salary schedules for which an employee participating in Teachers' Retirement System receives compensation and from which retirement contributions are withheld.

BRENDA MCGOWAN, Chairperson

APPROVED BY AGENCY: September 16, 2024

FILED WITH LRC: September 26, 2024 at 11:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 23 December 2024, at 9:00 a.m. Eastern Time at the offices of the retirement system at 479 Versailles Road, 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 comment shall be accepted through 31 December 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: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, telephone (502) 848-8508, facsimile (502) 573-0199, email at

Beau.Barnes@trs.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: It provides guidelines for submission of employer data to TRS.

(b) The necessity of this administrative regulation: Certain employer data is required for the maintenance of retirement accounts and processing of retirements and this regulation provides in-law guidelines for the submission of that data.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute requires the submission of specific and general data from employers to TRS.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides further guidelines for the statutorily required submission of data from employers to TRS.

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

(a) How the amendment will change this existing administrative regulation: This amendment will add to the reporting requirements of the reporting of the following: the total accumulated sick leave days accrued annually by TRS members employed by the employer; the employers' sick leave policies; and, the employers' certified salary schedules.

(b) The necessity of the amendment to this administrative regulation: The amendment will provide for the reporting of additional data to help the TRS actuary assess the sick leave liability and calculate retirement allowances.

(c) How the amendment conforms to the content of the authorizing statutes: The statute contemplates the reporting of retirement-related data by employers to TRS, including "data as required by administrative regulation." (d) How the amendment will assist in the effective administration of the statutes: The amendment specifies additional data to be reported as contemplated by the 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: There are 171 school districts that will be required to report this additional data on an annual basis. Many are voluntarily reporting this data now.

(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: Employers will add the additional data to their annual reporting.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Employers already collect the additional data and many are already including it in their annual reports to TRS. Reports are submitted electronically so there would be little to no additional cost in submitting the additional data.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Employers have an interest in assisting TRS with administering and providing an integral part of the compensation plan for their employees.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

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

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Administrative expenses of the retirement system are paid by trust and agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, as all employers and members are 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 161.310, 161.560 and 161.643.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Teachers' Retirement System of the State of Kentucky

(a) Estimate the following for the first year:

Expenditures: None

Revenues: None

Cost Savings: None

(b) How will expenditures, revenues, or cost savings differ in subsequent years? None of these will change.

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

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? None of these will change.

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

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? None of these will change.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no fiscal impact.

(b) Methodology and resources used to determine the fiscal impact: None are required as 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 no overall negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion: None needed since there is no overall negative or adverse major impact.

FINANCE AND ADMINISTRATION CABINET
Teachers' Retirement System
(Amendment)

102 KAR 1:340. Calculation of final average salary.

RELATES TO: KRS 161.220(9)

STATUTORY AUTHORITY: KRS 161.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310(1) requires the board of trustees to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.220(9) establishes the definition of "final average salary" including permissible salary increases for annuity calculations for retirement calculation purposes, which limits the amount of increases in salaries that can be included as final average salary if those increases are received for any of the three (3) years of

~~employment immediately prior to retirement, unless the member experiences a corresponding change in position or in length of employment]. This administrative regulation establishes the method for calculating final average salary if there is a change in position or in length of employment. This administrative regulation establishes how KRS 161.220(9) is applied for any of the final three (3) years immediately prior to retirement, and measuring the increase in compensation for those final three (3) years.]~~

Section 1. Definitions.

(1) "Additional duties" means service from a duty or duties outside of the member's primary job duty. This includes compensation paid from a district's supplemental or extra service salary schedule, such as coaching, club sponsoring, and summer school teaching. Additional duties also includes extended school services (ESS). For members employed by employers that are not school districts, additional duties includes assignments, responsibilities, duties, college credit hour classes taught, grant writing, and projects that are outside of, or added to, the member's position.

(2) "Newly Created Position" means a position that did not exist at least a full twelve (12) months prior to the member's assumption of that position.

(3) "Position" means:

(a) The primary job duty performed by a member that, standing alone, earns service credit in TRS, whether that job duty is provided in full-time employment as defined in KRS 161.220(21), part-time employment, or substitute teaching; and

(b) Does not include additional duties as defined in this administrative regulation.

(4) "Previously existing position" means a position that existed at least a full twelve (12) months prior to the member's assumption of that position.

(5) "Salary schedule" means only the single certified salary schedule based on rank and step generally applicable districtwide for teachers and excludes other schedules or compensation arrangements.

(6) "rank and step" means a single, specific cell on the salary schedule where rank serves as one axis of the schedule and step as the other.

Section 2. A member who receives an increase in salary that exceeds the limits permitted for inclusion as final average salary pursuant to KRS 161.220(9)(b), but experiences a corresponding change in length in[of] employment, shall have his or her final average salary calculated using salaries adjusted in the manner established in this section.

(1) The member shall receive one (1) additional day of salary for retirement calculation purposes at the member's base daily rate of pay for each day added to the member's annual contract in excess of the member's contracted days from the last immediately prior fiscal year.

(2) The base daily rate of pay used as an additional day of salary for retirement calculation purposes shall not include compensation:

(a) For extra duties worked beyond the member's primary job duty for which the member receives most of his or her compensation;

(b) That exceeds the limitations established by KRS 161.220(9)(b);

(c) That is not "annual compensation" as defined by KRS 161.220(10); or

(d) That is otherwise excluded from use in retirement calculations pursuant to the provisions of KRS 161.220 through 161.716.

(3) The additional days shall be worked days in order to have the additional salary included for retirement calculation purposes.

Section 3. The limitation established by KRS 161.220(9)(b) on the amount of salary included in each of the member's three (3) highest salaries shall not apply if the increase in the member's salary is due to a corresponding change in position. A corresponding change in position only occurs if:

(1) The member assumes a newly created position in which all

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duties are new and different from the previous position the member held;

(2) The member moves from one (1) position to another separate, previously existing position; or

(3) The member assumes a second, previously existing position in its entirety, and now occupies two (2) different positions.

(4) For purposes of paragraphs (b) and (c) of this subsection:

(a) For school district employers, the district salary schedule shall be proof of a previously existing position.

(b) For other employers, proof of a previously existing position includes official employment records, such as those for classified and non-classified positions established under the state merit system.

(c) For all employers, a title change, in and of itself, shall not be proof.

Section 4. The limitation established by KRS 161.220(9)(b) on the amount of salary included in each of the member's three (3) highest salaries shall apply in situations including if:

(1) A member performs additional duties during the[a] fiscal year; or

(2) The employer changes the member's duties or responsibilities to include additional duties or responsibilities within the member's existing position; or

(3) The member assumes some, but not all, duties of a second position; or

(4) The member assumes a newly created position in which not all duties are new and different.

Section 5.

~~[(1)] [Members who experience a corresponding change in position shall be entitled to receive salary credit:]~~

~~[(a)] [If the employer is a school district, based upon the compensation paid to the new position from the previous year's salary schedule, plus a percentage increase equal to the highest percentage increase received by members on any one (1) rank and step of the salary schedule of the school district; or]~~

~~[(b)] [If the employer is not a school district, the percentage increase received by all other members.]~~

~~[(2)] Any contributions paid to TRS on salaries that are disallowed under KRS 161.220(9)(b) shall be refunded to the school district on the member's behalf. [102-KAR 1:340- Calculation of final average salary if there is a corresponding change in position or in length of employment during any of the final three (3) years immediately prior to retirement.]~~

Section 6. The measurement of the limitation under KRS 161.220(9)(b) shall be applied so that the combined increase in salary for each of the last three (3) full years of salary prior to retirement shall not exceed the total permissible, percentage increase received by other members of the employer for the same three (3) year period. The increases for each of the last three (3) full years of salary shall be measured from, and compared to, the base full fiscal year salary that is immediately prior to the last three (3) full years of salary.

Section 7.

(1) In determining the limitation under KRS 161.220(9)(b), the total permissible percentage increase for a school district is the highest percentage increase for a specific cell of the salary schedule as defined in Section 1(5) from one (1) fiscal year to the next and excludes any increase from one (1) cell to another cell whether by rank or step.

(2) Individual members may have increases greater than the district's permissible increase when they advance on the salary schedule as defined in Section 1(5) in step or rank. Individual members may not have increases greater than the district's permissible increase when they advance on a pay schedule or compensation agreement other than the salary schedule as defined in Section 1(5).

BRENDA MCGOWAN, Chairperson

APPROVED BY AGENCY: September 16, 2024

FILED WITH LRC: September 26, 2024 at 11:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 23 December 2024, at 9:00 a.m. Eastern Time at the offices of the retirement system at 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 31 December 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: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199, email Beau.Barnes@trs.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides a method for calculating a member's final average salary under KRS 161.220(9)(b).

(b) The necessity of this administrative regulation: This administrative regulation provides a method for calculating a member's final average salary when there is a corresponding change in position or length of employment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.220(9)(b) provides exceptions for certain salary increases in a member's final years of service that would otherwise be excluded from use in retirement calculations. This administrative regulation will help clarify those exceptions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By helping define the exceptions under KRS 161.220(9)(b), this administrative regulation will provide the method for calculating a member's final average salary when there is a change in position or in length of employment.

(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 provide further detail regarding the calculation of the salary limitation.

(b) The necessity of the amendment to this administrative regulation: The amendment will provide in law more detail regarding the calculation of the salary limitation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment provides details for the application of the mandated statutory limitation.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide clarification of how the limitation is calculated and applied.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects members whose salaries increase beyond the limitations of KRS 161.220(9)(b) for inclusion in retirement calculation purposes.

(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: Members will not be required to take any action as a result of this administrative regulation.

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

question (3): . There is no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): . There are no additional benefits.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, as the regulation applies equally to all members whose salaries exceed the limitations of KRS 161.220(9)(b), but who also experience a corresponding change in position or in length of employment.

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 161.310 and KRS 161.220(9).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Teachers' Retirement System of the State of Kentucky.

(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.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None.

(a) Estimate the following for the first year:

Expenditures: None

Revenues: None

Cost Savings: None

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no difference.

(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? There will be no difference.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no fiscal impact.

(b) Methodology and resources used to determine the fiscal impact: None needed since 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 no overall negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion: None needed as there is no negative or adverse major impact.

FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
(Amendment)

105 KAR 1:130. Hazardous position[duty] coverage.

RELATES TO: KRS 61.552, 61.560, 61.580, 61.592, 78.530, 78.545, 78.5520, 78.615, 78.650[~~78.545(30)~~]

STATUTORY AUTHORITY: KRS 61.505[~~61.645(9)(e)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority[~~61.645(9)(e)~~] requires the Board of Trustees of the Kentucky Retirement Systems] to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with[~~necessary or proper in order to carry out the provisions of~~] KRS 16.505 to 16.652, 61.505, 61.510 to 61.705, and 78.510 to 78.852. KRS 61.592 and 78.5520 prescribe[~~KRS 61.592(2) requires the board to promulgate administrative regulations prescribing~~] the manner in which an employer shall request hazardous position[duty] coverage for employees, and the requirements for converting nonhazardous position coverage to hazardous position coverage. This administrative regulation establishes the requirements, procedures, and forms for requesting, or converting to, hazardous position coverage.

Section 1. Definition[Definitions], "Systems" means the Kentucky Employees Retirement System or the County Employees Retirement System.

[(1)] ["County" is defined by KRS 78.510(3).]

[(2)] ["Department" is defined by KRS 61.510(3).]

Section 2. Hazardous positions in the County Employees Retirement System.

(1) Pursuant to KRS 78.5520(2), County Employees Retirement System (CERS) employers shall classify a position as a hazardous position only when authorized by the CERS Board of Trustees. [If a county eligible to participate in the County Employees Retirement System chooses to provide hazardous duty coverage to all eligible employees, the county shall adopt an appropriate order to pay the required contributions and provide hazardous coverage to all eligible employees. Notwithstanding the three (3) month trial period set out in 105 KAR 1:120, Section 2, the county's request for participation in County Employees Retirement System shall be submitted to the Board of Trustees at the first quarterly meeting which occurs at least one (1) month after the adoption of the appropriate order. The effective date of hazardous position coverage in the order shall be the date of the county's participation in County Employees Retirement System.]

(2) A CERS employer shall notify the agency of the intent to request authorization of a hazardous position from the CERS Board of Trustees. Once notified, the agency shall provide the employer with a hazardous position packet, including the date the completed packet shall be returned to be presented for authorization to the CERS Board of Trustees. The hazardous position packet stipulates that the employer shall submit:

(a) A resolution on the employer's letterhead stating the employer's intent to classify an eligible position as a hazardous position, and the desired effective date of the hazardous position classification;

(b) A valid Form 7011, HP-1, Hazardous Participation Certification (CERS), to certify that the position identified in paragraph (a) of this subsection meets the definition of a hazardous position and that sufficient funds have been budgeted for the required employer contributions;

(c) A job description for each position identified in this subsection;

(d) A valid Form 7025, Position Questionnaire, for each position identified in this subsection; and

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(e) A valid Form 2011, HP-2, Hazardous Position Certification, to certify the effective date each employee began working in the position and the date of each employee's physical examination by a licensed physician.

[Section 3-]

~~[(1)] A department participating in the Kentucky Employees Retirement System may provide hazardous position coverage upon authorization by the governing authority. The governing authority shall make the request for hazardous position coverage in writing to the Board of Trustees of Kentucky Retirement Systems. If the position is approved, the effective date of hazardous position coverage shall be the first day of any month following the quarterly meeting of the board of trustees which occurs after the date of the request.]~~

~~[(2)] A county participating in County Employees Retirement System may provide hazardous position coverage upon adoption of a resolution by its governing authority to transfer eligible positions from nonhazardous to hazardous position coverage. The governing authority shall make a written request for hazardous position coverage to the Board of Trustees of Kentucky Retirement Systems. If the position is approved for hazardous coverage, the effective date of hazardous position coverage shall be the first day of any month following the quarterly meeting of the Board of Trustees of Kentucky Retirement Systems in which the hazardous position coverage is approved unless a different date is approved by the Board of Trustees of Kentucky Retirement Systems.]~~

~~(3)~~

~~(a)[(a)]~~

~~[1.] An employee[Employees] who began participating in CERS[County Employees Retirement System] prior to September 1, 2008 and was[were] working in a CERS hazardous position[covered positions in County Employees Retirement System] prior to September 1, 2008, shall continue to participate as a hazardous position employee[covered employees] as long as he or she remains[they remain] in a position that has been approved for hazardous position coverage.~~

~~[2.] An employee[Employees] who began participating in CERS[County Employees Retirement System] prior to September 1, 2008 and is[are] subsequently employed in a hazardous position[covered positions], shall participate as a hazardous position employee[covered employees] as long as he or she remains[they remain] in a position that has been approved for hazardous position coverage.~~

~~(c)[(b)] An employee[Employees] who began[begin] participating in CERS[County Employees Retirement System] on or after September 1, 2008 in a position that was approved as a[for] hazardous position[coverage] prior to September 1, 2008, shall not be reported as a hazardous position employee[covered employees] until the position is approved by the CERS[county requests that the] Board of Trustees[of Kentucky Retirement Systems approve] as a hazardous position in accordance with Section 4(1) of this administrative regulation[coverage for those positions that meet the criteria as set out in KRS 61.592(1)(b), and hazardous coverage is approved by the Board of Trustees of Kentucky Retirement Systems for those positions], even if the position was[has] previously [been] approved as a[for] hazardous position[coverage].~~

Section 3.[Section 4.] Hazardous positions in the Kentucky Employees Retirement System.

(1) Pursuant to KRS 61.592(2), an employer in the Kentucky Employees Retirement System (KERS) shall classify a position as a hazardous position only when authorized by the Kentucky Retirement Systems (KRS) Board of Trustees.

(2) A KERS employer shall notify the agency of the intent to request authorization of a hazardous position from the KRS Board of Trustees. Once notified, the agency shall provide a hazardous position packet, including the date the completed packet shall be returned to be presented for authorization to the KRS Board of Trustees. The hazardous position packet stipulates that the employer shall submit:

(a) A valid[The department shall complete and submit the] Form 7013, HP-1, Hazardous Position[Participation] Certification (KERS),

to certify that the position identified in this subsection meets the definition of a hazardous position and[. The form shall be signed by the head of the department and by an individual who can attest] that sufficient funds have been budgeted for the required employer contributions.

~~(b) A[For departments of the Commonwealth of Kentucky, the department shall also submit a] letter from the Governor's Office for[ef] Policy and Management verifying sufficient funds have been allocated for hazardous position contribution rates[budgeted for employer contributions].~~

~~[(2)] [The county shall complete and submit the "Form 7011, HP-1, Hazardous Participation Certification (CERS)". The form shall be signed by the agency head and by an individual who can attest that sufficient funds have been budgeted for the employer contributions.]~~

(c) A list of all positions identified in this subsection, which shall include the name, social security number, and position title of all affected individuals who are currently employed. For KERS employers reported by the Personnel Cabinet, the list of positions shall also include the unique eight-character Job ID used by the Personnel Cabinet which shall be different than a nonhazardous position Job ID.

(d) A job description for each position identified in this subsection.

~~[Section 5.] [The county or department shall submit a description of the duties of each position for which hazardous coverage is requested.]~~

~~(e)[(1)] A valid[The agency shall complete Sections 1 and 3 of] Form 7025, Position Questionnaire, for each position identified in this subsection[employees of a department and for employees of a county whose participation date was prior to September 1, 2008].~~

~~[(2)] [The agency shall complete Sections 2 and 3 of Form 7025, Position Questionnaire, for employees of a county whose participation date was on or after September 1, 2008.]~~

~~[Section 6.]~~

~~(f) A valid[The county or department shall complete and submit a] Form 2011, HP-2, Hazardous Position Certification, to certify the effective date[provided by the retirement system for] each employee began working in the[a] position and the date of each employee's physical examination by a licensed physician[for which the coverage has been requested. If there is any change in the employee's work assignment or classification, the county or department shall submit a new Form 2011, HP-2, Hazardous Position Certification, indicating the change in the position].~~

Section 4. Board of Trustees determination.

(1)

(a) The CERS Board of Trustees shall review all hazardous position classification requests and information provided by the CERS employer as indicated in Section 2 of this administrative regulation to determine if each position meets the requirements to be classified as a hazardous position.

(b) If the CERS hazardous position is authorized by the CERS Board of Trustees, the hazardous position effective date will be the first day of the month following the CERS Board of Trustees meeting at which it was authorized, unless the CERS Board of Trustees specifies a different date.

(2)

(a) The KRS Board of Trustees shall review all hazardous position requests and information provided by the KERS employer as indicated in Section 3 of this administrative regulation to determine if each position meets the requirements to be classified as a hazardous position.

(b) If the KERS hazardous position is authorized by the KRS Board of Trustees, the hazardous position effective date will be the first day of the month following the KRS Board of Trustees meeting at which it was authorized, unless a different date is specified by the Board.

Section 5. Hazardous service certification and revocation.

(1)

(a) CERS and KERS employers shall compete and submit a valid Form 2011, HP-2, Hazardous Position Certification, at initial

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hire and each time an employee begins a new hazardous duty position or changes his or her hazardous duty position as required by KRS 61.592(5) and 78.5520(4).

(b) The employer shall retain a copy of the physical examination by a licensed physician and submit a copy to the agency.

(2) The CERS Board of Trustees shall have the authority to revoke a CERS employee's hazardous position classification pursuant to KRS 78.5520(2)(c).

Section 6.[Section—7.] Conversion of position from nonhazardous to hazardous.

(1)

(a) To convert nonhazardous service credit to hazardous service credit, a member shall:

1. Have membership date prior to January 1, 2014; and

2. Have previously worked in a nonhazardous position that has been converted to a hazardous position.

(b) The employer for the converted hazardous position shall have participated in the systems prior to the conversion pursuant to KRS 61.592(3)(c) and 78.5520(3)(a).

(c) Payment of the cost of converting shall be paid in accordance with subsection (3) of this section.

(2)

(a) To request the conversion of nonhazardous service credit to hazardous service credit, the employer shall complete and submit a valid Form 4150, Certification of Employment in a Hazardous Position, to verify employee and employer participation in accordance with subsection (1)(a) and (b).

(b) The agency shall review the Form 4150 and determine if the service credit is eligible for conversion. If eligible, the agency shall provide the member with the cost of converting. (3)(a) The cost of converting the nonhazardous service credit to hazardous service credit shall be paid by the member as provided by KRS 61.552(9) and 78.545, unless:

1. The employer elects to pay the cost; or

2. The county elects to pay the cost, pursuant to KRS 78.530(3)(a), (d), or (f), to pay the cost of providing hazardous coverage for current employees for past service in positions approved for hazardous coverage, and the county requests[shall request] and pays[pay] for an actuarial study to determine the cost.

(c) Payments made by the member shall not be picked up by the employer as described in KRS 61.560(4) and 78.615(1).

(d)

1. Payment is due in full thirty (30) days from the date the cost of converting the service credit is provided to the employee, or in accordance with a payment schedule made with the agency.

2. Payments made by an employer shall be deposited to the retirement allowance account of the appropriate retirement system as established in KRS 61.580 and 78.650, and these funds shall not be considered accumulated contributions of the individual employee.

3. Payments made by a member, including interest, shall be deposited into his or her account as established in KRS 61.575 and 78.640 and are included in the member's accumulated contributions.

4. If payment is not made in accordance with this paragraph, the service credit prior to hazardous position classification shall remain nonhazardous service credit.

[Section 8.] [Local government employers may be obligated by statutes outside KRS Chapter 61 to certify certain positions as hazardous.]

Section 7.[Section-9.] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Form 2011, HP-2, Hazardous Position Certification," November 2024[April 2009];

(b) "Form 4150, Certification of Employment in a Hazardous Position", November 2024;

(c) "Form 7011, HP-1, Hazardous Participation Certification (CERS)", November 2024[April 2009];

(d)[(e)] "Form 7013, HP-1, Hazardous Participation Certification (KERS)", November 2024[April 2009]; and

(e)[(d)] "Form 7025, Position Questionnaire", November

2024[April 2009].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority[Kentucky Retirement Systems, Perimeter Park West], 1260 Louisville Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. and 4:30 p.m. This material is also available on the Kentucky Public Pensions Authority's Web site at kyret.ky.gov.

RYAN BARROW, Executive Director

APPROVED BY AGENCY: October 4, 2024

FILED WITH LRC: October 4, 2024 at 9:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing to allow for public comment on this administrative regulation shall be held on Thursday, December 26, 2024, at 2:00 p.m. at the Kentucky Public Pensions Authority (KPPA), 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in presenting a public comment at this hearing shall notify this agency in writing no later than five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Tuesday, December 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: Jessica Beaubien, Policy Specialist, Kentucky Public Pension Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8570, fax (502) 696-8615, email Legal.Non-Advocacy@kyret.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jessica Beaubien

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements, procedures, and forms for requesting, or converting to, hazardous position coverage.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements, procedures, and forms for requesting, or converting to, hazardous position coverage.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System. KRS 61.592 and 78.5520 prescribe the manner in which an employer shall request hazardous position coverage for employees, and the requirements for converting nonhazardous position coverage to hazardous position coverage.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists with the effective administration of statutes by establishing the requirements, procedures, and forms for requesting or converting to hazardous position coverage.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds details to the processes and procedures for an employer to request hazardous position coverage, and the process of converting nonhazardous position coverage to hazardous coverage position. Additionally, forms used for these processes are incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The amendment to this regulation is necessary to ensure the establishment of all requirements, procedures, and forms for requesting or converting to hazardous position coverage.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System. KRS 61.592 and 78.5520 prescribe

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the manner in which an employer shall request hazardous position coverage for employees, and the requirements for converting nonhazardous position coverage to hazardous position coverage.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists with the effective administration of statutes by establishing the requirements, procedures, and forms for requesting or converting to hazardous position coverage.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect approximately 1,453 employers that participate in the Kentucky Employees Retirement System and the County Employees Retirement System. This administrative regulation will also affect the Kentucky Public Pensions Authority. Finally, this administrative regulation may impact an unknown number of members participating in the Kentucky Employees Retirement System and the County Employees Retirement System.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will be minimally impacted by these changes as this administrative regulation is already being administered as written.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of compliance with this administrative regulation should be negligible, as this administrative regulation is already being administered as written.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits should be negligible, as this administrative regulation is already being administered as written.

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

(a) Initially: The costs associated with the implementation of this amendment should be negligible.

(b) On a continuing basis: The continuing costs associated with this amendment should be negligible.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Public Pensions Authority are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers and individuals are subject to the same processes and procedures.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.505.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The promulgating agency for this administrative regulation is the Kentucky Public Pensions Authority (KPPA). This administrative regulation will affect the KPPA, and approximately 333 state government employers that participate in the Kentucky Employees Retirement System.

(a) Estimate the following for the first year:

Expenditures: None

Revenues: None

Cost Savings: None

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There should be no expenditures, revenue, or cost saving for this administrative regulation in subsequent years because this administrative regulation is being administered as written.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): The County Employees Retirement System and 1,120 county and local employers that participate in the County Employees Retirement System.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There should be no expenditures, revenue, or cost saving for this administrative regulation in subsequent years because this administrative regulation is being administered as written.

(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? There are no additional regulated entities not listed in questions (2) or (3).

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The fiscal impact of this administrative regulation should be negligible because this administrative regulation is already being administered as written.

(b) Methodology and resources used to determine the fiscal impact: This administrative regulation is already being administered as written.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have a major economic impact because this administrative regulation is already being administered as written.

(b) The methodology and resources used to reach this conclusion: This administrative regulation is already being administered as written.

FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
(Amendment)

105 KAR 1:445. Trustee elections.~~[Electronic ballots in Trustee elections.]~~

RELATES TO: KRS 61.505, 61.645, 78.782
STATUTORY AUTHORITY: KRS 61.505(1)(g), 61.645(4)(j), [(9)(e)]78.782(4)(i)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority~~[61.645(9)(e) requires the Board of Trustees of Kentucky Retirement Systems]~~ to promulgate~~[all]~~ administrative regulations ~~on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with~~necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652, 61.505, 61.510 to 61.705, and 78.510 to 78.852~~[and to conform to federal statutes and regulations]~~. KRS 61.645(4)(j) ~~and 78.782(4)(i) authorize the systems~~authorizes Kentucky Retirement Systems] to promulgate an administrative regulation to implement the use of electronic and telephonic ballots in the trustee election process and requires paper ballots to be mailed upon request of any eligible voter. This administrative regulation establishes the procedures and requirements for preparing and casting electronic, telephonic, and paper ballots, and the tabulation of the ballots for

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trustee elections.

Section 1. Definitions.

(1) "Ballot" means ~~an~~[a voting instrument, either] electronic or paper ~~document~~[,] that includes the provisions required by KRS 61.645(4)(c) and 78.782(4)(c), and the candidate's:

(a) ~~Name;~~

~~Recent photograph;~~

~~City and county of residence;~~

~~Employer~~[Employing agency] and position title, or the ~~employer~~[employing agency] from which the candidate last worked or retired, and the position title of the last position held;

~~Education,~~ including schools and universities attended and degrees earned;

~~Whether or not the candidate has been convicted of a felony;~~

~~Any professional licenses or certifications held by the candidate;~~

~~Any organization of which the candidate is a member that is listed on the candidate's application; and~~

~~The Web site address where each candidate's~~[application] filed Application for Trustee[by the candidate] and[the candidate's] resume is available for viewing.

(2) "Board" means the Board of Trustees of the Kentucky Retirement Systems or the Board of Trustees of the County Employees Retirement System.

(3) "Candidate" means a participant of the system for which the election is being held who:

(a) Is nominated by the relevant board; or

~~1.] [A participating employee;]~~

~~2.] [Former employee whose membership has not been terminated under KRS 61.535; or]~~

~~3.] [A retired member, who meets the requirements of KRS 61.645(6); and]~~

~~Nominated~~[Is one (1) of not more than three (3) nominees from the Board of Trustees for each vacant position, nominated] by petition of the members[by the membership] of the relevant system[for which the vote is being taken, or who is written-in on a valid ballot.]

(4) "Election year" means the year of the expiration of a trustee's term of office and the year of the trustee election.

~~(3)]~~(3) "Eligible voter" means any person who:

(a) Is a participant[was a member or retired member] of the [retirement] system for which the vote is being taken on or before December 31 of the year preceding the election year; and

(b) Has on file:

~~1. A~~[and who has provided Kentucky Retirement Systems ("Systems") with a] valid email address; or

~~2. If,~~ if a paper ballot is requested pursuant to KRS 61.645(4)(j), a valid physical mailing address.

(6) "Plurality of votes" means a majority of valid votes cast in an election.

(7) "Resume" means a document which at a minimum includes the participant's:

(a) First and last name;

(b) Address;

(c) Phone number;

(d) E-mail address;

(e) Educational background; and

(f) Professional employment history that includes dates of employment, job title, employer name and address, and type of business.

~~(4)]~~(4) "Term of Office" means the period of membership on the relevant Board[of Trustees], which begins on April 1 of the year elected or appointed and ends on March 31 four (4) years thereafter.

(9) "Valid email address" means an email address the agency has on file for a participant that is operational and able to receive messages, or has not otherwise been deemed an invalid email address by the agency.

(10) "Valid physical mailing address" means the mailing address on file for a participant where he or she is able to receive U.S. mail, including:

(a) A current street address;

(b) A Post Office box registered with the United States Postal Service; or

(c) A private mailbox registered with a commercial mail receiving agency established pursuant to the United States Postal Service regulation.

~~(11)]~~(5) "Valid vote[Ballot]" means a timely cast vote[ballot either emailed or mailed] by an eligible voter that has clearly[properly] designated the voter's choice of eligible candidate or candidates[for the number of vacancies being filled].

(12) "Write-in" means casting a valid vote for a person not listed on the ballot as a candidate by:

(a) Inserting his or her name in the designated place when casting the vote by mail or electronically; or

(b) Providing his or her name when casting the vote by telephone.

(13) "Write-in candidate" means a person who is not listed on the ballot as a candidate and has been inserted or provided as a write-in.

Section 2. Use of Third-party Vendors. Subject to KRS 61.505(3)(d), the agency may contract with third-party vendors to provide services for the trustee election process as provided by KRS 61.645(4) and 78.782(4).

Section 3. Election and ballot requirements.

(1) At the expiration of an elected trustee's term of office, an election shall occur for:

(a) The Kentucky Retirement Systems Board of Trustees pursuant to KRS 61.645; and

(b) The County Employees Retirement System Board of Trustees pursuant to KRS 78.782.

(2) Ballots shall include:

(a) Candidates nominated by the Board in accordance with Section 4 of this administrative regulation;

(b) Candidates nominated by Petition in accordance with Section 5 of this administrative regulation; or

(c) A write-in option.

(3)

(a) On or before May 31 of the year immediately preceding an election year, the agency shall provide notice to participants detailing the steps he or she shall take to become a potential candidate.

(b) A participant shall only be a potential candidate if he or she:

1. Is a member of the system in which he or she is seeking placement on the ballot, or is a retired member with the majority of his or her service in that system;

2. Is not statutorily prohibited by virtue of term limits as established in KRS 61.645(3) and 78.782(3);

3. Completes the requirements of paragraph (c) of this subsection;

4. Passes the background check in accordance with subsection (4)(b) of this section;

5. Is determined constitutionally compatible in accordance with subsection (4)(c) of this section;

6. Is not a current or former employee of the agency or the Board in which he or she is seeking placement on the ballot; and

7. Is not in violation of any provision of KRS 11A.020 or 11A.040 by a court of competent jurisdiction or any other statute.

(c) Each participant seeking to be a potential candidate shall file in accordance with the notice indicated in paragraph (a) of this subsection:

1. A valid Application for Trustee;

2. A resume with cover letter;

3. A recent color photograph; and

4. An authorization for the agency to complete a background check.

(4)

(a) The agency shall review the filed documentation to ensure a potential candidate meets the requirements established in subsection (3)(b) of this section, and completed the requirements established in subsection (3)(c) of this section and KRS 61.645 and 78.782.

(b) A background check shall be completed for each potential

candidate.

(c) If currently employed, the Kentucky Attorney General's Office shall review the potential candidate's employment to determine if it is constitutionally compatible with the trustee position in accordance with KRS 61.080, 61.645, 78.782, and the Kentucky Constitution Section 165. If the Kentucky Attorney General's Office indicates that the potential candidate's employment is not constitutionally compatible with the trustee position, the potential candidate shall:

1. Be excluded from placement on the ballot; or
2. Be included for possible placement on the ballot if he or she agrees to resign from his or her current position if elected, and provides a written statement as such.

Section 4. Nomination by the Board.

(1) The agency shall provide the respective system's Board with a list of potential candidates who meet the requirements of Section 3(3) and (4) of this administrative regulation, and each of his or her completed corresponding Applications for Trustee.

(2) The name of each candidate nominated by the respective Board within six (6) months prior to the end of a term of office shall be placed on the ballot.

Section 5. Petitions.

(1) To be included on the ballot by petition, the potential candidate shall file a valid petition no later than four (4) months from the end of the term of office set to expire.

(2) A valid petition is a petition that:

(a) Meets the requirements of Section 3(3) and (4) of this administrative regulation; and

(b) KRS 61.645(4)(b) and 78.782(4)(b).

(3) Each petition shall be reviewed by the agency to verify each signature belongs to a participant of the respective system.

(4) The name of each candidate who meets the requirements of this section shall be placed on the ballot.

Section 6. [Section 2.] Default to electronic ballots [Paper Ballot Request].

(1) [Between November 1 and November 30 of the year preceding the expiration of the term of office and the trustee election, an eligible voter may request a paper ballot through Member or Retiree Self-Service.] The agency [Systems] shall notify each [the] eligible voter that an electronic ballot shall [will] be provided unless he or she requests a modification to the [a paper] ballot type received in accordance with subsection (2) of this section [is requested during the requisite time. The Systems shall request that the eligible voter verify the email address attached to his or her account].

(2)

[A]n eligible voter may also submit a written request to modify the [for a paper] ballot type shall be [if] received on or before November 30 of the year preceding the election year in order to be effective for the upcoming [expiration of the term of office and the trustee] election. Modifications of the ballot type include:

1. From an electronic ballot to [Once an eligible voter elects to receive] a paper ballot; and

2. From a paper ballot to an electronic ballot [the voter shall receive paper ballots for all subsequent elections unless the voter requests to vote electronically].

(b) An eligible voter shall [A] request a change [to modify] in the type of ballot:

1. Through the Self-Service Web site;

2. Via phone by calling the agency and providing his or her agency issued personal identification number (PIN); or

3. By filing a signed written request [shall be received on or before November 30 of the year preceding the expiration of the term of office and the trustee election in order to be effective for the upcoming election].

(3) Once an eligible voter modifies the ballot type he or she receives, the eligible voter shall receive the specified ballot type until he or she requests a change in the ballot type in accordance with subsection (2) of this section.

Section 7. [Section 3.] Ballot Preparation and delivery.

(1) The agency or its third-party vendor [Systems] shall prepare the official ballot no later than three (3) months prior to the expiration

of the term of office. The ballot [whether electronic or paper] shall:

(a) Provide a unique voter identification number;

(b) Provide details on how to vote by telephone;

(c) Contain [contain] instructions defining what constitutes a valid vote; and

(d) Indicate [ballot. The System shall notify the eligible voter on the ballot] that any invalid vote [ballot] shall not be counted.

(2) [For both electronic and paper ballots, the eligible voter shall check a square opposite of the candidate of his or her choice pursuant to KRS 61.645(4)(f), or write in the name of an eligible member, for each position to be elected.]

[Section 4.] [Delivery of Ballots.]

[(1)]

[(a)] [Electronic ballots] Ballots shall be provided [emailed] to the eligible voter on or before January 20 of the election year [of the expiration of the term of office and the trustee election].

(a) [(b)] For an electronic ballot, [The Systems shall use] the email address on file on or before December 31 of the year preceding the [expiration of the term of office and the trustee] election year shall be used. If the eligible voter does not have a valid [an] email address on file, [or the Systems receives notification that the email address is invalid so that] the electronic ballot shall not [cannot] be sent, [the Systems shall mail] If the agency discovered the invalid email address on or before one (1) week prior to the deadline to cast a valid vote, a paper ballot shall be mailed in accordance with paragraph (b) of this subsection [to the mailing address on file with the Systems. If the Systems receives a returned paper ballot with notification of a new mailing address from the United States Postal Service, the ballot will be sent to the new address if the notification is received].

[(e)] [The Systems shall be held harmless for any incorrect email address submitted by the member or inadvertently entered by the Systems.]

[(2)]

[(a)] [Paper ballots shall be mailed to the eligible voter on or before January 20 of the year of the expiration of the term of office and the trustee election.]

(b) For a paper ballot, the valid physical [The Systems shall use the] mailing address on file [with the Systems] on or before December 31 of the year preceding the election year shall be used [expiration of the term of office and the trustee election]. If [the Systems receives] a returned paper ballot is received:

1. With [with] notification of a new mailing address from the United States Postal Service, the ballot will be mailed [sent] to the new address if the notification is received on or before one (1) week prior to the date the vote shall be cast; or [.]

2. With no notification of a new mailing address from the United States Postal Service on or before one (1) week prior to deadline to cast a valid vote, if the participant has a valid email address on file, an electronic ballot shall be sent in accordance with paragraph (a) of this subsection.

(c) The ballot shall not be provided if there is no valid physical mailing address and no valid email address on file.

(3) The agency and its third-party vendor [The Systems] shall be held harmless for any incorrect email address or mailing address submitted by the participant [member] or inadvertently entered by the agency or its third-party vendor [Systems].

Section 8. [Section 5.] Casting of Votes [Ballots].

(1)

(a) For a vote to be accepted and counted as a valid vote, it [If an electronic ballot, the ballot] shall be cast on or before the end of day on March 1 of the election year for an electronic vote or vote by telephone, except as provided in paragraph (b) of this subsection.

(b) [(2)] For [If a] paper voting, the vote [ballot, the ballot] shall be on a ballot postmarked to the required address by the end of day on [or before] March 1 of the election year.

(2)

(a) [(3)] For an electronic or paper ballot, the eligible voter shall:

1. Indicate the candidate or candidates of his or her choice pursuant to KRS 61.645(4)(f) and 78.782(4)(f); or

2. Indicate a write-in option and add the name of an eligible

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participant as specified by the Board for which the vote is being cast.

(b) To cast a vote by electronic ballot, the eligible voter shall electronically sign the completed ballot on the Web site provided to him or her and follow any other prompts.

(c) To cast a vote by paper ballot, the eligible voter shall sign the completed ballot and mail it to the address indicated on the paper ballot.

(3) To cast a vote by telephone, the eligible voter shall:

(a) Call the number provided on the paper or electronic ballot;

(b) Provide his or her unique voter identification number;

(c) Indicate the candidate or write-in candidate of his or her choice verbally; and

(d) Follow any other prompts. [Any ballot that does not meet this standard as established in subsection (1) or (2) of this Section shall be invalid and not accepted.]

(4) Each eligible voter shall cast only [submit] one (1) vote per open position in each applicable system [ballot] and any subsequent vote [ballot] received or submitted shall [will] be invalid and not accepted.

Section 9. [Section 6-] Review of cast votes [Ballots].

(1) ~~The third-party vendor~~ [The ballots shall be submitted to the board's contracted auditing firm. Access to the ballots shall be limited to the contracted auditing firm. The contracted auditor] shall review each cast vote [ballot] to ascertain whether it is a valid vote [ballot].

(2)

(a) Invalid votes shall include ballots:

1. Returned [Ballots returned] to the agency or third-party vendor [Systems] for faulty or invalid physical mailing addresses or email addresses; [-]

2. Incorrectly [- or ballots that are incorrectly] returned or mailed to the street address of the agency or third-party vendor; or

3. That do not comply with Section 8 of this administrative regulation [Systems, shall be invalid].

(b) Invalid votes shall not be considered or counted [- All invalid ballots shall remain unopened and returned to the board's contracted auditor]. Once the final results are announced, the [invalid] ballots from these invalid votes shall be shredded or otherwise electronically destroyed by the third-party vendor [board's contracted auditing firm] and a certificate shall be provided to the agency [Systems] confirming the shredding or destruction of these [the invalid] ballots.

Section 10. [Section 7-] Tabulation of Votes [Ballots].

(1) After totaling the valid votes, the third-party vendor [cast, the board's contracted auditing firm] shall certify the results of the election in writing to the Chair of the respective Board [of Trustees] in care of the Chief Executive Officer [Director]. The certified results shall be provided to the agency [received at the retirement office] on or before March 15 of the election year.

(2) Once all valid votes [electronic and paper ballots] have been counted and the results are [election is] final, the third-party vendor [contracted auditing firm] shall destroy all ballots, including ballots or data generated and stored from electronic or telephone votes [ballots], and provide a certificate confirming the destruction of the ballots or data to the agency [Systems].

(3) The candidate or write-in candidate with the

[Section 8-] Term of Office. [Candidates elected by a] plurality of the valid votes [cast by eligible voters] is elected to the vacant trustee position and shall begin his or her [their] term of office on April 1 of the election year.

(4) The agency shall notify each candidate and write-in candidate of the outcome of the election.

[Section 9-] Deadlines. If any due date in this administrative regulation falls on a Saturday, Sunday, or day that the Systems is closed due to state holiday, the due date or time period deadline shall extend to the close of business of the next business day.]

Section 11. Incorporation by reference.

(1) "Application for Trustee", March 2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the agency's Web site at https://kyret.ky.gov.

RYAN BARROW, Executive Director

APPROVED BY AGENCY: October 4, 2024

FILED WITH LRC: October 4, 2024 at 9:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing to allow for public comment on this administrative regulation shall be held on Thursday, December 26, 2024, at 2:00 p.m. at the Kentucky Public Pensions Authority (KPPA), 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in presenting a public comment at this hearing shall notify this agency in writing no later than five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Tuesday, December 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: Jessica Beaubien, Policy Specialist, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8570, fax (502) 696-8615, email Legal.Non-Advocacy@kyret.ky.gov..

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jessica Beaubien

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures and requirements for preparing and casting electronic, telephonic, and paper ballots, and the tabulation of the ballots for trustee elections.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures and requirements for preparing and casting electronic, telephonic, and paper ballots, and the tabulation of the ballots for trustee elections.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System. KRS 61.645(4)(j) and 78.782(4)(j) authorize the systems to promulgate an administrative regulation to implement the use of electronic and telephonic ballots in the trustee election process and requires paper ballots to be mailed upon request of any eligible voter.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists with the effective administration of statutes by establishing the procedures and requirements for preparing and casting electronic, telephonic, and paper ballots, and the tabulation of the ballots for trustee elections.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds details to the procedures and requirements for preparing and casting electronic, telephonic, and paper ballots, and the tabulation of the ballots for trustee elections. Additionally, a form used for these processes has been incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The amendment to this regulation is necessary to ensure accurate and complete procedures and requirements for preparing and casting electronic, telephonic, and paper ballots, and the tabulation of the ballots for trustee elections, are in the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 61.505(1)(g) authorizes the Kentucky

Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System. KRS 61.645(4)(j) and 78.782(4)(j) authorize the systems to promulgate an administrative regulation to implement the use of electronic and telephonic ballots in the trustee election process and requires paper ballots to be mailed upon request of any eligible voter.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists with the effective administration of statutes by ensuring accurate and complete procedures and requirements for preparing and casting electronic, telephonic, and paper ballots, and the tabulation of the ballots for trustee elections, are in the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect approximately 421,609 participants in the Kentucky Employees Retirement System, the State Police Retirement System, and the County Employees Retirement System. This administrative regulation will also affect the Kentucky Public Pensions Authority.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will be minimally impacted by these changes. Most of this administrative regulation is already being administered as written. The new option for voting in trustee elections via telephone is already covered in the cost of an existing contract between the regulated entity (the Kentucky Public Pensions Authority) and its election services vendor.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of compliance with this administrative regulation should be negligible. Most of this administrative regulation is already being administered as written. The new option for voting in trustee elections via telephone is already covered in the cost of an existing contract between the regulated entity (Kentucky Public Pensions Authority) and its election services vendor.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will ensure accurate and complete procedures and requirements for preparing and casting electronic, telephonic, and paper ballots, and the tabulation of the ballots for trustee elections, are included in the regulation. In addition, the regulated entity (Kentucky Public Pensions Authority) hopes to improve voter response in upcoming trustee elections by offering telephone voting.

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

(a) Initially: The costs associated with the implementation of this amendment should be negligible.

(b) On a continuing basis: The continuing costs associated with this amendment should be negligible.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Public Pensions Authority are paid from the Retirement Allowance Account (trust and agency funds).

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. The regulated entity, potential applicants seeking to be elected as a trustee, and affected members are subject to the same processes and procedures.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.505, 61.645(4)(j), and 78.782(4)(j).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: . The promulgating agency for this administrative regulation is the Kentucky Public Pensions Authority (KPPA). This administrative regulation will not affect any other state unit, part, or division.

(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 should be no expenditures, revenue, or cost saving for this administrative regulation in subsequent years because most of this administrative regulation is being administered as written. The new option for voting in trustee elections via telephone is already covered in the cost of an existing contract between the regulated entity (Kentucky Public Pensions Authority) and its election services vendor.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This administrative regulation will not affect any local entities.

(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 are no local entities affected.

(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? There are no additional regulated entities.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The fiscal impact of this administrative regulation should be negligible because most of this administrative regulation is already being administered as written. The new option for voting in trustee elections via telephone is already covered in the cost of an existing contract between the regulated entity (Kentucky Public Pensions Authority) and its election services vendor.

(b) Methodology and resources used to determine the fiscal impact: Most of this administrative regulation is already being administered as written. The new option for voting in trustee elections via telephone is already covered in the cost of an existing contract between the regulated entity (Kentucky Public Pensions Authority) and its election services vendor.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have a major economic impact because most of this administrative regulation is already being administered as written. The new option for voting in trustee elections via telephone is already covered in the cost of an existing contract between the regulated entity (Kentucky Public Pensions Authority) and its election services vendor.

(b) The methodology and resources used to reach this conclusion: Most of this administrative regulation is already being administered as written. The new option for voting in trustee elections via telephone is already covered in the cost of an existing contract between the regulated entity (Kentucky Public Pensions Authority) and its election services vendor.

BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(Amendment)

201 KAR 16:510. Fees for veterinarians.

RELATES TO: KRS 321.190, 321.193, 321.201, 321.211, 321.221, 321.235, 321.320

STATUTORY AUTHORITY: KRS 321.193(2), 321.201(1), 321.211(1)–(3), (5), 321.221(1), 321.235(1)(c), 321.320

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.235(1)(c) requires the Kentucky Board of Veterinary Examiners to promulgate administrative regulations as it may deem necessary and proper to effectively carry out and enforce the provisions of KRS Chapter 321, including to establish authorized fees. KRS 321.211(1) requires veterinarians to pay a renewal fee to the board as a condition of licensure. KRS 321.201 authorizes the board to issue a special permit for the practice of veterinary medicine, and KRS 321.235(1)(c) requires the board to set fees for such special permits. This administrative regulation establishes application, examination, renewal, late, reinstatement, inactive status, and retirement fees for veterinarians, as well as fees for special permits. This administrative regulation also establishes reduced and waived fees for military servicemembers.

Section 1. Payment and Submission of Fees.

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

(2) All fees shall be nonrefundable.

(3) In the event the board carry forward balance at the end of a fiscal year falls below \$200,000, the board's fees shall automatically increase 20% for the duration of the fiscal biennium.

Section 2. Examination Fees for Veterinarians.

(1) The fee for the North American Veterinary Licensing Examination (NAVLE) shall be paid directly to the International Council for Veterinary Assessment (ICVA), its designee, or current test administrator.

(2) The fee for the Kentucky Board of Veterinary Examiners state jurisprudence exam shall be \$100 paid directly to the board.

(3) The fee for an applicant to obtain board approval to retake the NAVLE shall be fifty (50) dollars paid directly to the board and attached to the Application for Retake of the NAVLE form as found in 201 KAR 16:530 or online equivalent form. In 2024, or at the time when the ICVA takes over the NAVLE eligibility review process, whichever is later, the KBVE shall no longer accept retake applications or collect retake fees.

Section 3. Fees for Special Permits.

(1) The fee for a special permit issued by the board pursuant to KRS 321.201 shall be \$200.

(2) The fee shall be attached to either the Application for Licensure as a Veterinarian form as found in 201 KAR 16:540 or the Application for Retake of the NAVLE form as found in 201 KAR 16:530, or online equivalent forms.

(3) A special permit shall not be renewed. Following expiration of a special permit, an individual shall reapply for a new special permit pursuant to the limitations established in KRS 321.201.

Section 4. Application Fees for Veterinarians.

(1) The application fee for a veterinarian license shall be \$350.

(2) The fee shall be attached to the completed Application for Licensure as a Veterinarian form as found in 201 KAR 16:540 or online equivalent form, including all required attachments.

Section 5. Renewal Fees for Veterinarian Licenses.]

(1) The renewal deadline shall be September 30 of each year ending in an even number. The renewal biennium shall be the time period beginning the day after the renewal deadline to the next renewal deadline.

(2) Except as established in subsections (5) and (6) of this section, the biennial renewal fee for licensure as a veterinarian in

active status shall:

(a) Until June 29, 2026, be \$275;

(b) Between June 30, 2026, and June 30, 2028, be ~~\$495~~[\$350]; and

(c) After June 30, 2028, be ~~\$550~~[\$400].

(3) The Renewal Application for Veterinarians form as found in 201 KAR 16:570 or online equivalent form shall be complete, and include all required attachments, continuing education credits, and fee payment.

(4) No later than September 30 of the second year of the renewal biennium, the complete package shall be submitted to the board for review and approval.

(5) For veterinarians who are initially licensed in the second year of the biennium between 365 days and 182 days prior to the end of the renewal biennium, the licensure renewal fee shall be reduced by half during a licensee's first licensure cycle. The late fee for renewal, if applicable, shall not be reduced or waived without board authorization.

(6) For veterinarians who are initially licensed in the second year of the biennium between 181 days and the last day of the renewal biennium, the licensure renewal fee shall be waived during a licensee's first licensure cycle.

(7) Utilization of Renewal Grace Period.

(a) During the sixty (60) day grace period established by KRS 321.211(2), a licensed veterinarian who failed to meet the September 30 renewal deadline may continue to function as though licensed until a late renewal application is submitted to and approved by the board.

(b) The late fee for biennial renewal shall be \$300 in addition to the renewal fee established in subsections (2), (5), and (6) of this section.

(c) The veterinarian shall submit the complete Renewal Application for Veterinarians form as found in 201 KAR 16:570 or online equivalent form, including all required attachments, continuing education hours, and fee payment, to the board between October 1 and November 30 of a year ending in an even number.

(8) A veterinarian's license shall expire if a renewal application package and all attachments, and late fee if applicable, is not submitted to the board by November 30 each year ending in an even number.

Section 6. Reinstatement Fees for Veterinarians.

(1)

(a) Except as established in subsection 2 of this section, and Section 7 of this administrative regulation, if not more than five (5) years have elapsed since the last date of license expiration pursuant to KRS 321.211(6), a veterinarian shall pay a reinstatement fee as established in subparagraphs 1. through 3. of this paragraph to reinstate their license to active status.

1. Until June 29, 2026, the licensure reinstatement fee shall be \$675.

2. Between June 30, 2026, and June 30, 2028, the licensure reinstatement fee shall be \$775.

3. After June 30, 2028, the licensure reinstatement fee shall be \$850.

(b) The applicant shall submit a complete Reinstatement Application for Veterinarians form as found in 201 KAR 16:540 or online equivalent form, including all required attachments, to the board for reinstatement of their license.

(c) A veterinarian shall not apply for a new license during this five (5) year window; a reinstatement application shall be required.

(2) If more than five (5) years have elapsed since the last date of license expiration, a veterinarian shall apply as a new applicant to obtain a license in the Commonwealth of Kentucky.

Section 7. Inactive Status of License.

(1)

(a) A veterinarian shall request inactive licensure status in accordance with 201 KAR 16:580.

(b) If more than ninety (90) days prior to the renewal deadline or more than 150 days prior to the grace period deadline, the Request for Licensure Status Change form shall be required, and there shall not be a fee.

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(c) If less than ninety (90) days prior to the renewal deadline or less than 150 days prior to the grace period deadline, the Renewal Application for Veterinarians form shall be required, and the required fee shall be paid as established in subsection (2) of this section.

(2) Renewal of an inactive veterinary license.

(a) The biennial renewal fee for inactive veterinarian licensure status shall be \$100 per renewal biennium.

(b) The late fee for biennial renewal of an inactive veterinarian license shall be \$200 in addition to the renewal fee established in paragraph(a) of this subsection, and shall apply to a veterinarian license in an inactive status that was not renewed by September 30 of the second year of the renewal biennium.

(c) A veterinarian license in an inactive status that is not renewed by November 30 shall be moved to an expired status.

(3) Reinstatement of inactive veterinarian license status to active status.

(a) A veterinarian licensee in inactive status may reinstate their license to active status in accordance with 201 KAR 16:580.

(b) There shall be a reinstatement fee due at the time of application, as established in subparagraphs 1. and 2. of this paragraph.

1. For an inactive veterinarian license that has been in inactive status less than twenty-four (24) months:

a. Until June 29, 2026, the licensure reinstatement fee shall be \$500;

b. Between June 30, 2026, and June 30, 2028, the licensure reinstatement fee shall be ~~\$650~~[\$550]; and

c. After June 30, 2028, the licensure reinstatement fee shall be ~~\$750~~[\$600].

2. For an inactive veterinarian license that has been in inactive status greater than twenty-four (24) months, the licensure reinstatement fee shall be \$400.

Section 8. Retirement of a Veterinary License.

(1)

(a) A veterinarian may request to retire their license at any time.

(b) The one-time fee for this service shall be twenty-five (25) dollars, which shall be attached to a Request for Licensure Status Change form as found in 201 KAR 16:580 or the Renewal Application for Veterinarians form as found in 201 KAR 16:570 or online equivalent forms.

(2) Once a license is retired it shall not be reactivated. If a veterinarian holds a retired license and wishes to practice again, they shall apply to the board for a new license to practice veterinary medicine in the Commonwealth of Kentucky.

Section 9. Fee Reduction for Military Personnel.

(1) If a veterinarian applicant submits a copy of their current military orders or DD-214 (or other documentation acceptable to the board) with their application or renewal paperwork, the board shall waive or reduce fees as established in this section.

(a) For active duty military, active reserves, and National Guard service persons, an individual's initial application fees, the Kentucky State Exam fee, and the biennial renewal fees shall be waived.

(b) For retired military personnel with twenty (20) or more years of service, an individual's initial application fees shall be waived, and the biennial renewal fees shall be reduced by half, rounded to the nearest whole dollar.

(c) For any other military veteran, the initial application fees shall be waived.

(d) All other requirements of licensure, including renewal deadlines and continuing education requirements established in 201 KAR 16:590, shall be met.

(2) In conformity with federal Pub.L. No 117-333, for a veterinarian applicant who is an active duty servicemember, or whose spouse is an active duty servicemember, all application fees to the board shall be waived if:

(a) The servicemember, or the service member's spouse, has their residency relocated to Kentucky for the duration of current military orders;

(b) The veterinarian holds at least one (1) license equivalent in scope in another United States jurisdiction;

(c) Within ninety (90) days of relocating, the veterinarian

registers with the board on the Application for Licensure as a Veterinarian form as found in 201 KAR 16:540 or online equivalent form, in conformity with 201 KAR 16:540, Section 1(4);

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

(e) All veterinarian licenses held in any jurisdiction by the veterinarian remain in good standing;

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

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

MICHELLE M. SHANE, Executive Director on behalf of
JOHN C. PARK, DVM, Board Chair

APPROVED BY AGENCY: October 14, 2024

FILED WITH LRC: October 15, 2024 at 8:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2024, at 10:00 am EST, at the offices of the Kentucky Board of Veterinary Examiners, 4047 Iron Works Pkwy, Suite 104, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 December 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: Michelle M. Shane, Executive Director, Kentucky Board of Veterinary Examiners, 4047 Iron Works Parkway, Suite 104, Lexington, Kentucky 40511, Phone: 502-564-5433, Fax: 502-753-1458, Email: Michelle.Shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle M. Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees for persons seeking a veterinarian license from the board to gain the ability to practice veterinary medicine in Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the fees that the Kentucky Board of Veterinary Examiners (KBVE) approves for veterinarian licensure, as mandated in KRS 321.190, 321.193, 321.201(1), 321.211, and 321.235.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235 mandates that the board administer and enforce KRS Chapter 321. KRS 321.190 and 321.211 specifically require the board to charge application, examination, renewal, late, reinstatement, inactive status, and retirement fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly expressing what fees have been approved by the board in order to keep all mandated board programs operational and responsive to constituent needs.

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

(a) How the amendment will change this existing administrative regulation: Updating fees to ensure that the board remains operational, efficient, and responsive to both the public and licensee needs. In 2023, the KBVE attempted to phase in fees per the request of the Kentucky Veterinary Medical Association. However, the phased in approach burned through all of the KBVE's reserves. This coupled with unanticipated increases in operational and IT costs shows projections placing the agency in a budget deficit by F.Y.

2028 if no changes are made. This fee increase is necessary to ensure that the board remains solvent and operational without need of any general funds.

(b) The necessity of the amendment to this administrative regulation: Changes are necessary to conform with the new Kentucky Veterinary Medicine Practice Act, KRS Chapter 321. The Kentucky Board of Veterinary Examiners has determined this amendment is necessary keep all mandated board programs operational and ensure adequate staffing levels to keep the board responsive to the needs of the public and credential holders. Costs for the board have increased, and it is necessary to raise fees to continue operations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 321.235 mandates that the board administer and enforce KRS Chapter 321. KRS 321.190 and 321.211 specifically require the board to charge application, examination, renewal, late, reinstatement, inactive status, and retirement fees.

(d) How the amendment will assist in the effective administration of the statutes: This amendment shall ensure transparency about the fees associated with applications for licensure as a veterinarian.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 2,735 veterinarians, approximately 13 special permit holders, and future applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be required to have paid the fee prior to licensure or permitting, renewal, or reinstatement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for application, renewal, and reinstatement.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the fees associated with licensure.

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

(a) Initially: The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term.

(b) On a continuing basis: The KBVE expects costs for all board operations to be approximately \$900,000 annually in future bienniums as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KBVE does not receive any general funds. Fees for the KBVE come from license, certificate, permit, and registration fees established in this filing and the other fee filings. Costs for the board have increased, and it is necessary to raise fees to continue operations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no anticipation of an increase in fees to implement this administrative regulation, as the KBVE is already running an administrative program to process applications and an inspection program to ensure compliance.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are established directly.

(9) TIERING: Is tiering applied? Tiering of fees is applied to applications from U.S. military servicemembers. Pursuant to public law Public Law No 117-333, the board provides reduced or waived fees for active duty military. Discharged and retired military servicemembers are also provided reduced or waived fees associated with licensure as a veterinary technician.

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.193(2), 321.201(1), 321.211(1)–(3), (5), 321.221(1), 321.235(1)(c), 321.320

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The promulgating agency is the Kentucky Board of Veterinary Examiners. There are no other affected state units, parts, or divisions.

(a) Estimate the following for the first year:

Expenditures: The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term. This includes the administration of the veterinarian licensure program, database management, infrastructure, overhead, and contractors, including legal counsel, and investigators.

Revenues: This filing will generate approximately \$1.4 million on a biennial basis. Because veterinarians renew their license only every other year, the annual amount varies significantly. In F.Y.s ending in odd numbers, the regulation will only generate \$190,000; in F.Y.s ending in even numbers, the regulation will generate an additional \$1.2 million.

Cost Savings: This is not a new program. The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The KBVE expects costs for all board operations to be approximately \$900,000 annually in future bienniums as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321. Staff time and database management will be required for record keeping. Costs will also be outlaid for investigative and legal services to enforce the Kentucky Veterinary Medicine Practice Act.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): KBVE does not anticipate that any local entities will be impacted.

(a) Estimate the following for the first year:

Expenditures: N/A.

Revenues: N/A.

Cost Savings: N/A.

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

(4) Identify additional regulated entities not listed in questions (2) or (3): KBVE does not anticipate that any other regulated entities will be impacted.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

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

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: Running an administrative program mandated by the General Assembly costs money. There are costs involved to apply for a new veterinarian license, renew or reinstate, pay late fees, maintain an inactive license, or retire veterinarian license. KBVE fees have only minimally changed in the past 30 years; the increase in fees is to ensure that the board remains operational, efficient, and responsive to both the public and licensee needs, while also implementing new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321. Costs include overhead, staffing and benefits, database usage and maintenance, contractors, legal counsel, etc. These fees shall ensure that the board and its staff remain operational, efficient, and responsive to both the public and constituent needs. Costs for the board have increased, and it is necessary to raise fees to continue operations.

(b) Methodology and resources used to determine the fiscal impact: A large spreadsheet was used to calculate all board revenues, expenditures, proposed fees, and estimated quantities of applications based on historical numbers. Projections were calculated ten (10) years out to F.Y. 2036.

(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 shall not have a "major economic impact", as defined in KRS 13A.010(13). This administrative regulation does not set fees and will not bring in revenue.

(b) The methodology and resources used to reach this conclusion: This amendment will not have a negative impact, as no fees are established or collected as a part of this administrative regulation.

BOARDS AND COMMISSIONS
Board of Licensed Professional Counselors
(Amendment)

201 KAR 36:050. Complaint management process.

RELATES TO: KRS 335.540, 335.545

STATUTORY AUTHORITY: KRS 335.515(3), (7), 45 C.F.R. 164.512(a), (d), (e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) requires the board to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS 335.500 to 335.599. This administrative regulation establishes the procedures for filing, investigating, and addressing a complaint filed against a professional counselor.

Section 1. Receipt of Complaints.

(1) A complaint:

(a) May be submitted by an:

1. Individual;
2. Organization; or
3. Entity;

(b) Shall be:

1. In writing and provided on the Complaint Form, DPL-LPC-12; and
 2. Signed by the person submitting the complaint; and
- (c) May be filed by the board based upon information in its possession.

(2)

(a) Upon receipt of a complaint, a copy of the complaint shall be sent to the individual named in the complaint along with a request for that individual's response to the complaint.

(b) The individual shall be allowed a period of twenty (20) days from the date of receipt to submit a written response.

(3)

(a) Upon receipt of the written response of the individual named in the complaint, a copy of his or her response shall be sent to the complainant.

(b) The complainant shall have seven (7) days from the receipt to submit a written reply to the response.

Section 2. Initial Review.

(1) After the receipt of a complaint and the expiration of the period for the individual's response or reply, the complaint screening committee shall consider the individual's response, complainant's reply to the response, and any other relevant material available, and make a recommendation to the board. The board shall determine whether there is enough evidence to warrant a formal investigation of the complaint.

(2) If the board determines before formal investigation that a complaint is without merit, it shall:

(a) Dismiss the complaint; and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a complaint warrants a formal investigation, it shall:

(a) Authorize an investigation into the matter; and

(b) Order a report to be made to the complaint screening committee at the earliest opportunity.

Section 3. Results of Formal Investigation; Board Decision on Hearing.

(1) Upon completion of the formal investigation, the investigator shall submit a report to the complaint screening committee of the facts regarding the complaint. The committee shall review the investigative report and make a recommendation to the board. The board shall determine whether there has been a prima facie violation of KRS 335.500 to 335.599 or the administrative regulations promulgated thereunder and a complaint should be filed.

(2) If the board determines that a complaint does not warrant issuance of a formal complaint, it shall:

(a) Dismiss the complaint or take action pursuant to KRS 335.540(3); and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a complaint warrants the issuance of a formal complaint against a respondent, the complaint screening committee shall prepare a formal complaint, which states clearly the charge or charges to be considered at the hearing. The formal complaint shall be reviewed by the board and, if approved, signed by the chair and served upon the individual as required by KRS Chapter 13B.

(4) If the board determines that a person may be in violation, it shall:

(a) Order the individual to cease and desist from further violations of KRS 335.505;

(b) Forward information to the county attorney of the county of residence of the person allegedly violating KRS 335.505 with a request that appropriate action be taken under KRS 335.599; or

(c) Initiate action in Franklin Circuit Court for injunctive relief to stop the violation of KRS 335.505.

Section 4. Settlement by Informal Proceedings.

(1) The board, through counsel and the complaint screening committee, may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chair.

(3) The board may employ mediation as a method of resolving the matter informally.

Section 5.

(1) If the complaint screening committee determines that a violation has occurred but is not serious, the complaint screening committee may recommend the issuance of a private written admonishment~~[reprimand]~~ to the board. If the board accepts the recommendation, the board shall issue a private written admonishment~~[reprimand]~~ to the credential holder.

(2) A copy of the private written admonishment~~[reprimand]~~ shall be placed in the permanent file of the credential holder.

(3) A private written admonishment~~[reprimand]~~ shall not:

(a) Be subject to disclosure to the public under KRS 61.878(1)(l);

or

(b) Constitute disciplinary action.

(4) A private written admonishment~~[reprimand]~~ may be used by the board for statistical purposes or in any subsequent disciplinary action against the credential holder or applicant.

Section 6. If the board determines that there is reasonable cause to believe that a license holder or applicant for a license is physically or mentally incapable of practicing professional counseling with reasonable skill and safety to clients, the board may order the license holder or applicant to submit to an examination by a mental health professional or a physician designated by the board to determine the license holder's or applicant's mental health or physical status to practice professional counseling.

Section 7. Notice and Service Process. A notice required by KRS 335.500 to 335.599 or this administrative regulation shall be issued pursuant to KRS Chapter 13B and 201 KAR 36:090.

Section 8. Notification. The board shall make public:

- (1) Its final order in a disciplinary action under KRS 335.540 with the exception of a written admonishment issued pursuant to KRS 335.540(3); and
- (2) An action to restrain or enjoin a violation of KRS 335.505. 201 KAR 36:050.

Section 9. If your complaint relates to services provided to you by a licensee, the board or its authorized representative may contact you and request that you sign an authorization for release of medical and client records. This involves health oversight activities and administrative proceedings of the board and disclosure is permitted under 45 C.F.R. Section 164.512(a), (d), and (e), the regulations implementing the Health Insurance Portability and Accountability Act (HIPAA).

Section 10. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Complaint Form with Information Sheet", DPL-LPC-11, August 2024; and [DPL-LPC-12, July 2023, is incorporated by reference.]

(b) "Authorization for Release of Medical and Client Records", DPL-LPC-12, August 2024.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Licensed Professional Counselors, 500 Mero Street, Frankfort, Kentucky 40601, from 8:00 a.m. to 4:00 p.m., Monday through Friday. This material is also available on the board's Web site at lpc.ky.gov.

ANDREA BROOKS, Chair

APPROVED BY AGENCY: October 7, 2024

FILED WITH LRC: October 11, 2024 at 1:04 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Friday, December 27, 2024, at 1:00 p.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 December 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, Agency: Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709 (office), fax (502) 564-4818, email Sara.Janes@ky.gov; 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 complaint and administrative hearing process to address alleged violations brought before the board.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish a complaint and administrative hearing process to address alleged violations brought before the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for the administrative hearing process to address alleged violations brought before the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in establishing the complaint, investigation, and

administrative hearing process of alleged violations brought before the board.

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

(a) How the amendment will change this existing administrative regulation: The amendment will amend language Section 5 relating to use of the term "private reprimand" for non-serious statutory or regulatory offenses to usage of the term "private admonishment" which is consistent with KRS 335.540(3). KRS 335.545 provides that a hearing is required before imposing a written reprimand. Therefore, this amendment will bring the regulation into compliance with the authorizing statutes. Additionally, this amendment will include instructions with the Complaint Form and correct the form number in the material incorporated by reference. Finally, a new section advising complainants a release of medical records may be necessary under HIPAA and a new medical release form is included in the material incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to bring the regulation into compliance with the KRS 335.540 and 335.545. Additionally, this amendment will provide complainants with instructions about the complaint management process to alleviate questions about the process expressed by complainants and make the process more efficient, correct the form number listed in the MIR, and include information and a form for a HIPAA release of medical records.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements discipline and investigation by the board

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in effective administration by clarifying the disciplinary options available for board sanctions; and will help complainants understand the complexities of filing a complaint and what to expect, including the potential need for a HIPAA release.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the 4564 active and 61 inactive licensees in some capacity, and will also affect new applicants for licensure.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A licensee will have to take no additional action to comply with the amendments if a disciplinary action ensues against the licensee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no new cost associated to the amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will clarify the disciplinary options and allow the board to issue a private admonishment that will not be considered disciplinary in nature.

(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

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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 335.515(3), KRS 211.332, KRS 211.334, KRS 211.335, and KRS 211.336.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Board of Licensed Professional Counselors.

(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.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 45 C.F.R. Section 164.512(a), (d), and (e), the regulations implementing the Health Insurance Portability Accountability Act (HIPAA).

(2) State compliance standards. The state complies with HIPAA standards.

(3) Minimum or uniform standards contained in the federal mandate. The board may be required to request medical records for an investigation which are health oversight activities and administrative proceedings of the board and disclosure is permitted under 45 C.F.R. Section 164.512(a), (d), and (e), the regulations implementing the Health Insurance Portability Accountability Act (HIPAA).

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no stricter standard being imposed, nor additional or different responsibilities or requirements.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:081. Transportation and holding of live native wildlife.

RELATES TO: KRS 150.010, 150.015, 150.320, 150.330, 150.360, 150.370, 150.990, 150.183, 150.190, 150.195, 150.235, 258.065, 258.085

STATUTORY AUTHORITY: KRS 65.877, 150.025(1), 150.105, 150.180, 150.280, 50 C.F.R. 17.3, 21.29

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.877 authorizes local governments to regulate or prohibit inherently dangerous wildlife as identified by the Kentucky Department of Fish and Wildlife Resources and requires the department to establish procedures for denying or issuing a transportation permit. KRS 150.025(1) authorizes the department to promulgate administrative regulations for the buying, selling, or transporting of wildlife. KRS 150.105 authorizes the department to dispatch or bring under control any wildlife causing damage to persons, property, or other animals spreading disease and that should be eliminated to prevent further damage. KRS 150.180 authorizes the department to regulate the buying, selling, or transporting of protected wildlife. KRS 150.280 requires the department to promulgate administrative regulations to establish the procedures for the propagation and holding of protected wildlife. 50 C.F.R. 21.29 establishes the federal standards for holding raptors for falconry purposes. This administrative regulation establishes requirements for the buying, selling, holding, and transportation of live native wildlife.

Section 1. Definitions.

(1) "Bred in captivity" or "Captive bred" refers to wildlife, including eggs, born or otherwise produced in captivity from parents that mated or otherwise transferred gametes in captivity, if reproduction is sexual, or from parents that were in captivity when development of the progeny began, if development is asexual.

(2) "Enhanced Rabies Surveillance Zone" means Bell, Boyd, Bracken, Carter, Clay, Elliot, Fleming, Floyd, Greenup, Harlan, Johnson, Knott, Knox, Laurel, Lawrence, Leslie, Letcher, Lewis, Martin, Mason, McCreary, Pike, Pery, Robertson, and Whitley counties.

(3)[(2)] "Native wildlife" means wildlife species that have:[(a)] [Historically] historically existed[or], currently exist,or have naturally expanded their range:[in the wild in Kentucky without introduction by humans; or]

[(b)] [Naturally expanded their range into Kentucky without introduction by humans.]

(a) In the wild into Kentucky;

(b) Without introduction by humans; and

(c) Regardless of:

1. Origin or location of an individual animal; and

2. Being captive-bred or taken from the wild.

(4)[(3)] "Rabies vector species" means a:

(a) Coyote (Canis latrans);

(b) Gray fox (Urocyon cinereoargenteus);

(c) Raccoon (Procyon lotor);

(d) Red fox (Vulpes vulpes);

(e) Spotted skunk (Spilogale putorius);

(f) Striped skunk (Mephitis mephitis); or

(g) Any hybrid of paragraphs (a) through (f) of this subsection.

Section 2. Taking and Possessing Native Wildlife.

(1) A person shall not possess native wildlife that was not legally acquired.

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(2) For native wildlife obtained from the wild, a person shall not:

- (a) Buy;
- (b) Sell;
- (c) Offer to buy;
- (d) Offer to sell; or
- (e) Trade or barter.

(3) Except as established in Sections 5(9) and 7(1) of this administrative regulation and subsections (4),(5), (6), and (9) of this section, a person holding native wildlife in captivity shall apply for and obtain the appropriate permit prior to acquiring wildlife.

(4) Northern bobwhite.

(a) A person may possess 100 or fewer northern bobwhite without a captive wildlife permit, if the:

- 1. Birds are not propagated or sold; and
- 2. Person retains and possesses a receipt or proof of purchase.

(b) A person possessing northern bobwhite for dog training areas, shooting areas, or a shoot-to-train season shall comply with all applicable requirements of 301 KAR 2:041.

(c) Any confining facility shall comply with Sections 8 through 11 of this administrative regulation.

(5) Amphibians and reptiles.

(a) Five (5) or fewer individuals of each species of native reptile or amphibian may be taken ~~year-round~~ or possessed for personal use without a permit, except there shall be:

- 1. No limit on common snapping or softshell turtles, as established in 301 KAR 1:058;
- 2. A limit of fifteen (15) bullfrogs per night, during the bullfrog season, as established in 301 KAR 1:082; and
- 3. A limit of twenty-five (25) dusky salamanders of the genus *Desmognathus*, as established in 301 KAR 1:130.

(b) There shall be no limit on the number of individuals of each species possessed by a commercial or noncommercial captive wildlife permit holder, if the permit holder does not possess more than five (5) wild-caught individuals of each species of amphibian or reptile.

(c) A captive wildlife permit shall not be required to hold reptiles with a color morphology that is distinctly different from the wild type of the same species of reptile.

(6) A person with a valid falconry permit, as established in 301 KAR 2:195, shall not be required to possess a noncommercial captive wildlife permit or transportation permit for those raptors held under the falconry permit.

(7) A rabies vector species that is trapped in accordance with 301 KAR 2:251 shall be dispatched before being moved, unless immediately released at capture site, except that red foxes and coyotes trapped during the trapping season, as established in 301 KAR 2:251, may be:

(a) Held for up to forty-eight (48) hours with a valid noncommercial captive wildlife permit only for the purpose of being transferred to a permitted ~~[commercial]~~ foxhound training enclosure as established in 301 KAR 2:041; and

(b) Transferred from the wild to a permitted ~~[commercial]~~ foxhound training enclosure if the enclosure is located within the county of capture but may not be transferred from one foxhound training enclosure to another.

(8) A person shall not transport a living rabies vector species into or out of the Enhanced Rabies Surveillance Zone.

(9) ~~[Except for foxes and coyotes, a]~~ A captive wildlife permit shall not be required for captive-bred native wildlife legally imported or held in a temporary facility for ten (10) days or less.

(10) A permit holder shall report all bites and exposure events, as established in KRS 258.065, to the local county health department within twelve (12) hours.

(11) If a native mammal in a permit holder's possession bites a person or a mammal shows symptoms of a rabies infection, the animal shall be dispatched immediately, as established in KRS 258.085(1)(c), and the permit holder shall submit its head for testing immediately to a laboratory approved by the Secretary for Health and Family Services to be tested for rabies, as established in 902 KAR 2:070, Section 5.

(12) Department staff shall confiscate and dispatch any wild mammal that bites a person or shows symptoms of a rabies infection if the animal is not otherwise immediately dispatched pursuant to

subsection (11) of this section.

Section 3. Captive Wildlife Permits and Record Keeping.

(1) Commercial captive wildlife permit.

(a) A commercial captive wildlife permit shall be required for a person to:

- 1. Sell;
- 2. Offer to sell;
- 3. Trade;
- 4. Barter; or
- 5. Profit in any way from captive native wildlife, except as authorized by Section 2(9) of this administrative regulation.

(b) A commercial captive wildlife permit shall be renewable annually from the date of issue.

(c) A commercial captive wildlife permit shall be valid for one (1) specific captive wildlife facility.

(2) Noncommercial captive wildlife permit.

(a) A noncommercial captive wildlife permit shall be required for a person possessing native wildlife, but not selling, offering to sell, trading, bartering, or profiting in any way from captive native wildlife.

(b) A noncommercial captive wildlife permit shall be renewable three (3) years from the date of issue.

(c) A noncommercial captive wildlife permit shall be valid for one (1) specific captive wildlife facility.

(3) A captive wildlife permit holder shall maintain accurate records for all captive-bred and wild-captured wildlife and include the information established in paragraphs (a) and (b) of this subsection.

(a) For each captive-bred animal, a person shall:

- 1. Record the common and scientific name;
- 2. Keep evidence of legal acquisition, which shall be a:
 - a. Bill of sale;
 - b. Receipted invoice; or
 - c. Certificate of origin;
- 3. Record and maintain each animal's date of birth;
- 4. Record and maintain each transaction date related to:
 - a. Sale;
 - b. Purchase;
 - c. Trade;
 - d. Barter; or
 - e. Gifting; and
- 5. Record and maintain information of the person either receiving or transferring captive wildlife, which shall include the person's:
 - a. Name;
 - b. Address;
 - c. Phone number; and
 - d. Captive wildlife permit number.

(b) For each wild-captured animal, a person shall record and maintain the:

- 1. Common and scientific name;
- 2. Date of capture or date when received;
- 3. Location of capture;
- 4. Trapping license or hunting license number, if applicable, of the individual obtaining the wildlife; and
- 5. Information of the person to whom the animal was given or received, which shall include the person's:
 - a. Name;
 - b. Address;
 - c. Phone number; and
 - d. Captive wildlife permit number.

- (4) A captive wildlife permit holder shall:
 - (a) Maintain all records for at least five (5) years; and
 - (b) Allow records to be inspected by a department representative upon request.

Section 4. Transportation Permits and Certificates of Veterinary Inspection.

(1) A person shall apply for and obtain a valid transportation permit or permit authorization number from the department for all shipments of native wildlife, unless otherwise exempted by this or another administrative regulation, prior to:

(a) Receiving a shipment of native wildlife from outside of Kentucky;

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- (b) Importing native wildlife into Kentucky; or
- (c) Transporting native wildlife into and through the state to a destination outside Kentucky.

(2) A copy of a valid transportation permit or permit authorization number shall accompany all shipments of native wildlife into and through Kentucky.

(3) An individual transportation permit shall be valid for one (1) shipment of native wildlife.

(4) An annual transportation permit shall be valid for multiple wildlife shipments for one (1) year from the date of issue.

(5) All shipments of wildlife, except for amphibians and reptiles, shall be accompanied by a:

- (a) Certificate of veterinary inspection stating that the wildlife is free from symptoms of disease; or
- (b) Federal quarantine certificate.

Section 5. Applying for Permits.

(1) A permit shall authorize a person to hold native wildlife according to this administrative regulation.

(2) An applicant for a captive wildlife or transportation permit shall:

(a) Submit a completed Captive Wildlife Permit Application and Checklist;

(b) Provide the department with a valid email address;

(c) Submit the ~~annual~~ permit fee as established in 301 KAR 3:022, except for ~~applicants meeting government agencies that meet~~ the requirements in subsections (11) and (13)~~subsection (12)]~~ of this section; and

(d) Be at least eighteen (18) years of age.

(3) For a commercial or noncommercial captive wildlife permit, an applicant shall submit a completed Captive Wildlife Permit Application and Checklist;

(4) For an individual transportation permit, an applicant shall submit a completed Individual Transportation Permit Application; or

(5) For an annual transportation permit, an applicant shall submit a completed Annual Transportation Permit Application.

(6) An applicant for a captive wildlife permit shall only obtain wildlife from:

(a) A legal purchase or transfer of captive-bred animals from a commercial captive wildlife permit holder;

(b) A gift from a commercial or noncommercial captive wildlife permit holder;

(c) Wildlife trapped by the applicant during a legal season for the species with a valid trapping license, if applicable; or

(d) A legal out-of-state source if the applicant provides a valid transportation permit.

(7) Following permit issuance, the permit holder shall retain records as established in Section 3(3) and (4) of this administrative regulation.

(8) An applicant shall construct holding facilities that meet or exceed the enclosure specifications established in Sections 8 and 9 of this administrative regulation for each listed species to be acquired before submitting the Captive Wildlife Permit Application and Checklist.

(9) A person in legal possession of native wildlife who moves to Kentucky shall have thirty (30) days to pass a facility inspection and apply for a captive wildlife permit, if the person possessed a valid transportation permit to import the wildlife.

(10) A captive wildlife permit holder shall not simultaneously hold a wildlife rehabilitation permit.

(11) An applicant shall submit a completed Captive Wildlife Permit Application and Checklist and the correct fee, as established in 301 KAR 3:022 or 301 KAR 3:061, except if the permit holder is a government agency engaged in conservation activities, the fee shall be waived.

(12) An applicant importing into Kentucky, transporting through Kentucky, or possessing within Kentucky, federally protected migratory bird species shall possess, and provide to the department, a valid United States Fish and Wildlife Service permit, except for persons or entities that possess a valid falconry permit or meet the conditions listed in 50 C.F.R. 21.12 (a) and (b), 50 C.F.R. 21.13, and 50 C.F.R. 21.14.

(13) Federally endangered native species shall not be imported

into Kentucky, transported through Kentucky, or possessed in Kentucky, except by:

(a) A facility accredited by the Association of Zoos and Aquariums, as established in Section 7 of this administrative regulation;

(b) An individual who possesses a United States Fish and Wildlife Service permit pursuant to KRS 150.183 and 301 KAR 3:061; or

(c) A facility listed as a cooperator in an Association of Zoos and Aquariums species survival plan.[.]

(14) An annual transportation permit holder shall submit a revised Annual Transportation Permit Application to the department via mail to the address listed on the annual transportation permit application or via email at FWpermits@ky.gov for any amendments to the original application and shall not ship wildlife until a revised permit is issued by the department.

(15) A person importing or possessing native wildlife shall be responsible for following all applicable federal laws, state laws, and local ordinances regarding wildlife.

Section 6. Prohibited Species.

(1) Except as established in Sections 2(7) and 7 of this administrative regulation, 301 KAR 2:075, and 301 KAR 3:120, a person shall not import, transport into Kentucky, or possess:

~~(a) [(1)]~~ Alligator snapping turtle (*Macrochelys temminckii*);

~~(b) [(2)]~~ Bats of any species that are native to Kentucky, including:

~~1. [(a)]~~ Big Brown Bat (*Eptesicus fuscus*);

~~2. [(b)]~~ Eastern Red Bat (*Lasiurus borealis*);

~~3. [(c)]~~ Eastern Small-footed Myotis (*Myotis leibii*);

~~4. [(d)]~~ Evening Bat (*Nycticeius humeralis*);

~~5. [(e)]~~ Gray Bat (*Myotis grisescens*);

~~6. [(f)]~~ Hoary Bat (*Lasiurus cinereus*);

~~7. [(g)]~~ Indiana Bat (*Myotis sodalis*);

~~8. [(h)]~~ Little Brown Bat (*Myotis lucifugus*);

~~9. [(i)]~~ Northern Long-eared Bat (*Myotis septentrionalis*);

~~10. [(j)]~~ Rafinesque's Big-eared Bat (*Corynorhinus rafinesquii*);

~~11. [(k)]~~ Seminole Bat (*Lasiurus seminolus*);

~~12. [(l)]~~ Silver-haired Bat (*Lasionycteris noctivagans*);

~~13. [(m)]~~ Southeastern Myotis (*Myotis austroriparius*);

~~14. [(n)]~~ Tricolored Bat (*Perimyotis subflavus*); and

~~15. [(o)]~~ Virginia Big-eared Bat (*Corynorhinus townsendii virginianus*);

~~(c) [(3)]~~ Black bear (*Ursus americanus*);

~~(d) [(4)]~~ Bobcat (*Lynx rufus*);

~~(e) [(5)]~~ Copperbelly water snake (*Nerodia erythrogaster neglecta*);

~~(f) [(6)]~~ Cougar or mountain lion (*Felis concolor*);

~~(g) [(7)]~~ Hellbender (*Cryptobranchus alleganiensis*);

~~(h) [(8)]~~ Kirtland's Snake (*Clonophis kirtlandii*);

~~(i) [(9)]~~ Otter (*Lontra canadensis*);

~~(j) [(10)]~~ Rabies Vector Species:

~~1. [(a)]~~ Coyote (*Canis latrans*);

~~2. [(b)]~~ Gray fox (*Urocyon cinereoargenteus*);

~~3. [(c)]~~ Raccoon (*Procyon lotor*);

~~4. [(d)]~~ Red fox (*Vulpes vulpes*);

~~5. [(e)]~~ Spotted skunk (*Spilogale putorius*);

~~6. [(f)]~~ Striped skunk (*Mephitis mephitis*); or

~~7. [(g)]~~ Any hybrid of rabies vector species.

~~[(11)]~~ Wild rabbits (All species of the Order Lagomorpha);

~~(k) [(12)]~~ Wild turkey (*Meleagris gallopavo*); or

~~(l) [(13)]~~ Wolf (*Canis lupus*).

(2) Except as established in Section 7 of this administrative regulation, a person may possess native wild rabbits of the *Sylvilagus* genus but shall not import or transport native wild rabbits of the *Sylvilagus* genus into Kentucky.

Section 7. Exemptions.

(1) Accredited facilities. A facility that is accredited by the Association of Zoos and Aquariums shall:

(a) Not be required to obtain a transportation or captive wildlife permit for native wildlife;

(b) Be allowed to import, transport, and possess federally

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endangered species and the prohibited species established in Section 6 of this administrative regulation for official zoo activities; and

(c) Maintain prohibited species in an enclosure sufficient to prevent escape and direct contact with the public.

(2) Commissioner's exemption.

(a) Upon written request, the commissioner shall consider an exemption for the importation or possession of the prohibited species listed in Section 6 for scientific or educational purposes.

(b) The commissioner shall only grant exemptions that promote and further the purposes of KRS Chapter 150.

(c) Only the following entities shall be eligible for consideration for an exemption by the commissioner:

1. A facility that is designated as the official zoo of a municipality;
2. A government agency conducting research or education at a permanent wildlife center; or
3. A college or university conducting research or education that fulfills a classroom requirement.

(3) Legally possessed prohibited species.

(a) A permit holder with a prohibited species legally possessed in Kentucky prior to April 4, 2023, may remain in possession of the animal through the life of the animal by microchipping any rabies vector species, bobcats, or otters and reporting the microchip number to the department by submitting a Native Prohibited Wildlife Report form by June 4, 2023.

(b) Prohibited species shall not be transferred to other persons, except if the permit holder predeceases the animal, in which case the animal may be transferred to another valid permit holder.

(c) Prohibited species shall not be allowed to reproduce.

(d) A person who legally possesses prohibited wildlife shall not replace that wildlife after its death.

(e) Prohibited species possessed or imported into Kentucky shall be maintained within an enclosure sufficient to prevent:

1. Escape; and
2. Direct contact with the public.

Section 8. Confining Facilities.

(1) Except as established in 301 KAR 2:041, a cage, pen, or other enclosure for confining native wildlife shall be of sufficient structural strength to:

- (a) Prevent the escape of the captive animal;
- (b) Protect the caged animal from injury and predators; and
- (c) Prevent the entrance of free individuals of the same species.

(2) A wing-clipped and pinioned bird may be kept in a suitable unroofed enclosure, even if wild birds of the same species may enter the enclosure.

(3) A person shall not maintain any native wildlife in captivity in an unsanitary or unsafe condition or in a manner that results in the maltreatment or neglect of that wildlife.

(4) Native wildlife shall not be confined in any cage or enclosure that does not meet the minimum cage specifications in Section 9 of this administrative regulation.

(5) A cage or enclosure shall be maintained as established in paragraphs (a) through (n) of this subsection.

(a) Clean drinking water shall be provided daily in clean containers.

(b) Swimming or wading pools shall be cleaned as needed to ensure good water quality.

(c) Any cage or enclosure shall provide adequate drainage of surface water.

(d) A captive mammal or bird shall be fed daily.

(e) Food shall be:

1. Of a type and quantity that meets the nutritional requirements for the particular species; and
2. Provided in an unspoiled and uncontaminated condition.

(f) Any feeding container shall be kept clean, and uneaten food shall be removed within a reasonable time.

(g) A shelter shall be provided for security and protection from inclement weather.

(h) Shade or an overhead structure shall be provided in warm seasons.

(i) Fecal and food waste shall be:

1. Removed from cage daily; and

2. Stored or disposed of in a manner that prevents noxious odors and insect pests.

(j) Any cage or enclosure shall be ventilated to prevent noxious odors.

(k) A hard floor within a cage or enclosure shall be cleaned a minimum of once per week.

(l) A cage or enclosure with a dirt floor shall be raked a minimum of once every three (3) days with the waste removed.

(m) Animals that are compatible may be held in the same enclosure. Each enclosure with compatible animals held in the same enclosure shall comply with the required floor space established in Section 9 of this administrative regulation.

(n) A common wall shall be constructed between animals that are not compatible so that the animals cannot interact.

Section 9. Minimum Enclosure Sizes and Associated Requirements for Stationary Facilities.

(1) Birds.

(a) A northern bobwhite older than fourteen (14) weeks shall be held in an enclosure that meets the requirements established in subparagraphs 1. through 3. of this paragraph.

1. An enclosure for a single northern bobwhite shall be a minimum of 100 square feet.

2. There shall be an increase of at least one (1) square foot per additional northern bobwhite.

3. A northern bobwhite may be held in a smaller breeding pen during the breeding season.

(b) A duck shall be held in an enclosure that meets the requirements established in subparagraphs 1. and 2. of this paragraph.

1. No more than two (2) pairs or one (1) pair and their offspring prior to first molt shall be confined to an area smaller than 100 square feet; and

2. There shall be at least two (2) square feet of additional land space for each additional adult duck.

(c) A goose shall be held in an enclosure that meets the requirements established in subparagraphs 1. through 3. of this paragraph.

1. No more than two (2) pair or one (1) pair and their offspring prior to first molt shall be confined to an area smaller than 500 square feet.

2. There shall be a minimum of fifty (50) square feet of water that is two (2) feet or greater in depth.

3. There shall be at least 100 square feet of land and twenty-five (25) square feet of water surface for each additional adult goose.

(d) A ruffed grouse shall be held in an enclosure that meets the requirements established in subparagraphs 1. and 2. of this paragraph.

1. There shall be 200 square feet of floor space and an enclosure height of at least six (6) feet for five (5) or fewer birds.

2. There shall be an additional twenty (20) square feet of floor space for each additional bird.

(e) A raptor shall be held in an enclosure meeting the federal falconry standards described in 50 C.F.R. Part 21.29.

(2) Mammals.

(a) A bat shall be held in an enclosure that meets the requirements established in subparagraphs 1. through 3. of this paragraph.

1. A little brown bat, long-eared bat, and pipistrelle shall be held in an enclosure that is at least 6 ft. x 6 ft. x 6 ft.

2. An evening or red bat shall be held in an enclosure that is at least 8 ft. x 12 ft. x 8 ft.

3. A big brown or hoary bat shall be held in an enclosure that is at least 10 ft. x 20 ft. x 8 ft.

(b) Except as established in 301 KAR 2:041, a fox, bobcat, or raccoon shall be held in an enclosure that meets the requirements established in subparagraphs 1. and 2. of this paragraph.

1. A single animal enclosure shall be at least 8 ft. x 8 ft. x 6 ft.

2. There shall be at least thirty (30) square feet floor space for each additional animal.

(c) A coyote shall be held in an enclosure that meets the requirements established in subparagraphs 1. and 2. of this paragraph.

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1. A single animal enclosure shall be at least 8 ft. x 8 ft. x 6 ft.
2. There shall be at least twenty-five (25) square feet floor space for each additional animal.

(d) A beaver or otter shall be held in an enclosure that meets the requirements established in subparagraphs 1. through 4. of this paragraph.

1. A single animal enclosure shall be at least 8 ft. x 12 ft. x 6 ft. with a 4 ft. x 6 ft. pool that is at least three (3) feet deep at one (1) end.

2. There shall be an increase in horizontal cage size and pool size by at least eight (8) square feet for each additional animal.

3. An otter shall have a slide and a dry place for sleeping and retreat.

4. A beaver shall be supplied with gnawing logs and a dry place for sleeping and retreat.

(e) A muskrat or mink shall be held in an enclosure that meets the requirements established in subparagraphs 1. through 3. of this paragraph.

1. A single animal enclosure shall be at least 6 ft. x 4 ft. x 3 ft. with a 2 ft. x 4 ft. pool that is at least two (2) feet deep at one (1) end.

2. There shall be an increase in horizontal cage size by at least eight (8) square feet and a pool size of at least two (2) square feet.

3. A muskrat shall have gnawing material.

(f) A gray squirrel, fox squirrel, or flying squirrel shall be held in an enclosure that meets the requirements established in subparagraphs 1. and 2. of this paragraph.

1. A single animal enclosure shall be 4 ft. x 4 ft. x 8 ft.; and

2. There shall be an increase in floor space by two (2) square feet for each additional animal.

(g) A skunk, opossum, rabbit, or woodchuck shall be held in an enclosure that meets the requirements established in subparagraphs 1. through 3. of this paragraph.

1. A single animal enclosure shall be at least 6 ft. x 8 ft. x 8 ft.

2. There shall be an increase in floor space by at least four (4) square feet for each additional animal.

3. A woodchuck shall have several gnawing logs approximately six (6) inches in diameter.

(h) A weasel shall be held in an enclosure that meets the requirements established in subparagraphs 1. and 2. of this paragraph.

1. A single animal enclosure shall be at least 3 ft. x 3 ft. x 3 ft.

2. There shall be an increase in floor space by three (3) square feet for each additional animal.

Section 10. Mobile Facility. A mobile facility used in transporting native wildlife shall meet the requirements established in subsections (1) through (5) of this section.

(1) The mobile facility shall be equipped to provide fresh air and adequate protection from the elements, without injurious drafts.

(2) The animal housing area shall be free of engine exhaust fumes.

(3) A cage shall be large enough to ensure that each animal has sufficient room to stand erect and lie naturally.

(4) The structural strength of the enclosure shall be sufficient to contain the live animals and to withstand the normal rigors of transportation.

(5) Native wildlife housed in a mobile facility for more than ten (10) days shall be housed in a cage that meets the minimum cage specifications established in Section 8 of this administrative regulation.

Section 11. Temporary Facility. Native wildlife housed in a temporary facility or exhibit shall be housed in a cage that meets the minimum cage specifications established in Section 8 of this administrative regulation if present in any geographical location for more than ten (10) days.

Section 12. Inspections and Access.

(1) A permit holder shall allow a game warden~~[conservation officer]~~ to inspect the holding facilities and the property on which the holding facilities are located at any reasonable time.

(2) A game warden~~[conservation officer]~~ shall immediately notify the permit holder if the inspection reveals a violation of any provision

of this administrative regulation.

(3) A facility shall fail inspection if any deficiencies are found during the inspection or if the permit holder denies entry to the game warden~~[conservation officer]~~ at a reasonable time.

(4) An applicant who fails a facility inspection shall correct any deficiencies within ten (10) days of the failed inspection.

(5) A permit holder shall allow any department employee, accompanied by a game warden~~[conservation officer]~~, to access the wildlife holding facilities and the property on which the holding facilities are located at any reasonable time to carry out the purposes of this administrative regulation.

Section 13. Permit Denial and Revocation.

(1) Denial. The department shall deny the issuance of a new permit, deny a renewal of an existing or lapsed permit, and confiscate wildlife of a person who:

(a) Is convicted of a violation of any provisions of:

1. KRS Chapter 150;
2. Any department regulation; or
3. Any federal statute or regulation related to hunting, fishing, or wildlife;

(b) Provides false information on a captive wildlife permit application, transportation permit application, certificate of veterinary inspection, federal quarantine certificate, request for commissioner's exemption, federal permits, reports, facility inspection, or records;

(c) Acquires wildlife prior to receiving an approved captive wildlife permit, transportation permit, or commissioner's exemption, except as established in Section 2(4) through (6);

(d) Fails a facility inspection, as established in Section 12 of this administrative regulation; or

(e) Fails to comply with any provision of this administrative regulation, 301 KAR 2:041, 301 KAR 2:082, 301 KAR 2:084, 301 KAR 2:195, 301 KAR 2:230, or 301 KAR 2:251.

(2) Revocations.

(a) The department shall revoke the permit and confiscate wildlife, of a person who:

1. Is convicted of a violation of any provisions of:

- a. KRS Chapter 150;
- b. KAR Title 301; or
- c. Any federal statute or regulation related to hunting, fishing, or wildlife;

2. Provides false information on a Captive Wildlife Permit Application, Transportation Permit Application, Certificate of Veterinary Inspection, federal Quarantine Certificate, request for commissioner's exemption, federal permits, reports, facility inspection, or records;

3. Acquires wildlife prior to receiving an approved captive wildlife permit, transportation permit, or commissioner's exemption, except as established in Section 2(4) through (6);

4. Fails a facility inspection, as established in Section 12 of this administrative regulation; or

5. Fails to comply with any provision of this administrative regulation, 301 KAR 2:041, 301 KAR 2:082, 301 KAR 2:084, 301 KAR 2:195, 301 KAR 2:230, or 301 KAR 2:251.

(b) If a person's captive wildlife permit is revoked for one (1) facility, permits for all other facilities in their name shall be revoked.

(c) A fee shall not be refunded for a permit that is revoked.

(3) Denial period.

(a) An applicant for a captive wildlife permit, transportation permit, or commissioner's exemption whose permit or commissioner's exemption has been revoked or denied for the grounds established in this section shall be ineligible to reapply, and all applications denied for:

1. The initial denial period, for one (1) year;
2. A second denial period, for three (3) years; and
3. A third or subsequent denial period, for five (5) years;

(b) The department shall deny all Captive Wildlife Permit Applications for any facility in which a permit was denied or revoked, for the same period of time as the denial period, as established in paragraph (a) of this subsection.

(4) Commissioner's exemption.

(a) A commissioner's exemption shall be revoked for:

1. Failure to maintain wildlife in an enclosure sufficient to prevent

escape and direct contact with the public;

2. Failure to comply with the requirements established in this administrative regulation; or

3. Any other reason necessary to protect public health, public safety, native ecosystems, or native wildlife.

(b) If an exemption is terminated, all prohibited species shall be immediately placed in an enclosure sufficient to prevent escape and direct contact with the public and removed from the state within forty-eight (48) hours.

(5) Confiscated wildlife.

(a) All captive wildlife shall be confiscated if a captive wildlife permit, transportation permit, or commissioner's exemption is revoked or denied or if a person possesses native wildlife without a valid captive wildlife permit, transportation permit, or commissioner's exemption, except as established in Section 2(4), (5), or (6) or in subsection (4)(b) of this section.

(b) Confiscated wildlife shall be released, transferred, or dispatched, except that rabies vector species shall be dispatched immediately.

(c) Wildlife shall not be returned to the person, entity, or facility from which they were confiscated.

(d) Wildlife shall be surrendered to the department, for processing and disposition pursuant to this administrative regulation, upon being presented with a written order by the commissioner.[.]

(6) Administrative hearings.

(a) An individual whose permit has been denied or revoked may request an administrative hearing, which shall be conducted pursuant to KRS Chapter 13B.

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

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

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

Section 14. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Captive Wildlife Permit Application and Checklist", 2024[2022] edition;

(b) "Annual Transportation Permit Application", 2022 edition;

(c) "Individual Transportation Permit Application", 2022 edition;

(d) "Native Prohibited Wildlife Report", 2022 edition; and

(e) "Facility Inspection Checklist", 2022 edition.

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

(a) <https://fw.ky.gov/Wildlife/Documents/captivewildapp.pdf> for the "Captive Wildlife Permit Application";

(b) <https://fw.ky.gov/Wildlife/Documents/annualtransportapp.pdf> for the (Annual Transportation Permit Application";

(c) <https://fw.ky.gov/Wildlife/Documents/indtransportapp.pdf> for the "Individual Transportation Permit Application";

(d) <https://fw.ky.gov/Wildlife/Documents/nativeprohibitedreport.pdf> for the "Native Prohibited Wildlife Report"; and

(e) <https://fw.ky.gov/Wildlife/Documents/RehabLEInspectionChecklist.pdf> for the "Facility Inspection Checklist".

RICH STORM, Commissioner

APPROVED BY AGENCY: October 14, 2024

FILED WITH LRC: October 15, 2024 at 10:25 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2024, at 11 a.m., at KDFWR Administration Building, 1 Sportsman's Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend.

If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 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 requirements for the buying, selling, holding, commercial activity, and transportation of native wildlife.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide a defined process for the holding and transportation of live native wildlife. These processes are necessary to provide for the health and welfare of native wildlife and the safety of Kentucky citizens.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1)(c) authorizes the department to promulgate administrative regulations for the buying, selling, or transporting of wildlife. KRS 150.105 authorizes the department to dispatch or bring under control any wildlife causing damage to persons, property or other animals spreading disease and which should be eliminated to prevent further damage. KRS 150.180 authorizes the department to regulate the buying, selling, or transporting of protected wildlife. KRS 150.280 requires the department to promulgate administrative regulations to establish the procedures for the propagation and holding of protected wildlife. 50 C.F.R. 21.29 establishes the federal standards for holding raptors. This administrative regulation establishes requirements for the buying, selling, holding, and transportation of live native wildlife.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the requirements for applying for and receiving permits to buy, sell, hold and transport live native wildlife.

(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: These amendments will allow for the possession of native wild rabbits and establish species and permitting requirements for wildlife taken and transferred to foxhound training enclosures.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to allow people to possess native wild rabbits and streamline the permitting for foxhound training enclosures.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above. This amendment falls within the reach of the authorizing statute KRS 150.025 (1)(c).

(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: These amendments are less restrictive for the possession of native wild rabbits and permitting of foxhound training enclosures.

(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: These amendments will allow for the possession of native wild rabbits, red fox, and coyote with the proper

permits and enclosures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred for other entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Possession of native wild rabbits, red fox, and coyotes will be allowed with the proper permits and enclosures.

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

(a) Initially: There will be no initial administrative cost to the department to implement this administrative regulation beyond staff time to review permit applications and issue permits.

(b) On a continuing basis: There will be no cost to the department on a continuing basis beyond reviewing permit applications and issuing permits.

(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: No fees are being established or increased.

(9) TIERING: Is tiering applied? No. Tiering is not applied because all permit holders are 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 150.025(1)(c) authorizes the department to promulgate administrative regulations for the buying, selling, or transporting of wildlife. KRS 150.105 authorizes the department to dispatch or bring under control any wildlife causing damage to persons, property or other animals spreading disease and which should be eliminated to prevent further damage. KRS 150.180 authorizes the department to regulate the buying, selling, or transporting of protected wildlife. KRS 150.280 requires the department to promulgate administrative regulations to establish the procedures for the propagation and holding of protected wildlife. 50 C.F.R. 21.29 establishes the federal standards for holding raptors. This administrative regulation establishes requirements for the buying, selling, holding, and transportation of live native wildlife.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The department’s wildlife and law enforcement divisions will be impacted by this amendment in terms of issuing permits and enforcement.

(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? No new revenue will be generated by this administrative regulation during the first year. The existing permit fees will not change as a result of this amendment.

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

(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? No new revenue will be generated by this administrative regulation during the first year. The existing permit fees will not change as a result of this amendment.

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

(a) Estimate the following for the first year:

Expenditures: n/a

Revenues: n/a

Cost Savings: n/a

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no additional costs to administer this program for the first year.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: n/a

(b) Methodology and resources used to determine the fiscal impact: There will be no additional costs to administer this program for the first year.

(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)

(b) The methodology and resources used to reach this conclusion: There will be no additional costs to administer this program for the first year.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 50 C.F.R. 21.29 or 50 C.F.R. 17, 21, and 22.

(2) State compliance standards. KRS 150.330 and KRS 150.183

(3) Minimum or uniform standards contained in the federal mandate. 50 C.F.R. 21.29 establishes the federal standards for holding raptors for falconry purposes. 50 C.F.R. 17 establishes the federal standards for threatened and endangered wildlife, and 50 C.F.R. 17.3 defines bred in captivity and captive bred. 50 C.F.R 21 establishes the federal standards for migratory birds. 50 C.F.R 22 establishes the federal standards for bald and golden eagles as the Bald and Golden Eagle Act.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, changes to this administrative regulation were made to align with the federal statutes and regulations. The exception is that this regulation was amended to meet KRS 150.183 that prohibits federally endangered species from entering the state unless a federal permit is provided. 50 C.F.R. 17.3 defines bred in captivity or captive bred as they relate to possession of native wildlife in Kentucky.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation was amended to adhere to both federal and state statutes. KRS 150.183 prohibits importation, transportation, and possession of endangered species unless a federal permit is provided to the department. This provides further protections to endangered species that need stricter protections to populations and are often utilized for entertainment or exhibition purposes, at the detriment of native wildlife populations. The captive bred definition in 50 C.F.R. 17.3 provides clarity for permitting requirements.

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)**

301 KAR 2:082. Transportation and holding of live exotic wildlife.

RELATES TO: KRS 13B, 150.010, 150.015, 150.186, 150.320, 150.330, 150.990, 150.183, 150.195, 150.235, 258.065, 258.085

STATUTORY AUTHORITY: KRS 65.877, 150.025(1), 150.090, 150.105, 150.180, 150.280, 50 C.F.R. 17, 21, 16 U.S.C. 3371 – 3378, 18 U.S.C. 42 – 43

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.877 authorizes local governments to regulate or prohibit inherently dangerous wildlife as identified by the Kentucky Department of Fish and Wildlife Resources and requires the department to establish procedures for denying or issuing a transportation permit. KRS 150.025(1) authorizes the department to regulate the buying, selling, or transporting of wildlife. KRS 150.090 authorizes the department to appoint game wardens[~~conservation officers~~] charged with the enforcement of this chapter. KRS 150.105 authorizes the department to destroy or bring under control any wildlife causing

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damage to persons, property, or other animals spreading disease and that should be eliminated to prevent further damage. KRS 150.180 authorizes the department to regulate the transportation and importation of wildlife into Kentucky. KRS 150.280 requires the department to promulgate administrative regulations establishing procedures for the holding of protected wildlife. 50 C.F.R. 21 requires federal standards for holding migratory birds, including raptors. 50 C.F.R. 17 requires federal standards for endangered and threatened wildlife. This administrative regulation establishes the procedures for obtaining a transportation permit for exotic wildlife, prohibits the importation and possession of exotic species with the potential to damage native ecosystems, and places restrictions on importing, transporting, and holding species that are potentially dangerous to human health and safety.

Section 1. Definition. "Exotic wildlife" means wildlife species that have never naturally existed in the wild in Kentucky, including species introduced by man that have become naturalized.

Section 2. Transportation Permits and Certificates of Veterinary Inspection.

(1) A person shall apply for and obtain a valid transportation permit or permit authorization number from the department for all shipments of exotic wildlife, unless otherwise exempted or prohibited by this or another administrative regulation, prior to:

- (a) Receiving a shipment of wildlife from outside of Kentucky;
- (b) Importing exotic wildlife into Kentucky; or
- (c) Transporting exotic wildlife into Kentucky.

(2) A copy of a valid transportation permit or permit authorization number shall accompany all shipments of wildlife into Kentucky.

(3) An individual transportation permit shall be valid for one (1) shipment of wildlife.

(4) An annual transportation permit shall be valid for multiple wildlife shipments for one (1) year from the date of issue.

(5) All shipments of wildlife, except for amphibians and reptiles, shall be accompanied by a:

- (a) Certificate of veterinary inspection stating that the wildlife is free from symptoms of disease; or
- (b) Federal quarantine certificate.

Section 3. Applying for Permits.

(1) A person shall apply for a transportation permit by completing the online application process at fw.ky.gov, or by submitting the necessary forms:

(a) For an individual transportation permit, an applicant shall submit a completed Individual Transportation Permit Application form; or

(b) For an annual transportation permit, an applicant shall submit a completed Annual Transportation Permit Application form.

(2) A permit holder shall be at least eighteen (18) years of age.

(3) An applicant shall submit a completed application established in subsection (1)(a) or (b) of this section and remit the correct fee, as established in 301 KAR 3:022 or 301 KAR 3:061.

(4) An annual transportation permit holder shall submit a revised Annual Transportation Permit Application to the department via mail to the address listed on the Annual Transportation Permit Application or via email at FVPermits@ky.gov for any amendments to the original application and shall not ship wildlife until a revised permit is issued by the department.

(5) A person importing, transporting, or possessing exotic wildlife shall be responsible for following all applicable federal and state laws and local ordinances regarding wildlife.

(6) A person with a valid falconry permit, as established in 301 KAR 2:195, shall not be required to possess a transportation permit for those raptors held under the falconry permit.

(7) An applicant possessing, importing, or transporting into Kentucky from outside the state federally protected migratory bird species, shall possess, and provide to the department, a valid United States Fish and Wildlife Service permit, except for persons or entities that meet the conditions listed in 50 C.F.R. 21.12 (a) and (b), 50 C.F.R. 21.13, and 50 C.F.R. 21.14.

(8) Federally endangered exotic species shall not be imported, transported into Kentucky, or possessed, except the

Department of Fish and Wildlife Resources may allow importation, transportation, or possession of any exotic endangered species of wildlife pursuant to KRS 150.183 and 301 KAR 3:061.

Section 4. Prohibited Species.

(1) Except as established in Section 5 of this administrative regulation, a person shall not import, transport into Kentucky, or possess the following exotic wildlife that are considered potentially injurious to native ecosystems:

- (a) Baya weaver (*Ploceus philippinus*);
 - (b) Blackbirds (Genus *Agelaius*), except native species;
 - (c) Cape sparrow (*Passer melanurus*);
 - (d) Cowbirds (Genus *Molothrus*), except native species;
 - (e) Cuckoo (Family *Cuculidae*), except native species;
 - (f) Dioch or red-billed quelea (*Quelea quelea*);
 - (g) European blackbird (*Turdus merula*);
 - (h) Fieldfare (*Turdus pilaris*);
 - (i) Flying fox or fruit bat (Genus *Pteropus*);
 - (j) Fox (Genus *Cerdocyon*, Genus *Lycalopex*, Genus *Otocyon*, Genus *Urocyon*, and Genus *Vulpes*);
 - (k) Gambian giant pouched rat (*Cricetomys gambianus*);
 - (l) Giant, marine, or cane toad Rhinella marina; ~~(Bufo marinus);~~
 - (m) Hawaiian rice bird or spotted munia (*Lonchura punctulata*);
 - (n) Java sparrow (*Padda oryzivora*);
 - (o) Madagascar weaver (*Foudia madagascariensis*);
 - (p) Mistle thrush (*Turdus viscivorus*);
 - (q) Monk or Quaker parakeet (*Myiopsitta monachus*);
 - (r) Multimammate rat (Genus *Mastomys*);
 - (s) Mute swan (*Cygnus olor*);
 - (t) Nutria (*Myocastor coypus*);
 - (u) Prairie dog (*Cynomys* spp.);
 - (v) Raccoon dog (*Nyctereutes procyonoides*);
 - (w) Sky lark (*Alauda arvensis*);
 - (x) Song thrush (*Turdus philomelos*);
 - (y) Starling (Family *Sturnidae*), including pink starlings or rosy pastors (*Sturnus roseus*), except for Indian Hill mynahs (*Gracula religiosa*);
 - (z) Suricate or slender-tailed meerkat (Genus *Suricata*);
 - (aa) Tongueless or African clawed frog (*Xenopus laevis*);
 - (bb) Weaver finch (Genus *Passer*), except *Passer domesticus*;
 - (cc) White eyes (Genus *Zosterops*);
 - (dd) European rabbit (*Oryctolagus cuniculus*) that morphologically resembles wild European rabbits. ~~[Wild] [rabbits, hares, and pikas (Order Lagomorpha);]~~
 - (ee) Yellowhammer (*Emberiza citrinella*); or
 - (ff) A member of the following families:
 1. Suidae (pigs or hogs), except for domestic swine;
 2. Viverridae (civets, genets, lingsangs, mongooses and fossas); or
 3. Tayassuidae (peccaries and javelinas).
- (2) Except as established in Sections 5 and 6 of this administrative regulation, a person shall not import, transport, or possess the following inherently dangerous exotic wildlife:
- (a) Alligators or caimans (Family *Alligatoridae*);
 - (b) African buffalo (*Syncerus caffer*);
 - (c) Bears (Family *Ursidae*);
 - (d) Cheetah (*Acinonyx jubatus*);
 - (e) Clouded leopard (*Neofelis nebulosa*);
 - (f) Crocodiles (Family *Crocodylidae*);
 - (g) Elephants (Family *Elephantidae*);
 - (h) Gavia (Family *Gavialidae*);
 - (i) Gila monsters or beaded lizards (Family *Helodermatidae*);
 - (j) Hippopotamus (*Hippopotamus amphibius*);
 - (k) Honey badger or ratel (*Mellivora capensis*);
 - (l) Hyenas (Family *Hyaenidae*), including all species except aardwolves (*Proteles cristatus*);
 - (m) Komodo dragon (*Varanus komodoensis*);
 - (n) Lions, jaguars, leopards, or tigers (Genus *Panthera*);
 - (o) Lynx (Genus *Lynx*);
 - (p) Old world badger (*Meles meles*);
 - (q) Primates, nonhuman (Order *Primates*);
 - (r) Rhinoceroses (Family *Rhinocerotidae*);
 - (s) Snow leopard (*Uncia uncia*);

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(t) Venomous exotic snakes of the families Viperidae, Atractaspididae, Elapidae, Hydrophidae, and Colubridae, except for hognose snakes (Genus Heterodon);

(u) Wolverine (*Gulo gulo*); or

(v) Hybrids of a species listed in this subsection.

(3) Except as established in subsection (1) of this section and Section 5 of this administrative regulation, a person may possess, but shall not import into or transport through Kentucky wild rabbits, hares, or pikas (Order Lagomorpha).

Section 5. Exemptions.

(1) A facility that is accredited by the Association of Zoos and Aquariums shall:

(a) Not be required to obtain a transportation permit for exotic wildlife;

(b) Be allowed to import, possess, and transport into Kentucky federally endangered species and the prohibited exotic species listed in Section 4 of this administrative regulation for official zoo activities; and

(c) Maintain prohibited exotic species in an enclosure sufficient to prevent escape and direct contact with the public.

(2) Commissioner's exemption.

(a) Upon written request, the commissioner shall consider an exemption for importation, transportation into Kentucky, or possession of the prohibited species listed in Section 4 of this administrative regulation.

(b) The commissioner shall only grant exemptions that promote and further the purposes of KRS Chapter 150.

(c) Only the following entities shall be eligible for an exemption by the commissioner:

1. A facility that is designated as the official zoo of a municipality;

2. A college or university conducting research or education that fulfills a classroom requirement;

3. A lawfully operated circus only importing or possessing inherently dangerous exotic wildlife species that are not federally endangered, as listed in the Endangered and Threatened Species Act list, 50 C.F.R. 17.11;

4. A facility previously granted an exemption by the commissioner for the purpose of housing confiscated wildlife and serving as an animal holding facility as a service to the department; and

5. A facility previously granted a commissioner's exemption, as a licensed or accredited institute of education or research, that houses prohibited species at a permanent wildlife facility for educational or research purposes.

Section 6. Prohibited Species Requirements.

(1) Prohibited exotic species imported, transported into Kentucky, or possessed shall be maintained within an enclosure sufficient to prevent:

(a) Escape; and

(b) Direct contact with the public.

(2) A person shall obtain a valid transportation permit to temporarily transport into Kentucky a prohibited animal listed in Section 4(2) of this administrative regulation and shall not:

(a) Remain in Kentucky in excess of forty-eight (48) hours;

(b) Stop in Kentucky for exhibition purposes; or

(c) Sell, trade, gift, barter, offer for sale, trade, gift, barter, or profit in any way from a prohibited animal while in Kentucky.

(3) Except for Lynx, a person who legally possessed wildlife listed in Section 4(2) of this administrative regulation prior to July 13, 2005, may continue to possess the animal through the life of the animal and shall maintain:

(a) Veterinary records;

(b) Acquisition papers for the animal; or

(c) Any other evidence that establishes that the person possessed the animal in Kentucky prior to July 13, 2005.

(4) Lynx legally held in Kentucky prior to December 1, 2021, may be allowed to remain in possession of the owner through the life of the animal. The owner shall maintain:

(a) Veterinary records;

(b) Acquisition papers for the animal; or

(c) Any other evidence that establishes that the person legally

possessed the animal in Kentucky prior to December 1, 2021.

(5) A person who legally possesses wildlife pursuant to subsection (3) or (4) of this section shall not, without an exemption pursuant to Section 5 of this administrative regulation:

(a) Replace the wildlife after its death;

(b) Allow the wildlife to reproduce; or

(c) Transfer wildlife to other persons, except if the owner predeceases the animal, the animal may be transferred to another person with the approval of the department's Wildlife Division Director.

(6) If exotic wildlife listed in Section 4 of this administrative regulation escapes, the owner shall immediately contact local emergency services and the department at 800-252-5378 to report the escape.

(7) All bites, as established in KRS 258.065, or contact with applicable exotic animals that results in possible exposure to disease or zoonotic infection, shall be reported to the local county health department within twelve (12) hours.

(8) If an exotic mammal bites a person or a mammal shows symptoms of a rabies infection, the owner of the animal shall arrange for the animal to be killed in a manner as to preserve the brain intact, and the animal's head shall be submitted for testing immediately to a laboratory approved by the Secretary of the Cabinet for Health and Family Services to be tested for rabies, as established in 902 KAR 2:070, Section 5 and KRS 258.085(1)(c).

Section 7. Permit-exempt Animals. The following exotic animals shall not require permits from the department for importation, transportation into Kentucky, or possession:

(1) Alpaca (*Vicugna pacos*);

(2) American bison (*Bison bison*);

(3) Breeds and varieties of goats derived from the wild goat or bezoar (*Capra hircus*);

(4) Camel (*Camelus bactrianus* and *Camelus dromedarius*);

(5) Canary (*Serinus canaria*);

(6) Chinchilla (*Chinchilla laniger*);

(7) Cockatoo and cockatiel (family *Cacatuidae*);

(8) Domesticated races of ducks and geese (family *Anatidae*) morphologically distinguishable from wild ducks or geese;

(9) Domesticated races of the European rabbit (*Oryctolagus cuniculus*) morphologically distinguishable from wild European rabbits;

(10) Domesticated races of mink (*Mustela vison*), if:

(a) Adults are heavier than 1.15 kilograms; or

(b) The fur color can be distinguished from wild mink;

(11) Domesticated races of rats (*Rattus norvegicus* or *Rattus rattus*) or mice (*Mus musculus*);

(12) Domesticated races of turkeys (*Meleagris gallopavo*) recognized by the American Poultry Association and the U.S. Department of Agriculture, but shall not include captive held or bred wild turkeys;

(13) Domestic yak (*Bos grunniens*);

(14) Gerbil (*Meriones unguiculatus*);

(15) Guinea fowl (*Numida meleagris*);

(16) Guinea pig (*Cavia porcellus*);

(17) Hamster (*Mesocricetus* spp.);

(18) Indian Hill mynah (*Gracula religiosa*);

(19) Llama (*Lama glama*);

(20) Parrot, lovebird, budgerigar, macaw, parakeet (except monk parakeet, *M. monachus*) (families *Psittacidae*, *Psittaculidae*, and *Psittichasiidae*);

(21) Peafowl (*Pavo cristatus*);

(22) Pigeon (*Columba domestica* or *Columba livia*) or domesticated races of pigeons;

(23) Ratite, as defined by KRS 247.870; and

(24) Toucan (family *Rhamphastidae*).

Section 8. Release. With the exception of pheasants and chukars, a person shall not release exotic wildlife into the wild.

Section 9. Inspections and Access.

(1) A person in possession of exotic wildlife, pursuant to a transportation permit or commissioner's exemption, shall allow a

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~~game warden~~~~[conservation officer]~~ to inspect the holding facilities at any reasonable time to carry out the purposes of this administrative regulation.

(2) A transportation permit or commissioner's exemption holder shall allow any department employee, accompanied by a ~~game warden~~~~[conservation officer]~~, to access the holding facilities at any reasonable time to carry out the purposes of this administrative regulation.

Section 10. Permit Denial and Revocation.

(1) Denial. The department shall deny the issuance of a new permit, or deny a renewal of an existing or lapsed permit, and may confiscate wildlife from a person who:

(a) Is convicted of a violation of any provisions of:

1. KRS Chapter 150;
2. 301 KAR Chapters 1 through 5; or
3. Any federal statute or regulation related to hunting, fishing, or wildlife;

(b) Provides false information on a transportation permit application, certificate of veterinary inspection, federal quarantine certificate, request for commissioner's exemption, federal permits, reports, or records;

(c) Acquires wildlife prior to receiving a transportation permit, commissioner's exemption, or certificate of veterinary inspection, except as established in Sections 2(5), 3(7), 5(1), and 7; or

(d) Fails to comply with any provision of this administrative regulation, 301 KAR 2:041, 301 KAR 2:081, 301 KAR 2:084, 301 KAR 2:195, 301 KAR 2:230, 301 KAR 2:251, 301 KAR 3:061, 302 KAR 20:020, 302 KAR 20:040, 50 C.F.R. 17, 50 C.F.R. 21, 18 U.S.C. 42 - 43, or 16 U.S.C. 3371 - 3378.

(2) Revocations.

(a) The department shall revoke a transportation permit or commissioner's exemption, and may confiscate wildlife, of a person who:

1. Is convicted of a violation of any provisions of:

- a. KRS Chapter 150;
- b. 301 KAR Chapters 1 through 5; or
- c. Any federal statute or regulation related to hunting, fishing, or wildlife;

2. Provides false information on a transportation permit application, certificate of veterinary inspection, federal quarantine certificate, request for commissioner's exemption, federal permits, reports, or records;

3. Acquires wildlife prior to receiving a transportation permit or commissioner's exemption, except as established in Sections 3(7) and 5(1); or

4. Fails to comply with any provision of this administrative regulation, 301 KAR 2:041, 301 KAR 2:081, 301 KAR 2:084, 301 KAR 2:195, 301 KAR 2:230, 301 KAR 2:251, 301 KAR 3:061, 302 KAR 20:020, 302 KAR 20:040, 50 C.F.R. 17, 50 C.F.R. 21, 18 U.S.C. 42-43, or 16 U.S.C. 3371-3378.

(b) A fee shall not be refunded for a permit that is revoked.

(3) Denial period. An applicant for a transportation permit or commissioner's exemption whose permit or commissioner's exemption has been revoked or denied for the grounds established in this section shall be ineligible to reapply, and all applications and commissioner's exemption requests shall be denied for:

- (a) The initial denial period, for one (1) year;
 - (b) A second denial period, for three (3) years; and
 - (c) A third or subsequent denial period, for five (5) years.
- (4) Commissioner's exemption.

(a) A commissioner's exemption shall be revoked for:

1. Failure to maintain wildlife in an enclosure sufficient to prevent escape and direct contact with the public;
2. Failure to abide by the provisions established in an exemption letter or this administrative regulation; or
3. Any other reason necessary to protect public health, public safety, native ecosystems, or native wildlife.

(b) If an exemption is terminated, all prohibited species shall be immediately placed in an enclosure sufficient to prevent escape and direct contact with the public and removed from the state within forty-eight (48) hours.

(5) Confiscated wildlife.

(a) All captive wildlife may be confiscated if a transportation permit or commissioner's exemption is revoked or denied, or a person imports, transports into Kentucky, or possesses exotic wildlife without a valid transportation permit, commissioner's exemption, or certificate of veterinary inspection, except as established in Sections 2(5), 3(7), 5(1), and 7.

(b) Wildlife that is confiscated, as established in this section, shall not be returned to the person, entity, or facility from which the wildlife was confiscated.

(c) Confiscated wildlife shall be euthanized if:

1. It is necessary to protect public safety, property, or wild or domesticated animals;
2. It is necessary to protect native ecosystems;
3. The wildlife is suffering from injury or illness; or
4. A facility legally capable and properly equipped to hold the wildlife is not readily available or economically feasible.

Section 11. Administrative Hearings.

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

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

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

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

Section 12. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Annual Transportation Permit Application", 2022;

(b) "Individual Transportation Permit Application", 2022.

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

(a) <https://fw.ky.gov/Wildlife/Documents/annualtransportapp.pdf> for the "Annual Transportation Permit Application";

(b) <https://fw.ky.gov/Wildlife/Documents/indtransportapp.pdf> for the "Individual Transportation Permit Application".

RICH STORM, Commissioner

APPROVED BY AGENCY: October 14, 2024

FILED WITH LRC: October 15, 2024 at 10:25 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2024, at 10:00 a.m., at KDFWR Administration Building, 1 Sportsman's Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 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 requirements for importation, transportation, and possession of exotic wildlife.

(b) The necessity of this administrative regulation: This

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administrative regulation is necessary to provide a defined process for the holding and transportation of live exotic wildlife. These processes are necessary to provide for the protection of our native ecosystem, health and welfare of native wildlife from disease, and the safety of Kentucky citizens.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 65.877 authorizes local governments to regulate or prohibit inherently dangerous wildlife as identified by the department and requires the department to establish procedures for denying or issuing a transportation permit. KRS 150.025(1) authorizes the department to regulate the buying, selling, or transporting of wildlife. KRS 150.090 authorizes the department to appoint game wardens charged with the enforcement of this chapter. KRS 150.105 authorizes the department to destroy or bring under control any wildlife causing damage to persons, property or other animals spreading disease and which should be eliminated to prevent further damage. KRS 150.180(6) authorizes the department to regulate the importation of wildlife into Kentucky. KRS 150.280 requires the department to promulgate administrative regulations establishing procedures for the holding of protected wildlife.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the requirements for applying for and receiving transportation permits and commissioner's exemptions to possess, import, and transport through Kentucky from outside the state live exotic wildlife.

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow the possession of wild rabbits, hares, and pikas within Kentucky, with the exception of European rabbits (*Oryctolagus cuniculus*) that morphologically resemble wild European rabbits.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to protect native rabbit species from disease, which could impact populations.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will be less restrictive on people who wish to acquire exotic rabbits, hares, and pikas within 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: This amendment will allow breeding and possession of specified rabbits, hares, and pikas in Kentucky.

(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.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Possession of select rabbits, hares, and pikas will be allowed in Kentucky.

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

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

(b) On a continuing basis: There will be no cost to the department on a continuing basis.

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

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applied because all permit holders are treated the 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 65.877 authorizes local governments to regulate or prohibit inherently dangerous wildlife as identified by the department and requires the department to establish procedures for denying or issuing a transportation permit. KRS 150.025(1) authorizes the department to regulate the buying, selling, or transporting of wildlife. KRS 150.090 authorizes the department to appoint game wardens charged with the enforcement of this chapter. KRS 150.105 authorizes the department to destroy or bring under control any wildlife causing damage to persons, property or other animals spreading disease and which should be eliminated to prevent further damage. KRS 150.180(6) authorizes the department to regulate the importation of wildlife into Kentucky. KRS 150.280 requires the department to promulgate administrative regulations establishing procedures for the holding of protected wildlife.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

(a) Estimate the following for the first year:

Expenditures: n/a

Revenues: n/a

Cost Savings: n/a

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No revenue will be generated by this administrative regulation during the first year.

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

(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? No revenue will be generated by this administrative regulation during the first year.

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

(a) Estimate the following for the first year:

Expenditures: n/a

Revenues: n/a

Cost Savings: n/a

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no additional costs to administer this program for the first year.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

(b) Methodology and resources used to determine the fiscal impact: There will be no additional costs to administer this program for the first year.

(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 additional costs to administer this program for the first year.

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(b) The methodology and resources used to reach this conclusion: There will be no additional costs to administer this program for the first year.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:225. Dove, wood duck, teal, and other migratory game bird hunting.

RELATES TO: KRS 150.330, 150.340, 150.603

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600(1), 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the Kentucky Department of Fish and Wildlife Resources to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes the requirements for the taking of migratory game birds within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions.

(1) "Cooperative dove field" means a tract of land controlled by the department through lease, license, or cooperative agreement specifically for hunting doves.

(2) "Decoy" means an artificial representation of a bird meant to entice birds within range of a hunter.

(3) "Dove" means mourning dove or white-winged dove.

(4)~~(2)~~ "Drawn hunter" means a hunter who applied for a quota hunt and was selected by the department to participate in the hunt.

(5)~~(3)~~ "Experienced hunter" means an adult hunter who has hunted during more than two (2) prior license years.

(6)~~(4)~~ "Guest hunter" means a hunter invited by a drawn hunter to participate in a quota hunt.

(7)~~(5)~~ "Mentored hunter" means a hunter who:

(a) Has hunted during no more than two (2) prior license years; and

(b) Hunts with experienced hunters on department sponsored dove hunts.

(8)~~(6)~~ "Migratory game bird" means mourning dove, white-winged dove, wood duck, teal, Canada goose, common gallinule, woodcock, snipe, purple gallinule, Virginia rail, or sora rail.

(9)~~(7)~~ "Teal" means green-winged teal, blue-winged teal, or cinnamon teal.

(10)~~(8)~~ "Wildlife Management Area" or "WMA" means a tract of land:

(a) Controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) That has "Wildlife Management Area" or "WMA" as part of its official name.

(11)~~(9)~~ "Youth" means a person who has not reached his or her 16th birthday.

Section 2. September Goose Hunting Zones.

(1) The Western goose zone shall include all counties west of and including Hardin, Nelson, Washington, Marion, Taylor, Adair, and Cumberland counties.

(2) The Eastern goose zone shall include Bullitt County in its entirety and all other counties not included in the Western goose zone.

Section 3. Season Dates.

(1) A person shall not hunt a migratory game bird except during a season established in this administrative regulation, 301 KAR 2:221, or 301 KAR 2:228.

(2) The seasons established in paragraphs (a) through (g) of this subsection shall apply to migratory bird hunting.

(a) Dove, beginning on:

1. September 1 for fifty-six (56) consecutive days;
2. Thanksgiving Day for eleven (11) consecutive days; and
3. The Saturday before Christmas for twenty-three (23) consecutive days;

(b) Woodcock, beginning on the fourth Saturday in October for forty-seven (47) consecutive days, except that the season shall be closed during the first two (2) days of modern gun deer season, as established in 301 KAR 2:172;

(c) Snipe, beginning on:

1. The third Wednesday in September for forty (40) consecutive days; and

2. Thanksgiving Day for sixty-seven (67) consecutive days;

(d) Wood duck, beginning on the third Saturday in September for five (5) consecutive days;

(e) Teal, beginning on the third Saturday in September for five (5)~~nine (9)~~ consecutive days;

(f) Virginia rail, sora rail, common gallinule, and purple gallinule, beginning on September 1 for seventy (70) consecutive days; and

(g) Canada goose:

1. Eastern goose zone beginning September 16 for fifteen (15) consecutive days; and

2. Western goose zone beginning September 1 for fifteen (15) consecutive days.

Section 4. Bag and Possession Limits. A person shall not exceed the limits established in subsections (1) through (8) of this section for seasons established in Section 2 of this administrative regulation.

(1) Dove. There shall be a:

(a) Daily limit of fifteen (15); and

(b) Possession limit of forty-five (45).

(2) Eurasian collared dove. There shall not be a limit, except that a hunter, if in the field or during transport, shall keep the head or a fully-feathered wing attached to the bird.

(a) The head; or

(b) A fully-feathered wing.

(3) Woodcock. There shall be a:

(a) Daily limit of three (3); and

(b) Possession limit of nine (9).

(4) Snipe. There shall be a:

(a) Daily limit of eight (8); and

(b) Possession limit of twenty-four (24).

(5) Virginia and sora rail, singly or in aggregate. There shall be a:

(a) Daily limit of twenty-five (25); and

(b) Possession limit of seventy-five (75).

(6) Common and purple gallinule, singly or in aggregate. There shall be a:

(a) Daily limit of three (3); and

(b) Possession limit of nine (9).

(7) Wood duck and teal. There shall be a:

(a) Daily limit of six (6), which shall not include more than two (2) wood ducks; and

(b) Possession limit of eighteen (18), which shall not include more than six (6) wood ducks.

(8) Canada goose.

(a) For the Canada goose seasons beginning in September, there shall be a:

1. Daily limit of five (5); and

2. Possession limit of fifteen (15).

(b) Bag and possession limits for all remaining Canada goose seasons shall be as established in 301 KAR 2:221.

Section 5. Shooting Hours. A person shall not take a migratory game bird except during the times established in this section.

(1) If hunting dove on WMA land or cooperative dove field, a person shall hunt:

(a) Between 11 a.m. and sunset during the September and October portion of the season, as established in Section 2 of this administrative regulation; and

(b) Between one-half (1/2) hour before sunrise and sunset during the remainder of the season, as established in Section 2 of this administrative regulation.

(2) If hunting dove on private land, a person shall hunt:

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- (a) Between 11 a.m. and sunset on September 1; and
- (b) Between one-half (1/2) hour before sunrise and sunset during the remainder of the season, as established in Section 2 of this administrative regulation.
- (3) Other species listed in this administrative regulation shall be taken between one-half (1/2) hour before sunrise and sunset.

Section 6. Hunter Orange. A person shall be exempt from hunter orange requirements pursuant to 301 KAR 2:132 and 2:172 if:

- (1) Hunting waterfowl or doves; or
- (2) Accompanying a person hunting waterfowl or doves.

Section 7. Exceptions to Statewide Migratory Game Bird Seasons.

- (1) A person shall not:
 - (a) Hunt wood duck or teal on an area closed to waterfowl hunting as established in 301 KAR 2:222;
 - (b) Hunt in an area marked by a sign as closed to hunting;
 - (c) Enter an area marked by a sign as closed to the public; or
 - (d) Hunt geese during September on:
 1. Public land in the Ballard Zone, as established in 301 KAR 2:221; ~~and~~
 2. Cave Run Lake and the public land inside the boundary formed by Highways 801, 1274, 36, 211, U.S. 60, and Highway 826; ~~and~~ ~~[-]~~
 - (e) Use a decoy while hunting doves on WMA land or cooperative dove field prior to October 1.

(2) A person hunting migratory birds on any of the areas established in paragraphs (a) through (k) of this subsection shall only use or possess nontoxic shot approved by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. Parts 20 and 21:

- (a) Ballard WMA;
- (b) Boatwright WMA;
- (c) Doug Travis WMA;
- (d) Duck Island WMA;
- (e) Kaler Bottoms WMA;
- (f) Kentucky River WMA;
- (g) Ohio River Islands WMA;
- (h) Sloughs WMA;
- (i) South Shore WMA;
- (j) Yatesville Lake WMA; and
- (k) A WMA wetland management unit that is posted by sign.

(3) At Ballard WMA and the Swan Lake Unit of Boatwright WMA, a person shall not hunt:

- (a) Dove, Virginia rail, sora rail, common gallinule, purple gallinule, or snipe after October 13; or
- (b) Woodcock.
- (4) At Miller Welch - Central Kentucky WMA, a person shall not hunt:

- (a) Dove or snipe after October 13; or
- (b) Woodcock.
- (5) At Grayson Lake WMA, a person shall not hunt:
 - (a) Within three-quarters (3/4) of a mile from the dam including the no-wake zone of the dam site marina;
 - (b) On Deer Creek Fork; or
 - (c) On Camp Webb property or the state park, except for participants drawn for any department-sponsored quota dove hunt on Camp Webb property in September.
- (6) At Land Between the Lakes National Recreation Area, a person shall not hunt a migratory game bird between the last Saturday in September and November 30.

(7) At West Kentucky WMA, a person shall not hunt Canada geese during the September season.

(8) At Yatesville Lake, the following areas shall be closed to waterfowl hunting, unless authorized by Yatesville Lake State Park:

- (a) The Greenbrier Creek embayment; and
- (b) The lake area north of the mouth of the Greenbrier Creek embayment to the dam, including the island.

(9) At Robinson Forest WMA, a person shall not hunt a migratory game bird on the main block of the WMA.

Section 8. Youth and Mentored Hunter Dove Hunts.

- (1) There shall be department-sponsored youth and mentored

hunter dove hunts in which participants shall be selected by a random computerized drawing.

- (2) A youth or mentored hunter shall:
 - (a) Apply on the department's Web site at fw.ky.gov between the first Monday in August and the third Friday in August; and
 - (b) Carry a department provided selection notification letter on the day of the hunt.
 - (3) Each youth or mentored hunter shall be accompanied by an experienced hunter.
 - (4) At the youth or mentored hunter hunts:
 - (a) Each youth or mentored hunter shall not be accompanied by more than one (1) experienced hunter;
 - (b) One (1) experienced hunter may accompany two (2) youths or mentored hunters; and
 - (c) A maximum of two (2) shotguns are allowed per party.
 - (5) A person shall:
 - (a) Hunt within fifteen (15) feet of the assigned location stake; and
 - (b) Not change locations unless another location has been vacated by the assigned hunter.
 - (6) A person shall only discharge a firearm within fifteen (15) feet of the assigned location stake.
 - (7) A person shall leave their firearm at the assigned location stake when retrieving birds.
 - (8) A hunter participating in youth or mentored hunter hunts shall:
 - (a) Check-in prior to hunting;
 - (b) Not begin hunting before 2 p.m.;
 - (c) Cease hunting by 7 p.m.;
 - (d) Exit the area by 7:30 p.m.; and
 - (e) Check out before exiting the field.

Section 9. Dove Quota Hunts.

(1) A person applying to hunt doves on a department dove quota hunt shall:

- (a) Apply on the department's web site at fw.ky.gov between the first Monday in August and the third Friday in August; and
- (b) Not apply for more than one (1) quota hunt.
- (2) A person drawn to hunt on a dove quota hunt may bring up to one (1) additional guest hunter.

(3) (a) A hunter need not apply for the quota hunt to participate as a guest.

(b) Checking in prior to or participating in the quota hunt shall not constitute applying for the quota hunt.

- (4) A person hunting doves on department quota hunt shall:
 - (a) Check in prior to hunting;
 - (b) Not begin hunting before 1 p.m. in the Eastern Time Zone and by 12 p.m. in the Central Time Zone;
 - (c) Carry a copy of his or her department provided selection notification letter on the day of the hunt, except a guest hunter shall carry a copy of his or her host hunter's selection notification letter;
 - (d) Not hunt as a guest hunter unless the drawn hunter who invited them is present in field;
 - (e) Cease hunting and exit the field by 6 p.m. in the Eastern Time Zone and by 5 p.m. in the Central Time Zone;
 - (f) Check out of the area by accurately completing the Dove Quota Post-hunt Hunter Survey provided by the department and submitting the survey at the department designated drop point before exiting the field; and
 - (g) Not possess more than fifty (50) shotshells.

(5) (a) A hunter need not apply for the quota hunt to participate as a guest.

(b) Checking in prior to or participating in the quota hunt shall not constitute applying for the quota hunt.

(4) A person hunting doves on department quota hunt shall:

- (a) Check in prior to hunting;
- (b) Not begin hunting before 1 p.m. in the Eastern Time Zone and by 12 p.m. in the Central Time Zone;
- (c) Carry a copy of his or her department provided selection notification letter on the day of the hunt, except a guest hunter shall carry a copy of his or her host hunter's selection notification letter;
- (d) Not hunt as a guest hunter unless the drawn hunter who invited them is present in field;
- (e) Cease hunting and exit the field by 6 p.m. in the Eastern Time Zone and by 5 p.m. in the Central Time Zone;
- (f) Check out of the area by accurately completing the Dove Quota Post-hunt Hunter Survey provided by the department and submitting the survey at the department designated drop point before exiting the field; and
- (g) Not possess more than fifty (50) shotshells.

(5) (a) A hunter need not apply for the quota hunt to participate as a guest.

(b) Checking in prior to or participating in the quota hunt shall not constitute applying for the quota hunt.

(4) A person hunting doves on department quota hunt shall:

(a) Check in prior to hunting;

(b) Not begin hunting before 1 p.m. in the Eastern Time Zone and by 12 p.m. in the Central Time Zone;

(c) Carry a copy of his or her department provided selection notification letter on the day of the hunt, except a guest hunter shall carry a copy of his or her host hunter's selection notification letter;

(d) Not hunt as a guest hunter unless the drawn hunter who invited them is present in field;

(e) Cease hunting and exit the field by 6 p.m. in the Eastern Time Zone and by 5 p.m. in the Central Time Zone;

(f) Check out of the area by accurately completing the Dove Quota Post-hunt Hunter Survey provided by the department and submitting the survey at the department designated drop point before exiting the field; and

(g) Not possess more than fifty (50) shotshells.

Section 10. Incorporation by Reference.

(1) "Dove Quota Post-hunt Hunter Survey", First Edition, 2022[¹], is incorporated by reference.

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

(3) This material may also be found on the department's Web site at fw.ky.gov.

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RICH STORM, Commissioner

APPROVED BY AGENCY: October 14, 2024

FILED WITH LRC: October 15, 2024 at 10:25 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 2024, at 10:30 a.m., at KDFWR Administration Building, 1 Sportsman's Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 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 seasons and bag limits within federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS). In addition, it establishes requirements for the hunting of migratory birds.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish annual migratory bird hunting seasons in accordance with the USFWS.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes procedures for the taking of migratory game birds within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

(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 migratory bird hunting seasons and area specific requirements consistent with state, national, and international management goals.

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

(a) How the amendment will change this existing administrative regulation: This amendment will reduce the length of the September teal season from nine (9) days to five (5) days. Further, this amendment will disallow the use of decoys by dove hunters on Department controlled lands during the month of September.

(b) The necessity of the amendment to this administrative regulation: Teal seasons are set under pre-agreed upon Adaptive Harvest Management (AHM) agreements with the US Fish and Wildlife Service. Based on surveys conducted in the spring of 2024, teal populations fell below the level which allows for a "liberal" package and instead mandated the use of a "moderate" package. In Kentucky, the moderate AHM package mandates a maximum of 5 days of teal hunting in September for the 2025-2026 season. Decoys have become a problem on public dove fields in recent seasons. The use of motorized decoys has resulted in many quickly diving and low flying doves and has created a less safe environment for hunters using public dove fields. Additionally, numerous hunters have arrived in public dove fields early and used arrays of decoys to "block off" areas around them to keep other hunters away from their spots.

This has created conflicts and discontent among other hunters.

(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: There are approximately 40,000 migratory bird hunters 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: Migratory bird hunters will now have to hunt teal during a September timeframe on only five (5) consecutive days beginning the third Saturday in September. Dove hunters wishing to utilize public land dove hunting opportunities will have to forgo the use of decoys to attract dove during the month of September.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Teal hunters will be in compliance with federal law. Dove hunters utilizing Department controlled lands will experience safer hunts with less likelihood of conflict over who gets to hunt a specific area.

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

(a) Initially: This administrative regulation change will result in no initial change in administrative cost to the Department.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied. The same requirements and limits apply to all migratory bird hunters.

FISCAL 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), 150.360, 150.600, and 50 C.F.R. Parts 20 and 21.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Department of Fish and Wildlife and its Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

(a) Estimate the following for the first year:

Expenditures: No additional expenditures will be necessitated by the amendments to this administrative regulation during the first year.

Revenues: No revenue will be generated by amendments to this administrative regulation during the first year.

Cost Savings: No cost savings will be generated by amendments to this administrative regulation during the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no differences to expenditures, revenues or cost savings in subsequent years.

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

**EDUCATION AND LABOR CABINET
Kentucky Board of Education
Department of Education
(Amendment)**

- (a) Estimate the following for the first year:
Expenditures: N/A
Revenues: N/A
Cost Savings: N/A
- (b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no impact on expenditures, revenues or cost savings in subsequent years.
- (4) Identify additional regulated entities not listed in questions (2) or (3): None.
- (a) Estimate the following for the first year:
Expenditures: N/A
Revenues: N/A
Cost Savings:
- (b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no impact on expenditures, revenues or cost savings in subsequent years.
- (5) Provide a narrative to explain the:
- (a) Fiscal impact of this administrative regulation: There will be no fiscal impact generated by the amendment to this administrative regulation. The reduced number of hunting days is mandated by federal law to protect harvested populations. In Kentucky, most hunters hunt the opening weekend of this season, and few (<1000) were hunting on the final days of the season. The reduction will not reduce hunter numbers but instead just limit total harvest. The prohibition of decoys will not limit the number of people hunting. It will just mean those hunting are safer and less likely to have conflicts.
- (b) Methodology and resources used to determine the fiscal impact: Experience of KDFWR staff.
- (6) Explain:
- (a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) . These regulation changes will not have a "Major economic impact".
- (b) The methodology and resources used to reach this conclusion: Experience of KDFWR staff.

FEDERAL MANDATE ANALYSIS COMPARISON

- (1) Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.
- (2) State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Parts 20 and 21.
- (3) Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the earliest opening and latest closing date, the maximum number of days a species is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.
- (4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.
- (5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the regulatory frameworks that a state may allow. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect local, regional and/or state populations of birds important to Kentucky's migratory bird hunters. Restricting bag limits provides the state the ability to protect populations that may be of concern on the state level but not on a national scale. The greatest concentrations of migratory birds and the greatest hunting pressure often occur on public lands managed by the Department. The Department imposes more restrictive regulations on these lands in effort to meet migratory bird management objectives while still providing quality hunting opportunity.

704 KAR 3:365. Complaint procedures for programs under the Elementary and Secondary Education Act of 1965.

RELATES TO: KRS 156.010, 156.035, 20 U.S.C. 6320, 20 U.S.C. 7844, 20 U.S.C. 7883
STATUTORY AUTHORITY: KRS 156.035, 156.070, 20 U.S.C. 6320, 7844, 7883
NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes complaint procedures pursuant to Sections 1117, 8304, and 8503 of the Elementary and Secondary Education Act of 1965 (ESEA) as amended by the Every Student Succeeds Act. Section 8304 of ESEA requires the Kentucky Department of Education (department) to adopt written procedures for the receipt and resolution of complaints alleging violations of law in the administration of programs under ESEA. Sections 1117 and 8503 of ESEA require the department to resolve complaints related to equitable services to nonpublic school children.

Section 1. Complaints Against a Local Education Agency.

- (1) Complaints related to equitable services to nonpublic school children shall be governed by Section 3 of this administrative regulation.
- (2) Complaints originating at the local level alleging a violation by a local education agency (LEA) of a federal statute or regulation that applies to a program under ESEA shall be decided by the department only after such complaints have been filed and decided[heard] at the local level in accordance with local education agency policy.
- (3) A complaint not resolved at the local level may be submitted to the department by mail at the following address: Kentucky Department of Education, c/o ESEA Complaints, 300 Sower Boulevard – 5th Floor, Frankfort, Kentucky 40601.
- (4) Complaints mailed to the department shall be in the form of a written, signed statement that includes:
- (a) A statement that a requirement that applies to an ESEA program has been violated by the LEA and that the complaint has been filed and decided by the LEA;
- (b) The facts on which the statement is based, a description of the nature of the problem, and the specific ESEA requirement(s) allegedly violated by the LEA;
- (c) A signature and contact information for the complainant; and
- (d) A potential resolution of the problem to the extent it is known and available to the complainant at the time of the filing.
- (5) Upon receipt of a complaint, the department shall carry out an investigation if necessary. During the investigation period:
- (a) The complainant and the LEA shall each have an opportunity to submit additional information about any allegation in the complaint;
- (b) The LEA shall have an opportunity to respond to the complaint, including making a proposal to resolve such amicably; and
- (c) Any on-site investigation, if deemed necessary by the department, shall be made following adequate advance notice to the parties involved and may include the gathering of information through:
1. Direct observation;
 2. Interviews; or
 3. Examination of records.
- (6) Within forty-five (45) days of receiving a complaint, the department shall issue a written decision for each allegation in the complaint. If exceptional circumstances exist with respect to a particular complaint, an extension of the time limit may be granted by the department. Written decisions issued by the department shall include:
- (a) A description of applicable statutory and regulatory requirements;
 - (b) A description of the procedural history of the complaint;
 - (c) Findings of fact supported by citation, including page

numbers, to supporting documents:

(d) Legal analysis and conclusion;

(e) Corrective actions, if applicable;

(f) A statement of appeal rights, if applicable;

(g) A statement regarding the department's determination about whether it will provide services; and

(h) All documents reviewed by the department in reaching its decision, paginated consecutively.

(7) The complainant or LEA shall have a right to request the Commissioner, or his designee, reconsider the written decision issued pursuant to [in] subsection (6). To initiate reconsideration, the complainant or LEA shall send, by certified mail to the department, a written request within fifteen (15) days of the issuance of the department's decision issued pursuant to [in] subsection (6). The request for reconsideration must include reference to the specific finding(s) of fact, conclusion(s) of law, or corrective action(s) included in the decision issued pursuant to subsection 6 that the party requesting reconsideration disagrees with, as well as the specific reasons the findings are believed to be in error. Written reconsideration decisions issued by the department shall include:

(a) A description of applicable statutory and regulatory requirements;

(b) A description of the procedural history of the complaint;

(c) Findings of fact supported by citation, including page numbers, to supporting documents;

(d) Legal analysis and conclusion;

(e) Corrective actions, if applicable;

(f) A statement of appeal rights, if applicable;

(g) A statement regarding the department's determination about whether it will provide services; and

(h) All documents reviewed by the department in reaching its decision, paginated consecutively.

(8) Following the receipt of a request pursuant to subsection (7), the Commissioner, or his designee, shall reconsider the specific findings of fact, conclusions of law, and corrective actions contained in department's decision in subsection (6) and identified in the regulation for reconsideration, and shall issue a final written decision for each allegation in the complaint within thirty (30) days.

(9) Following the final determination on a complaint, the LEA shall take any required corrective action. To ensure compliance, the department may use one (1) or more of the following methods:

(a) A corrective action plan for the LEA;

(b) Follow-up visits by department staff to determine whether the LEA is taking the required corrective action;

(c) Repayment of previously dispersed funds or withholding of future funds; or

(d) To the extent permissible under ESEA and other applicable laws and regulations, any corrective action necessary to ensure compliance.

Section 2. Complaints Against the State Education Agency.

(1) Appeals relating to the department's accountability classification of a school or district shall be governed by 703 KAR 5:240 and not by this administrative regulation.

(2) Complaints related to equitable services to nonpublic school children shall be governed by Section 3 of this administrative regulation.

(3) All other complaints originating at the state level alleging a violation by the ~~department[state education agency (SEA)]~~ of a federal statute or regulation that applies to a program under ESEA shall be submitted to the department by mail at the following address: Kentucky Department of Education, c/o ESEA Complaints, 300 Sower Boulevard – 5th Floor, Frankfort, Kentucky 40601.

(4) Complaints mailed to the department shall be in the form of a written, signed statement that includes:

(a) A statement that a requirement that applies to an ESEA program has been violated by the department[SEA];

(b) The facts on which the statement is based, a description of the nature of the problem, and the specific ESEA requirement allegedly violated by the department;

(c) A signature and contact information for the complainant; and

(d) A potential resolution of the problem to the extent it is known and available to the complainant at the time of the filing.

(5) Upon receipt of a complaint, the department shall follow the same procedures outlined in Section 1 of this administrative regulation to the extent practicable.

Section 3. Complaints Related to Equitable Services to Nonpublic School Children.

(1) Complaints related to equitable services to nonpublic school children shall be submitted to the nonpublic school ombudsman by mail at the following address: Kentucky Department of Education, c/o Nonpublic School Ombudsman, 300 Sower Boulevard – 5th Floor, Frankfort, Kentucky 40601.

(2) Complaints mailed to the nonpublic school ombudsman shall be in the form of a written, signed statement that includes:

(a) A statement that 20 U.S.C. 7881 has been violated by the department[SEA], an LEA, an education service agency, a consortium of those agencies, or other applicable entity;

(b) The facts on which the statement is based and a description of the nature of the problem;

(c) A signature and contact information for the complainant; and

(d) A potential resolution of the problem to the extent it is known and available to the complainant at the time of the filing.

(3) Upon receipt of a complaint, the nonpublic school ombudsman shall carry out an investigation if necessary. During the investigation period:

(a) The complainant and the department[SEA], LEA, education service agency, consortium of those agencies, or other entity shall each have an opportunity to submit additional information about any allegation in the complaint;

(b) The department[SEA], LEA, education service agency, consortium of agencies, or other entity shall have an opportunity to respond to the complaint, including making a proposal to resolve such amicably; and

(c) Any on-site investigation, if deemed necessary by the department, shall be made following adequate advance notice to the parties involved and may include the gathering of information through:

1. Direct observation;
2. Interviews; or
3. Examination of records.

(4) Within forty-five (45) days of receiving a complaint, the nonpublic school ombudsman shall issue a final written decision for each allegation in the complaint. Written decisions issued by the department must include:

(a) A description of applicable statutory and regulatory requirements;

(b) A description of the procedural history of the complaint;

(c) Findings of fact supported by citation, including page numbers, to supporting documents;

(d) Legal analysis and conclusion;

(e) Corrective actions, if applicable;

(f) A statement of appeal rights, if applicable;

(g) A statement regarding the department's determination about whether it will provide services; and

(h) All documents reviewed by the department in reaching its decision, paginated consecutively.

Section 4. Appeals to the United States Secretary of Education. An involved party may appeal the final written decision of the department under Section[Sections] 1, 2, or 3 of this administrative regulation to the United States Secretary of Education (Secretary) to the extent permissible under ESEA and in accordance with written procedures developed and implemented by the secretary. Appeals submitted to the secretary must include the following:

(1) A clear and concise statement of the parts of the department's decision being appealed, if applicable;

(2) The legal and factual basis for the appeal;

(3) A copy of the complaint filed with the department;

(4) A copy of the department's written resolution to the complaint being appealed, if one is available, including all documents reviewed by the department in reaching its decision, paginated consecutively; and

(5) Any supporting documentation not included as part of the department's written resolution of the complaint being appealed.

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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).

ROBBIE FLETCHER, Commissioner
SHARON PORTER ROBINSON, Chair

APPROVED BY AGENCY: October 10, 2024

FILED WITH LRC: October 14, 2024 at 11:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held December 23, 2024 at 1 p.m. in Room 516, 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 December 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 amendment provides necessary updates to comply with changes to federal regulation. It provides detailed requirements of the content to be included in complaints, determinations, and appeals under the Elementary and Secondary Education Act of 1965.

(b) The necessity of this administrative regulation: This administrative regulation is required to comply with changes to federal regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the new federal regulations by incorporating detailed requirements of the content to be included in complaints, determinations, and appeals under the Elementary and Secondary Education Act of 1965.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist with the effective administration of federal statutes by conforming to changes in federal regulation.

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

(a) How the amendment will change this existing administrative regulation: This amendment provides detailed requirements of the content to be included in complaints, determinations, and appeals under the Elementary and Secondary Education Act of 1965.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to conform to changes in federal regulation. Section 8503 of the ESEA requires states to adopt written procedures for the receipt and resolution of complaints.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to changes in federal regulation by providing detailed requirements of the content to be included in complaints, determinations, and appeals under the Elementary and Secondary Education Act of 1965.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will assist with the effective administration of federal statutes by conforming to changes in federal regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this

administrative regulation: The Kentucky Department of Education, local education agencies, nonpublic schools, students served by nonpublic schools.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation requires that written complaints, determinations, and appeals include a description of applicable statutory and regulatory requirements; a description of the procedural history of the complaint; findings of fact supported by citation, including page numbers, to supporting documents; legal analysis and conclusion; corrective actions, if applicable; a statement of applicable appeal rights; a statement regarding the department's determination about whether it will provide services; and all documents reviewed by the department in reaching its decision, paginated consecutively.

(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 any impacted agency.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation provides the entities identified above with more clear guidelines related to complaints, determinations, and appeals of decisions made under the Elementary and Secondary Education Act of 1965.

(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 the Kentucky Department of Education.

(b) On a continuing basis: There will be no ongoing cost to the Kentucky Department of Education.

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

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 20 U.S.C. 6320, 20 U.S.C. 7844, 20 U.S.C. 7883

(2) State compliance standards. The Kentucky Department of Education must comply with the Federal Elementary and Secondary Education Act (ESEA) as a condition of federal grant funding from the United States Department of Education. There are no parallel state law requirements for ESEA complaints governed by this regulation. KRS 156.010 provides that the "Department of Education shall be the sole state agency for the purpose of developing and approving state plans required by state or federal laws and regulations as prerequisites to receiving federal funds for elementary and secondary education."

(3) Minimum or uniform standards contained in the federal mandate. The federal regulation contains the minimum standards that must be included in a complaint under the ESEA. This regulation is being updated to conform to those minimum standards.

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

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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. 20 U.S.C. 6320

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Board of Education, the Department of Education, Local Education Agencies, and Nonpublic Schools

(a) Estimate the following for the first year:

Expenditures: There are no costs estimated in the first year.

Revenues: There will be no revenues generated in the first year.

Cost Savings: There will be no cost savings in the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There are no expenditures, revenues, or cost savings related to this regulation.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Local Education Agencies, nonpublic schools.

(a) Estimate the following for the first year:

Expenditures: There are no costs estimated in the first year.

Revenues: There will be no revenues generated in the first year.

Cost Savings: There will be no cost savings in the first year.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There are no expenditures, revenues, or cost savings related to this regulation.

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

(a) Estimate the following for the first year:

Expenditures: There are no costs estimated in the first year.

Revenues: There will be no revenues generated in the first year.

Cost Savings: There will be no cost savings in the first year.

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

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no fiscal impact of this regulation.

(b) Methodology and resources used to determine the fiscal impact: N/A

(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: There is no fiscal impact of this regulation.

EDUCATION AND LABOR CABINET
Office of Unemployment Insurance
(Amendment)

787 KAR 1:010. Application for employer account; reports.

RELATES TO: KRS 336.248, 341.070, 341.190, 341.243, 341.250, 341.262

STATUTORY AUTHORITY: KRS 336.015, 336.050, 341.115, 2021 Ky Acts Ch. 169 Part 1(l)(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations for the proper administration of KRS Chapter 341. KRS 341.190(2) requires each employing unit to keep specified work records and authorizes the secretary to require additional reports. This administrative regulation establishes the application requirements for an employer account and the requirements for other additional reports required by the office.

Section 1. Each employing unit that has met one (1) or more of the requirements for coverage set forth in KRS 341.070 or KRS 336.248 shall use the Unemployment Insurance Self-Service Web

Portal located at https://kewes.ky.gov to complete and electronically file with the Office of Unemployment Insurance an Application for Unemployment Insurance Employer Reserve Account UI-1 no later than the last day of the calendar quarter in which the coverage requirements are first met.

Section 2. Each employing unit shall use the Unemployment Insurance Self-Service Web Portal located at https://kewes.ky.gov to complete and electronically file with the Office of Unemployment Insurance the following electronic reports as required in accordance with the instructions contained on Unemployment Insurance Self-Service Web Portal:

(1) UI-1P, Professional Employer Organization Application for Unemployment Insurance Employer Reserve Account.

(2) UI-1S, Supplemental Application for Unemployment Insurance Employer Reserve Account;

(3) UI-3.2, Account Status Information; and

(4) UI-21, Report of Change in Ownership or Discontinuance of Business in Whole or Part.

Section 3. Each employing unit shall complete and file with the Office of Unemployment Insurance the following reports as required in accordance with the instructions contained on the forms:

(1) UI-3, Employer's Quarterly Unemployment Wage and Tax Report;

(2) UI-74, Application for Partial Payment Agreement;

(3) UI-203, Overpayment and Fraud Detection; and

(4) UI-412A, Notice to Employer of Claim for Unemployment Insurance Benefits.

Section 4. If an employing unit elects to submit the information required in any report listed in Section 3 of this administrative regulation through the Web site at https://kewes.ky.gov provided by the Office of Unemployment Insurance for that purpose, the requirement for the filing of that report shall have been satisfied.

Section 5. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) UI-1, "Application for Unemployment Insurance Employer Reserve Account", Rev. 2021;

(b) UI-1P, "Professional Employer Organization Application for Unemployment Insurance Employer Reserve Account"

(c) UI-1S, "Supplemental Application for Unemployment Insurance Employer Reserve Account", Rev. 2021;

(d) UI-3, "Employer's Quarterly Unemployment Wage and Tax Report", Rev. 11/20;

(e) UI-3.2, "Account Status Information", Rev. 2021;

(f) UI-21, "Report of Change in Ownership or Discontinuance of Business in Whole or Part", Rev. 2021;

(g) UI-74, "Application for Partial Payment Agreement", Rev. 5/11;

(h) UI-203, "Overpayment and Fraud Detection", Rev. 01/2021; and

(i) UI-412A, "Notice to Employer of Claim for Unemployment Insurance Benefits", Rev. 09/18.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director of Unemployment Insurance, Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and is also available on the office's Web site at https://kcc.ky.gov/Pages/Reports-and-forms.aspx.

GREG HIGGINS, Executive Director

APPROVED BY AGENCY: October 10, 2024

FILED WITH LRC: October 14, 2024 at 10:40 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this amended administrative regulation shall be held on December 21, 2024, at 1:00 p.m. Eastern Time at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, 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 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 December 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: Charles Wheatley, Deputy General Counsel, Education and Labor Cabinet, 500 Mero St., 3rd Floor, Frankfort, Kentucky, 502-782-0555, email Charles.wheatley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Charles Wheatley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application requirements for an employer account and the requirements for additional reports required by the Office of Unemployment Insurance.

(b) The necessity of this administrative regulation: This amended administrative regulation is necessary to carry out KRS 336.248.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary promulgate administrative regulation necessary or suitable for the proper administration of KRS Chapter 341.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides application procedures for establishing an employer account with unemployment insurance and the requirements for additional reports required by the Office of Unemployment Insurance pursuant to KRS Chapter 341, KRS 341.070, KRS 341.190, KRS 341.243, KRS 341.250, KRS 341.262, and KRS 336.248.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds a new form "UI-1P, Professional Employer Organization Application for Unemployment Insurance Employer Reserve Account" required for professional employer organizations to create an employer reserve account with the unemployment insurance fund pursuant to KRS 336.248.

(b) The necessity of the amendment to this administrative regulation: The amendment is needed to introduce a new form required by the Office of Unemployment for professional employer organizations to apply for an employer reserve account to satisfy the reporting and contribution requirements set forth in KRS 336.248.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment establishes the new form for professional employer organizations to apply for an employer reserve account for the employer to satisfy the reporting and contribution requirements to the Office of Unemployment Insurance for their covered employees.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides the Office of Unemployment Insurance staff with the necessary information from professional employer organizations ("PEO") to establish their employer reserve accounts for PEOs to comply with their statutory reporting and contribution obligations to the unemployment insurance fund.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all professional employer organizations 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: The amendment provides a new form specifically for the use of professional employer organizations ("PEO") for the PEO to establish an employer reserve account to facilitate the reporting and contribution obligations to the unemployment insurance fund by the PEO on behalf of their clients. Currently, there is not a PEO specific form for establishing an employer reserve account.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Additional internal cost expended by professional employer organizations to comply with this administrative regulation is undeterminable by the Office of Unemployment Insurance. The amendment to this regulation does not establish any fees to be paid to the Office of Unemployment Insurance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation allows the professional employer organizations to establish an employer reserve accounts to file reports and make contributions required by the Office of Unemployment Insurance on behalf of their clients, thus facilitating the professional employer organizations compliance with their statutory obligations under KRS 336.248.

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

(a) Initially: The amendment creates no new costs to implement.

(b) On a continuing basis: This amendment creates no new costs on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state allocations and federal funding will be used for the ongoing implementation and enforcement of this administrative regulation amendment.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All professional employer organizations are 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 336.248

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: This administrative regulation impacts Office of Unemployment Insurance (OUI) within the Kentucky Education and Labor Cabinet.

(a) Estimate the following for the first year:

Expenditures: This administrative regulation amendment will create no new expenditures for the first year.

Revenues: This administrative regulation amendment will create no new revenues.

Cost Savings: This administrative regulation amendment will create no cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The OUI anticipates no new expenditures, revenues, or cost savings in subsequent years as a result of this administrative regulation amendment.

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

(a) Estimate the following for the first year:

Expenditures: None

Revenues: None

Cost Savings: None

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The OUI anticipates no new expenditures, revenues, or cost savings in subsequent years as a result of this

administrative regulation amendment.

(4) Identify additional regulated entities not listed in questions (2) or (3): No additional regulated entities are affected by this administrative regulation amendment.

(a) Estimate the following for the first year:

Expenditures: None

Revenues: None

Cost Savings: None

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The OUI anticipates no new expenditures, revenues, or cost savings in subsequent years as a result of this administrative regulation amendment.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation amendment has no fiscal impact on the OUI.

(b) Methodology and resources used to determine the fiscal impact: Because there is no fiscal impact related to this administrative regulation amendment, no methodology or resources were necessary to determine 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) The administrative regulation amendment does not create an overall negative or adverse major impact on OUI.

(b) The methodology and resources used to reach this conclusion: Because there is no fiscal impact related to this administrative regulation amendment, no methodology or resources were necessary to determine fiscal impact.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. No federal mandate constituted the administrative regulation amendment.

(2) State compliance standards. KRS 336.248 created the standard for this administrative regulation amendment.

(3) Minimum or uniform standards contained in the federal mandate. No federal mandate is involved with this administrative regulation amendment.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No federal mandate is involved with this administrative regulation amendment.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No federal mandate is involved with this administrative regulation amendment.

EDUCATION AND LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amendment)

803 KAR 2:110. Employer and employee representatives.

RELATES TO: KRS 338.111

STATUTORY AUTHORITY: KRS 338.051, 338.061

NECESSITY, FUNCTION, AND CONFORMITY:

KRS.338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes employer and employee representation during an inspection.

Section 1. Definitions.

(1) "Compliance safety and health officer" means a person

authorized by the commissioner to conduct occupational safety and health inspections or investigations.

(2) "Employee" is defined by KRS 338.015(2).

(3) "Employer" is defined by KRS 338.015(1).

Section 2. Representatives of Employers and Employees.

(1) The compliance safety and health officer shall be in charge of the inspection and questioning of persons.

(2) A representative of the employer and a representative authorized by her or his employees shall be given an opportunity to accompany the compliance safety and health officer.

(3) The compliance safety and health officer may permit additional employer representatives and additional representatives authorized by employees to accompany her or him if she or he determines it aids the inspection.

(4) A different employer and employee representative may accompany the compliance safety and health officer during each different phase of an inspection if it does not interfere with the conduct of the inspection.

(5) The compliance safety and health officer shall have authority to resolve all disputes as to who is the representative authorized by the employer and employees.

(6) If there is no authorized representative of employees, or if the compliance safety and health officer is unable to determine with reasonable certainty who is the representative, she or he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

(7) The representative or representatives authorized by employees may[shall] be an employee of the employer or a third party.

(8) If the authorized representative is not an employee of the employer, the representative may accompany the Compliance Safety and Health Officer during the inspection if[if], in the judgment of the Officer[compliance safety and health officer], good cause has been[is] shown why accompaniment by a third party[~~such as a safety professional or industrial hygienist, who is not an employee of the employer~~] is reasonably necessary to the conduct an effective and thorough physical inspection of the workplace (including but not limited to because of their relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language or communication skills)[~~the third party may accompany the compliance safety and health officer during the inspection~~].

(9) A compliance safety and health officer may consult with employees concerning matters of occupational safety and health necessary for an effective and thorough inspection.

(10) During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of KRS Chapter 338 that she or he has reason to believe exists in the workplace to the attention of the compliance safety and health officer.

(11) The compliance safety and health officer shall be authorized to deny accompaniment to any person whose conduct interferes with the inspection.

(12) Accompaniment in areas containing trade secrets shall be subject to KRS 338.171.

(13) Only persons authorized access to information classified by an agency of the United States government may accompany a compliance safety and health officer in areas containing information.

JAMIE LINK, Secretary

APPROVED BY AGENCY: September 30, 2024

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held December 23, 2024 at 10:00 a.m. EST via Zoom. Public access to the meeting is available

at: <https://us06web.zoom.us/j/83167645226?pwd=dLuhzy6L8o0s75XdhuZudmHbhx4JQa.1> or by telephone at (713) 353-0212, (888) 822-7517 toll free, conference code 194378. 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 December 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: Robin Maples, OSH Standards Specialist, Education and Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email robin.maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since December 11, 1974, defines terms. Section 2 establishes the requirements pursuant to 29 C.F.R. 1903.8 relating to representatives of employers and employees. This amendment clarifies representative(s) designated by employees may be an employee of a third-party.

(b) The necessity of this administrative regulation: This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.37(b)(3), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1953.5(a)(1), 29 C.F.R. 1953.5(a)(2), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(d)(1), which all require Kentucky occupational safety and health (OSH) regulations to be as effective as the federal requirements. This regulation is equivalent.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.37(b)(3), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1953.5(a)(1), 29 C.F.R. 1953.5(a)(2), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(d)(1), which require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state requirement is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.37(b)(3), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1953.5(a)(1), 29 C.F.R. 1953.5(a)(2), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(d)(1), which require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

(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 representative(s) designated by employees may be an employee of a third-party.

(b) The necessity of the amendment to this administrative regulation: Kentucky operates a State Plan approved by the Occupational Safety and Health Administration (OSHA) that provides employee occupational safety and health (OSH) protections. OSHA approves, monitors, and provides funding to Kentucky. It is necessary to promulgate this regulation to meet the requirements established in Public Law 91-596 84 STAT. 1590, 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.37(b)(3), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1953.5(a)(1), 29 C.F.R. 1953.5(a)(2), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(d)(1), which all require the Kentucky OSH Program to be as effective as OSHA. The Education and Labor Cabinet must promulgate this administrative to ensure the state is at least as effective as the federal requirement. This administrative regulation ensures Kentucky's compliance with the federal

mandates, maintains Kentucky's primacy, and retains federal funding.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. This administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.37(b)(3), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1953.5(a)(1), 29 C.F.R. 1953.5(a)(2), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(d)(1), which all require the Kentucky OSH Program to be as effective as OSHA. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed, and no immediate action is required.

(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 the OSH Program to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state requirement is as effective as the federal requirement.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program 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: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are 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 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.37(b)(3), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1953.5(a)(1), 29 C.F.R. 1953.5(a)(2), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(d)(1)

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: This administrative regulation affects any unit, part, or division of state or local government covered by KRS Chapter 338.

(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 amendment does not impose any additional requirements or expenditures.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This administrative regulation affects any unit, part, or division of state or local government covered by KRS Chapter 338.

(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 amendment does not impose any additional requirements or expenditures.

(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 amendment does not impose any additional requirements or expenditures.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This emergency administrative regulation imposes no new direct cost burden on employers and does not require them to take any action to comply.

(b) Methodology and resources used to determine the fiscal impact: Federal Register, Volume 89, Number 63, V. Final Economic Analysis and Regulatory Flexibility Act Certification.

(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 emergency administrative regulation imposes no new direct cost burden on employers and does not require them to take any action to comply.

(b) The methodology and resources used to reach this conclusion: Federal Register, Volume 89, Number 63, V. Final Economic Analysis and Regulatory Flexibility Act Certification.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.37(b)(3), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1953.5(a)(1), 29 C.F.R. 1953.(a)(2), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(d)(1).

(2) State compliance standards. The Kentucky OSH Program is mandated to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard. This regulation is equivalent.

(3) Minimum or uniform standards contained in the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.37(b)(3), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1953.5(a)(1), 29 C.F.R. 1953.(a)(2), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(d)(1).

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

(5) Justification for the imposition of the stricter standard, or

additional or different responsibilities or requirements. This amendment does not impose stricter requirements.

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction Division of Electrical (Amendment)

815 KAR 35:060. Licensing of electrical contractors, master electricians, and electricians.

RELATES TO: KRS 164.772(3), 227A.010, 227A.060, 227A.100, 339.230, 29 C.F.R. 570

STATUTORY AUTHORITY: KRS 227A.040(1), (8), 227A.060, 227A.100(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227A.040(1) requires the Department of Housing, Buildings and Construction to administer and enforce KRS 227A.010 to 227A.140 and evaluate the qualifications of applicants for electrical licensure. KRS 227A.040(8) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations to establish procedures governing the licensure of electrical contractors, master electricians, and electricians. KRS 227A.060(4)(b) requires the department to promulgate administrative regulations pursuant to KRS Chapter 13A that establish an application form for the use of military experience to apply toward electrical licensure. KRS 227A.100(9) authorizes the department to promulgate administrative regulations governing an inactive license. This administrative regulation establishes the eligibility requirements and application procedures for the licensing of electrical contractors, master electricians, and electricians.

Section 1. Initial Application Requirements.

(1) Filing the application.

(a) Electrical contractor. An applicant seeking an electrical contractor's license shall submit to the department:

1. A completed Electrical Contractor's License Application, Form EL-2;

2. An application fee of ~~\$400~~[\$200] for a biennial[~~twelve (12)~~ month] license;

3. The name and license number of the master electrician affiliated with the applicant; and

4. Proof of insurance as required by KRS 227A.060(1)(c).

(b) Master Electrician. An applicant seeking a master electrician license shall submit to the department:

1. A completed Electrical License Application, Form EL-3;

2. An application fee of ~~\$200~~[\$400] for a biennial[~~twelve (12)~~ month] license; and

3. Proof of the applicant's experience as established by KRS 227A.060(2)(b) and this administrative regulation.

(c) Electrician. An applicant seeking an electrician license shall submit to the department:

1. A completed Electrical License Application, Form EL-3;

2. An application fee of ~~\$100~~[~~fifty (50)~~ dollars] for a biennial[~~twelve (12)~~ month] license; and

3. Proof of the applicant's experience as established by KRS 227A.060(3)(b) and this administrative regulation.

(d) The application fees may be prorated for not less than thirteen (13)[~~seven (7)~~ months or more than eighteen (18)] months and shall expire on the final day of the applicant's birth month.

(2) Photograph requirement. All electrical license applicants shall submit a passport-sized color photograph of the applicant taken within the past six (6) months.

(3) Voiding of application.

(a) The initial application shall remain pending until all requirements are met, up to a period of one (1) year after the date the application is submitted.

(b) At the end of the one (1) year, the application shall be void.

Section 2. Reciprocity. An applicant for reciprocity shall:

(1) Comply with:

(a) The requirements established in the reciprocity agreement between Kentucky and the state in which the applicant is licensed;

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(b) The general application requirements in Section 1(2) of this administrative regulation;

(2) Provide:

(a) A copy of the applicant's license from the participating jurisdiction[state];

(b) A letter of good standing from the licensing authority of the jurisdiction[state] in which the applicant is currently licensed; and

(3) If applying for an electrical contractor's license, proof of insurance as required by KRS 227A.060(1)(c).

Section 3. Verification of Experience.

(1) Records of experience. Proof of experience shall be provided by:

(a) Tax returns or other official tax documents that indicate the applicant's occupation or the nature of the applicant's business activities, including Federal Schedule C, Form 1040, Form 1099, or local occupational tax returns;

(b) A copy of a business license issued by a county or municipal government that did not issue electrical contractor's, master electrician's, or electrician's licenses prior to June 24, 2003, if the business license indicates the applicant operated as an electrical contractor or worker;

(c) A sworn affidavit, on the affiant's letterhead, certifying that the affiant has personal knowledge that the applicant has engaged in electrical work under the scope of the National Electrical Code, NFPA 70[, incorporated by reference in 815 KAR 7:120 and 815 KAR 7:125,] from at least one (1) of the following:

1. An electrical workers union;

2. A licensed electrical contractor and licensed master electrician the applicant was or currently is employed by; or

3. An industrial manufacturing facility or natural gas pipeline facility the applicant was or currently is employed by; or

4. An electrical training program that has been approved by the department pursuant to 815 KAR 35:090 and is an apprenticeship program registered in accordance with 787 KAR 3:010.

(d) A completed form ELM-1, Military Experience for Electrical Licensure, and documentation in accordance with KRS 227A.060(4) for military experience applicable towards electrical licensure. [~~Records of a branch of the United States Armed Forces that indicate the applicant performed a function that primarily involved electrical work. Experience gained while in the military shall be deemed to have been earned in Kentucky.~~]

(2) An applicant for a master electrician license or electrician license attending an accepted electrical training program in accordance with 815 KAR 35:090 shall provide with his or her application:

(a) An affidavit from the director or authorized agent of the electrical training program confirming the applicant's participation in the electrical training program; and

(b) Documentation that the applicant has completed the required number of hours in accordance with 815 KAR 35:090.

(3) Additional proof of experience shall be requested by the department, prior to or after licensing, if the department has reason to believe that the experience shown is insufficient or nonexistent.

(4) Except for military experience, experience applicable towards electrical licensure shall consist of electric work under the scope of the National Electrical Code, NFPA 70. [~~One (1) year of electrical experience shall consist minimally of 1,600 hours of electrical work under the scope of the National Electrical Code, NFPA 70, incorporated by reference in 815 KAR 7:120 and 815 KAR 7:125, in a continuous twelve (12) month period.~~]

Section 4. Examinations.

(1) An applicant for an electrical contractor's license, master electrician's license, or electrician's license shall pass, with a minimum score of seventy (70) percent, an examination administered by an approved examination provider.

(2) A passing score shall be valid for a period of three (3) years.

(3) Reasonable accommodations shall be made to provide accessibility to disabled applicants, upon request.

(4) For an electrical contractor's license, an applicant that is a business entity shall designate a person to take the examination on behalf of the applicant. The designee shall be:

(a) An owner of the applicant's business;

(b) An officer of the applicant's business;

(c) A director of the applicant's business; or

(d) A full-time employee of the applicant's business.

(5) Upon application by a testing agency, a national code group, or by an applicant for licensure, the department may recognize another examination as equivalent to an examination administered by an approved examination provider. The person or group submitting the examination shall demonstrate that the examination covers the same material and requires the same level of knowledge as the approved examinations.

Section 5. Appeal Procedure.

(1) An applicant denied a license may appeal the decision to the commissioner of the department. The applicant shall submit written notice of the appeal to the department within ten (10) business days of receiving notice that the license application has been denied.

(2) The appeal shall be conducted pursuant to KRS Chapter 13B by a hearing officer appointed by the commissioner of the department.

Section 6. Proof of Insurance.

(1) An electrical contractor's insurance policy shall name the department as the certificate holder.

(2) The applicant shall provide proof of workers' compensation insurance by providing:

(a) An insurance certificate from an insurance provider approved by the Kentucky Department of Insurance; or

(b) A notarized statement that the applicant is not required to obtain workers' compensation coverage and the reason why the coverage is not required.

(3) Each electrical contractor shall require the contractor's liability and workers' compensation insurers to provide notice to the department if a policy:

(a) Is cancelled, terminated, or not renewed; or

(b) Limit is lowered.

(4) An electrical contractor shall advise the department of:

(a) A change in the contractor's insurance coverage, including cancellation or termination of any policy;

(b) A change in the insurer providing the coverage; or

(c) Changed circumstances that require the contractor to obtain coverage.

Section 7. Inactive License Status.

(1) A licensee may request that a license be placed in inactive status.

(2) An electrical contractor whose license is in inactive status shall not be required to maintain liability insurance or provide proof to the department of compliance with workers' compensation laws.

(3) A certified electrical inspector may be licensed as an electrical contractor, master electrician, or electrician, but shall maintain that license as inactive while having an active electrical inspector certification.

(4) A licensee shall not perform electrical work while the license is inactive. Performing electrical work that requires a license while holding an inactive license shall be grounds for revocation or suspension of all electrical licenses and certifications held by the licensee.

Section 8. Renewal Requirements.

(1) A license shall be valid for two (2) years[~~one (1) year~~] and shall be renewed on or before the last day of the licensee's birth month in the second year. For electrical contractor licenses issued to corporations, partnerships, or business entities without a birth month, the renewal shall occur on or before the last day of the month the license was issued in the second year.

(2) Filing for renewal. An electrical contractor, a master electrician, or an electrician shall submit to the department:

(a) A completed form DHBC L-1, Licensing Renewal Application;

(b) A renewal fee of:

1. \$400[\$200] for an electrical contractor;

2. \$200[\$100] for a master electrician; and

3. \$100[Fifty (50) dollars] for an electrician;

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(c) Proof of [annual] continuing education in accordance with KRS 227A.100(7) and 815 KAR 2:010; and

(d) Proof of insurance as required by KRS 227A.060(1)(c) and this administrative regulation for an electrical contractor.

(3)

(a) A licensee who is in inactive status shall be exempt from biennial[annual] renewal.

(b) An inactive license shall be reactivated upon payment of the biennial[annual] renewal fee, the reactivation fee, and upon compliance with the continuing education requirements established in 815 KAR 2:010.

Section 9. Reinstatement and Late Fees.

(1) Application, renewal, reinstatement, and late fees shall not be refundable.

(2) The reinstatement fee for a terminated license pursuant to KRS 227A.100(4) shall be equal to the license renewal fee and shall be paid in addition to the license renewal fee.

(3) The late renewal fee shall be fifty (50) dollars. If all documents required to be submitted for renewal are postmarked on or before the last day of the renewal month, the filing shall be considered timely, and a late fee shall not be assessed.

Section 10. Change of information.

(1) An electrical contractor and a master electrician shall notify the department of any change to the name of the electrical contractor's or master electrician's business and its address, employer, and the employer's address each time a change of information is made.

(2)

(a) Except as stated in subsection (3) of this section, if an electrical contractor designated by an entity as established in Section 4(4) of this administrative regulation leaves the employment or no longer maintains an interest in that entity, the entity shall designate another person who either:

1. Has passed the electrical contractor's examination; or

2. Successfully passes the electrical contractor's examination within thirty (30) days.

(b) Failure to have a designee that has passed the examination shall render the licensee no longer qualified to be licensed.

(3) Death of an electrical contractor or master electrician.

(a) If the electrical contractor or master electrician representing a company dies, the company shall notify the department within ten (10) days of the electrical contractor's or master electrician's death.

(b) The 180-day interim period established in KRS 227.480 and KRS 227A.140 shall begin on the date the electrical contractor or master electrician dies.

(c) The company shall not be required to renew the deceased's electrical contractor or master electrician license if the license renewal date falls within the 180-day interim period.

(d) The company shall not use the deceased electrical contractor's or master electrician's license after the expiration date of the interim period.

(e) The company shall notify the department when the company has a replacement electrical contractor or master electrician to represent the company on or before the expiration date of the interim period.

Section 11. Provisional License.

(1) Application. An applicant seeking a provisional electrician license shall submit to the department:

(a) A completed Provisional Electrical License Application Form, EL-14;

(b) An application fee of fifty (50) dollars;

(c) A passport-sized color photograph of the applicant taken within the past six (6) months; and

(d) Proof of the applicant's experience as established by KRS 227A.060(5)(a)[227A.060(4)(a)2].

(e) The Proof requested in paragraph (d) of this subsection shall be satisfied with the documents listed in Section 3(1) of this administrative regulation.

(2) Responsibilities. A provisional electrician license holder shall have the same rights and responsibilities as an electrician licensed

pursuant to KRS 227A.060(3) and this administrative regulation.

(3) Termination.

(a) A provisional electrician license shall be valid for one (1) year from the date of issuance. The provisional electrician license shall immediately terminate on the date of the one (1) year anniversary of the issuance of the provisional electrician license.

(b) The provisional electrician license holder shall no longer have the rights and responsibilities of an electrician licensed pursuant to KRS 227A.060(3) and this administrative regulation. The provisional electrician license holder shall revert to the individual's unlicensed status before the issuance of the provisional license.

Section 12. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Electrical Contractor's License Application", Form EL-2, October 2024[May 2020];

(b) "Electrical License Application", Form EL-3, October 2024[May 2020];

(c)[(d)] [I] "Licensing Renewal Application", Form DHBC L-1, October 2024;[April 2023-]

(d) "Military Experience for Electrical Licensure", Form ELM-1, October 2024; and

(e)[(e)] "Provisional Electrical License Application", Form EL-14, October 2024.[May 2020; and]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings, and Construction, Electrical Licensing, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov/Pages/default.aspx>.

RAY A. PERRY, Secretary

JONATHON M. FULLER, Commissioner

APPROVED BY AGENCY: October 9, 2024

FILED WITH LRC: October 10, 2024 at 9:35 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 26, 2024, at 10:00 a.m., eastern time, in the Department of Housing, Buildings and Construction, 500 Mero Street, First Floor, Frankfort, Kentucky 40601. Individuals interest in being heard at this hearing shall notify this agency in writing by 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. The 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 December 31, 2024, at 11:59 p.m., eastern time. Send written notification of the intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person below:

CONTACT PERSON: Jonathon M. Fuller, Commissioner, Department of Housing, Buildings and Construction, 500 Mero Street, 1st Floor, Frankfort, Kentucky 40601, phone (502) 782-0617, fax (502) 573-1057, email max.fuller@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathon M. Fuller

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensure requirements for electrical contractors, master electricians, and electricians.

(b) The necessity of this administrative regulation: KRS 227A.040(1) requires the Department of Housing, Buildings and Construction to administer and enforce KRS 227A.010 to 227A.140 and evaluate the qualifications of applicants for electrical licensure. KRS 227A.040(8) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations to establish procedures governing the licensure of electrical contractors, master electricians, and electricians. KRS 227A.100(9) authorizes the department to promulgate administrative regulations

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governing an inactive license. KRS 227A.060(4)(b) requires the department to promulgate administrative regulations pursuant to KRS Chapter 13A that establish an application form for the use of military experience to apply toward electrical licensure. This administrative regulation establishes the eligibility requirements and application procedures for the licensing of electrical contractors, master electricians, and electricians.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 227A.040(8) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations to establish procedures governing the licensure of electrical contractors, master electricians, and electricians. KRS 227A.100(9) authorizes the department to promulgate administrative regulations governing an inactive license. This administrative regulation establishes the eligibility requirements and application procedures for the licensing of electrical contractors, master electricians, and electricians.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 227A.040(1) requires the Department of Housing, Buildings and Construction to administer and enforce KRS 227A.010 to 227A.140 and evaluate the qualifications of applicants for electrical licensure. This administrative regulation establishes the eligibility requirements and application procedures for the licensing of electrical contractors, master electricians, and electricians, which is authorized by KRS 227A.040(8) and KRS 227A.100(9).

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

(a) How the amendment will change this existing administrative regulation: This amendment changes expiration dates, fees, and experience requirements to reflect the changes of 2024 RS HB 444.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to align the administrative regulation with the changes to KRS Chapter 227A found in 2024 RS HB 444.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 227A.040(8) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations to establish procedures governing the licensure of electrical contractors, master electricians, and electricians. KRS 227A.060(4)(b) requires the department to promulgate administrative regulations pursuant to KRS Chapter 13A that establish an application form for the use of military experience to apply toward electrical licensure.

(d) How the amendment will assist in the effective administration of the statutes: KRS 227A.040(1) requires the Department of Housing, Buildings and Construction to administer and enforce KRS 227A.010 to 227A.140 and evaluate the qualifications of applicants for electrical licensure. KRS 227A.040(8) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations to establish procedures governing the licensure of electrical contractors, master electricians, and electricians. KRS 227A.100(9) authorizes the department to promulgate administrative regulations governing an inactive license. This amendment updates electrical licensing requirements to align with 2024 RS HB 444.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any electrical contractor, master electrician, or electrician license applicant or current licensee and the Department of Housing, Buildings and Construction.

(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 and licensees will now be issued biennial licenses and will have to renew their licensees every other year. Applicants applying with military experience will now have a supplemental form to utilize for their electrical licensing application.

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities identified in question (3): This amendment alters fees to reflect the changes made in HB 444 to KRS 227A.100.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Electrical licensees will now be issued biennial licenses and applicants applying with military experience will have a supplemental form to utilize for their electrical licensing application.

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

(a) Initially: This amendment will not result in additional cost to the agency initially.

(b) On a continuing basis: This amendment will not result in additional cost to the agency on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Any costs associated with the implementation and enforcement of this administrative regulation will be met with existing agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Any costs associated with the implementation and enforcement of this administrative regulation will be met with existing agency funds.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment alters fees to reflect the changes made in HB 444 to KRS 227A.100.

(9) TIERING: Is tiering applied? Tiering is not applied as all regulated entities are subject to the same amended 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 227A.040(1) requires the Department of Housing, Buildings and Construction to administer and enforce KRS 227A.010 to 227A.140 and evaluate the qualifications of applicants for electrical licensure. KRS 227A.040(8) authorizes the Department of Housing, Buildings and Construction to promulgate administrative regulations to establish procedures governing the licensure of electrical contractors, master electricians, and electricians. KRS 227A.100(9) authorizes the department to promulgate administrative regulations governing an inactive license. KRS 227A.060(4)(b) requires the department to promulgate administrative regulations pursuant to KRS Chapter 13A that establish an application form for the use of military experience to apply toward electrical licensure.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Department of Housing, Buildings and Construction

(a) Estimate the following for the first year:

Expenditures: Neutral

Revenues: Neutral

Cost Savings: Neutral

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

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Local entities that employ electrical licensees and cover the cost of electrical licensure renewal for the employees.

(a) Estimate the following for the first year:

Expenditures: Neutral

Revenues: Neutral

Cost Savings: Neutral

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

(4) Identify additional regulated entities not listed in questions (2) or (3): Electrical licensees

(a) Estimate the following for the first year:

Expenditures: Neutral

Revenues: Neutral

Cost Savings: Neutral

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

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no anticipated fiscal impact to this amendment. This amendment aligns the administrative regulation with the changes to KRS Chapter 227A found in HB 444. Electrical license fees have been amended in the administrative regulation to reflect biennial licensure.

(b) Methodology and resources used to determine the fiscal impact: Budget and licensing staff confirmed that electrical licensing going to a two year-renewal cycle will not have an impact and be budget neutral expenditures as the renewal fees are adjusted for the two-year renewal.

(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 in questions (2) – (4).

(b) The methodology and resources used to reach this conclusion: Budget and licensing staff confirmed that this amendment is budget neutral as renewal fees are adjusted for the two-year renewal.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Healthcare Policy
(Amendment)**

907 KAR 1:028. Independent laboratory and radiological service coverage and reimbursement.

RELATES TO: KRS 205.520, 205.560, 333.090, 42 C.F.R. 440.30, Part 493, 42 U.S.C. 1395l(h)(1)(A), 1396a(a)(9), 1396b(i)(7), 1396d

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 C.F.R. 441.17,

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the provisions relating to the coverage of and reimbursement for independent laboratory and radiological services.

Section 1. Definitions.

(1) "CLIA" means the Clinical Laboratory Improvement Amendments, 42 C.F.R. Part 493.

(2) "CMS" means the Centers for Medicare and Medicaid Services.

(3) "Covered benefit" or "covered service" means an independent laboratory or radiological service for which the department shall reimburse.

(4) "CPT" means the current procedural terminology coding system.

(5) "Department" means the Department for Medicaid Services or its designee.

(6) "Incidental" means a medical procedure or service which:

(a)

1. Is performed at the same time as a more complex primary procedure or service; and

2. Requires little additional resources; or

(b) Is clinically integral to the performance of the primary procedure or service.

(7) "Independent laboratory" means a laboratory which:

(a) Is certified by CMS under the CLIA to perform laboratory services;

(b) Is independent of an institutional setting;

(c) Is a Medicare-participating facility;

(d) Meets the requirements established in 42 C.F.R. Part 493 regarding laboratory certification, registration, or other accreditation as appropriate; and

(e) Is a Medicaid-enrolled provider.

(8) "Laboratory director" means an individual meeting the director of laboratory qualifications established in KRS 333.090(1), (2), or (3).

(9) "Medicaid-enrolled provider" means a provider participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671 and 1:672.

(10) "Medically necessary" or "medical necessity" means a covered benefit determined to be needed in accordance with 907 KAR 3:130.

(11) "Medicare-participating" means certified by CMS and accepting reimbursement from Medicare.

(12) "Mutually exclusive" means two (2) laboratory or radiological services:

(a) Not reasonably provided in conjunction with one (1) another during the same patient encounter on the same date of service; or

(b) Representing:

1. Duplicate or very similar items; or

2. Medically inappropriate use of CPT codes.

(13) "Prescriber" means a physician, podiatrist, optometrist, dentist, oral surgeon, advanced registered nurse practitioner, or physician's assistant who:

(a) Is acting within the legal scope of clinical practice under the licensing laws of the state in which the health care provider's medical practice is located;

(b) Is in good standing with:

1. The licensure board of jurisdiction for the provider's practice; and

2. CMS;

(c) Has the legal authority to write an order for a medically necessary service for the recipient; and

(d) If enrolled as a Kentucky Medicaid provider, is in compliance with all requirements of 907 KAR 1:671 and 1:672.

(14) "Radiological service" means a service in which X-rays or rays from radioactive substances are used for diagnostic or therapeutic purposes.

(15) "Recipient" is defined in KRS 205.8451(9).

(16) "Usual and customary" means the uniform amount which a provider charges the general public for a specific procedure or service.

Section 2. Coverage.

(1) The department shall reimburse for a procedure provided by an independent laboratory if the procedure:

(a) Is one that the laboratory is certified to provide by Medicare and in accordance with 907 KAR 1:575;

(b) ~~Is a covered service within the CPT code range of 80047-89356 except as excluded in Section 3 of this administrative regulation;~~

~~[(e)]~~ Is prescribed in writing or by electronic request by a physician, podiatrist, dentist, oral surgeon, advanced registered nurse practitioner, or optometrist; and

~~(c) [(d)]~~ Is supervised by a laboratory director.

(2) The department shall reimburse for a radiological service if the service:

(a) Is provided by a facility that:

1. Is licensed to provide radiological services;

2. Meets the requirements established in 42 C.F.R. 440.30;

3. Is certified by Medicare to provide the given service;

4. Is a Medicare-participating facility;

5. Meets the requirements established in 42 C.F.R. Part 493 regarding laboratory certification, registration, or other accreditation as appropriate; and

6. Is a Medicaid-enrolled provider;

(b) Is prescribed in writing or by electronic request by a physician, oral surgeon, dentist, podiatrist, optometrist, advanced registered nurse practitioner, or a physician's assistant;

(c) Is provided under the direction or supervision of a licensed physician~~[-and]~~

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~~[(d)] [Is a covered service within the CPT code range of 70010-78999].~~

Section 3. Exclusions. The department shall not reimburse for an independent laboratory or radiological service under this administrative regulation for the following services or procedures:

- ~~(1) [A procedure or service with a CPT code of 88300-88399;]~~
- ~~[(2)] [A procedure or service with a CPT code of 89250-89356;]~~
- ~~[(3)] A service provided to a resident of a nursing facility or an intermediate care facility for individuals with an intellectual disability;~~

or

- ~~[(2)]~~[(4)] A court-ordered laboratory or toxicology test.

Section 4. Reimbursement.

(1) The department shall reimburse an independent laboratory the current Medicare rate established by CMS:

- (a) For Kentucky;
- (b) For the covered service or procedure; and
- (c) In accordance with 42 U.S.C. 1395l(h)(1)(A).

(2) Reimbursement for a service provided by an independent laboratory shall not exceed the limit established in 42 U.S.C. 1396b(i)(7).

(3) The department shall reimburse a Medicaid-enrolled provider licensed to provide radiological services:

(a) The provider's usual and customary charge for the service; and

(b) Not to exceed sixty (60) percent of the upper payment limit established for the procedure in the Medicaid physician fee schedule pursuant to 907 KAR 3:010.

Section 5. Provider Participation Conditions.

(1) To be reimbursed by the department for a service provided in accordance with this administrative regulation, a provider of independent laboratory services or radiological services shall:

- (a) Be a Medicaid-enrolled provider;
- (b) Comply with all relevant provisions of KAR Title 907 [KAR 1:005 and 1:673];

(c) Comply with the requirements regarding the confidentiality of personal records pursuant to 42 U.S.C. 1320d-8 and 45 C.F.R. parts 160 and 164; and

(d) Annually submit documentation of:

1. Current CLIA certification to the department if the provider is an independent laboratory; and

2. A current radiological license to the department if the provider provides radiological services.

(2) A provider may bill a recipient for a service not covered by the department if the provider informed the recipient of noncoverage prior to providing the service.

Section 6. Appeal Rights.

(1) An appeal of a department decision regarding a recipient based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

LISA D. LEE, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 30, 2024

FILED WITH LRC: October 9, 2024 at 1:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 23, 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 December 16, 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 December 31, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan Scott and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions relating to the coverage of and reimbursement for independent laboratory and radiological services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the provisions relating to the coverage of and reimbursement for independent laboratory and radiological services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the provisions relating to the coverage of and reimbursement for independent laboratory and radiological services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists with the effective administration of the statutes by establishing the provisions relating to the coverage of and reimbursement for independent laboratory and radiological services.

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

(a) How the amendment will change this existing administrative regulation: The amendments contain various changes to comply with 907 KAR. In addition, references to CPT codes and CPT code ranges have been removed to reflect updated capacity of the Department's information technology systems to better assess provider eligibility to provide a service.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reflect current practice and reimbursement in this healthcare area.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by establishing a more updated system of provider reimbursement for independent laboratories.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists with the affective administration of the statutes by establishing a more updated system of provider reimbursement for independent laboratories.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 360 independent laboratory providers in the Medicaid program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will not need to take any new action to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated entities will experience no new costs in complying with this administrative regulation.

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

entities identified in question (3): Recipients will be able to participate or continue to participate in the Medicaid program. Providers will be able to more easily bill and seek reimbursement for services rendered to Medicaid-covered individuals.

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

(a) Initially: The Department anticipates no additional costs in implementing this administrative regulation.

(b) On a continuing basis: The Department anticipates no additional costs in implementing this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding will be necessary to implement the amendments.

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

(9) TIERING: Is tiering applied? (Explain why or why not) 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 205.520, 42 C.F.R. Part 493

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Department for Medicaid Services is the promulgating agency, other agencies have not been identified.

(a) Estimate the following for the first year:

Expenditures: No additional expenditures beyond those allocated to the Department pursuant to 2024 House Bill 6.

Revenues: The Department does not anticipate revenues as a result of this administrative regulation.

Cost Savings: The Department does not anticipate cost savings as a result of this administrative regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? DMS does not expect a change to expenditures, revenues, or cost savings in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None known.

(a) Estimate the following for the first year:

Expenditures: n/a The Department does not anticipate additional expenditures.

Revenues: n/a The Department does not anticipate additional revenues.

Cost Savings: n/a The Department does not anticipate cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? DMS does not expect additional expenditures, revenues, or cost savings for local entities as a result of this regulation.

(4) Identify additional regulated entities not listed in questions (2) or (3): Independent laboratory providers.

(a) Estimate the following for the first year:

Expenditures: n/a The Department does not anticipate additional expenditures.

Revenues: n/a The Department does not anticipate additional revenues.

Cost Savings: The Department anticipates some cost savings due to decreased administrative burden for the providers who are billing.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? DMS expects cost savings due to decreased administrative burden on an ongoing basis.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The administrative regulation does not contain an additional fiscal impact.

(b) Methodology and resources used to determine the fiscal impact: The policies impacting providers and facilities have not changed, as a result no fiscal impact is expected.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) : The administrative regulation will not have a major economic impact – as defined by KRS 13A.010 – on regulated entities.

(b) The methodology and resources used to reach this conclusion: The policies impacting providers and facilities have not changed, as a result no fiscal impact is expected.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. Part 493 establishes policies relating to independent laboratories in the Medicaid program.

(2) State compliance standards. KRS 194A.030(2) requires the Department for Medicaid Services to "serve as the single state agency in the commonwealth to administer Title XIX of the Federal Social Security Act."

(3) Minimum or uniform standards contained in the federal mandate. 42 C.F.R. Part 493 establishes a comprehensive scheme of federal requirements for state Medicaid agencies related to independent laboratory services.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment will not impose stricter than federal requirements.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Aging and Independent Living Division of Quality Living (Amendment)

910 KAR 1:210. Kentucky Long-term Care Ombudsman Program.

RELATES TO: KRS 205.201, 209.030(5), (7), 216.510(1), 216.535, 216.540-216.543, 439.3401, 42 U.S.C. 3001 et seq. 35, 3027(a)(12)(C), 45 C.F.R. 1324 Subpart A

STATUTORY AUTHORITY: KRS 194A.050, 205.204

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 3001 et seq. 35, the Older Americans Act of 1965, as amended, requires states to establish and operate, either directly or by contract, a long-term care ombudsman program to protect the rights of older individuals. KRS 194A.050 requires the secretary for the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law. KRS 205.204 designates the Cabinet for Health and Family Services as the state agency to administer the Older Americans Act of 1965, as amended, in Kentucky. This administrative regulation establishes a statewide long-term care ombudsman program.

Section 1. Definitions.

(1) "Access" means the right to enter a long-term care facility, meet with the residents, and review the records of a resident including the name and contact information of the resident representative.

(2) "Active" means program staff and volunteers actively participating in the program by performing program activities or cases at least quarterly.

(3) "Administrator" means any person charged with the general administration or supervision of a long-term care facility without regard to whether the person has an ownership interest in the facility

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or to whether the person's functions and duties are shared with one (1) or more other persons.

(4) "Advisory council member" means a non-certified volunteer who serves on the ombudsman advisory council to advise and support the program.

(5)~~(3)~~ "Case" means each inquiry brought to, or initiated by, the ombudsman on behalf of a resident or group of residents involving one (1) or more complaints and includes an ombudsman investigation or strategy to resolve and follow-up.

(6)~~(4)~~ "Certification" means the official notification by the Kentucky long-term care ombudsman that local long-term care ombudsman individual staff are qualified and acceptable to function in that capacity.

(7)~~(5)~~ "Complaint" means an allegation filed by residents or on behalf of residents relating to the health, safety, welfare, and rights of a resident.

(8)~~(6)~~ "Complaint resolution" means either corrective action taken in regard to an allegation or a determination as to the validity of the allegation.

~~(7) ["Complaint verification" means a determination through investigative means that allegations relating to the health, safety, welfare, and rights of a patient are generally accurate.]~~

(9)~~(8)~~ "DAIL" means the Department for Aging and Independent Living.

(10)~~(9)~~ "Designation" means formal notification by the Kentucky long-term care ombudsman that a district program meets requirements and shall be considered a subdivision of the state office.

(11)~~(10)~~ "Designee" means an individual who is chosen to act on behalf of the KLTCO and who meets the same qualifications as the KLTCO pursuant to Section 8 of this administrative regulation.

(12)~~(11)~~ "District ombudsman" means that individual certified by the Kentucky long-term care ombudsman to implement the ombudsman provisions of the approved contract agency plan.

(13)~~(12)~~ "Educational or experiential equivalent" means:

(a) Two (2) semesters totaling at least twenty-four (24) hours of course work; and

(b) At least 400 documented hours of experience assisting aging or disabled individuals through:

1. Practicum placement;
2. Clinicals; or
3. Volunteerism.

(14)~~(13)~~ "Evaluation" means periodic analysis and review conducted by the Kentucky long-term care ombudsman of district, regional, and state ombudsman programs, including quality assurance and outcome measures pertaining to individual and programmatic performance.

(15)~~(14)~~ "Friendly visitor" means a trained non-certified volunteer who visits residents in long-term care facilities to assist the district long-term care ombudsman program.

(16)~~(15)~~ "Investigation" means the formal response by a long-term care ombudsman to complaints of issues involving the health, safety, welfare, and rights of a resident.

(17)~~(16)~~ "Kentucky long-term care ombudsman" or "KLTCO" means the individual charged with the administration of the Kentucky Long-term Care Ombudsman Program under the provisions of the Older Americans Act of 1965, as amended.

(18)~~(17)~~ "Long-term care facility" ["Long-term care facility"] is defined by KRS 216.510(1).

(19)~~(18)~~ "Monitoring" means periodic review measuring ombudsman program's adherence to approved plans, including analysis of non-client specific data relating to program performance.

(20) "Office" means the designated state long-term care ombudsman.

(21)~~(19)~~ "Referral" means the appropriate channeling of information ~~so as to affect~~effect a desired outcome.

(22)~~(20)~~ "Regional long-term care ombudsman" means ombudsmen who operate directly from the Kentucky Long-term Care Ombudsman Program and whose responsibilities include coordination of a multi-area development district area.

(23)~~(21)~~ "Resident representative" is defined by 45 C.F.R., 1324.1.

(24)~~(22)~~ "Volunteer ombudsman" means a certified unpaid

individual serving within a district program to assist a district ombudsman.

Section 2. Responsibilities of Kentucky Long-term Care Ombudsman.

(1) The Kentucky Long-term Care Ombudsman Program shall be administered by a full time ombudsman operated by DAIL or through a contracted entity.

(2) The Kentucky long-term care ombudsman shall be responsible for the:

(a) Design, implementation, and management of a statewide uniform system for receiving, investigating, resolving, and reporting complaints on behalf of residents in long-term care facilities and provide ongoing support to assist in the resolution of those complaints;

(b) Investigation of complaints made by or on behalf of residents in long-term care facilities from areas of the state temporarily without local ombudsman programs if a local backup ombudsman is not available;

(c) Development and implementation of policies and procedures for operation of the program, including those related to:

1. Receipt, investigation, verification, and resolution of complaints;

2. Protecting confidentiality of records and identity of complainants;

3. Establishing the right of public access to information regarding conditions in long-term care facilities; and

4. Securing ombudsman access to long-term care facilities, residents, and residents' personal and medical records;

(d) Development and management of a system for the operation of a statewide network of district programs, including:

1. Designation of district programs through:

a. Reviewing applications for designation of district ombudsman contained in their plans for operating either directly or under subcontract;

b. Providing written confirmation of the designation; and

c. Administration of certification and training requirements;

2. Development of district program operating procedures and reporting requirements; and

3. Establishment of a communications link between the Kentucky long-term care ombudsman and district programs;

(e) Establishment and maintenance of program official files and adoption of procedures to protect the confidentiality of those files;

(f) Provision of information and education concerning:

1. Program activities;

2. The long-term care system; and

3. The rights and concerns of residents and potential residents of long-term care facilities;

(g) Provision of assistance to citizen organizations, consumer groups, and other interested community organizations to enhance the rights of residents in long-term care facilities;

(h) Promotion of the development of citizen organizations at the state and local level to participate in the program;

(i) Use of publicity and outreach efforts directed at long-term care residents and families, network staff, and the general public about the availability of the program to receive and investigate complaints;

(j) Review of complaint, case, and issue data submitted by the district programs and analysis for trends, patterns, and issue identification;

(k) Annual National Ombudsman Reporting System (NORS) report to the Administration on Community Living;

(l) Assistance to the district ombudsman to establish, develop, and coordinate ombudsman activities;

(m) Development of agreements and working relationships with relevant agencies to encourage their cooperation and assistance with the program at the state and local levels;

(n) Development of agreements and working relationships with legal services programs, particularly those funded by the Older Americans Act of 1965, as amended;

(o) Development of agreements and working relationships with the licensure and certification agencies;

(p) Development and provision of training on an ongoing basis

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for regional and district ombudsman program staff and volunteers;

~~(q)~~ Identification and development of additional funding and staffing resources for the long-term care ombudsman program;

~~(r)~~ Support and promotion of the formation of resident councils in long-term care facilities;

~~(s)~~ Development and provision of testimony and comment on proposed legislation, administrative regulations, policies, and rule changes affecting the long-term care residents;

~~(t)~~ Conduction of other activities related to the protection and dignity of residents of long-term care facilities;

~~(u)~~ Performance of other activities required by the Administration on Community Living;

~~(v)~~ Policy that shall require the district ombudsman program to perform the functions and responsibilities of the ombudsman pursuant to 45 C.F.R. 1324.13 and adhere to the requirements of section 712 of the Older Americans Act of 1965, as amended;

~~(w)~~ Policy and procedure clarifying the local ombudsman shall have access to the agency's programmatic fiscal information; and

~~(x)~~ Policy and procedure for the receipt and review of grievances received regarding the determination or action of the ombudsman and representatives.

Section 3. Responsibilities of the Regional Long-term Care Ombudsman. The regional long-term care ombudsman shall be staff of, and report directly to, the Kentucky long-term care ombudsman and shall have the following responsibilities:

(1) Receive, investigate, and resolve complaints;

(2) Provide technical assistance and coordination of district programs;

(3) Assist in training of volunteers and local program personnel;

(4) Provide information to public agencies regarding problems of long-term care residents;

(5) Abide by established policies and procedures related to reporting and confidentiality; and

(6) Perform other job duties as required by the Kentucky long-term care ombudsman.

Section 4. Designation of District Programs.

(1) The Kentucky long-term care ombudsman shall designate district entities throughout the state to operate the long-term care ombudsman program.

(2) The district ombudsman program entity shall submit a plan that shall serve as the application for designation of a district ombudsman. The application shall include:

(a) Definition of program in terms of the following personnel:

1. Program supervisor;

2. Ombudsman advisory council;

3. District ombudsman;

4. Friendly visitors; and

5. Volunteer ombudsman;

(b) Agency to conduct the program;

(c) Ability to receive, investigate, and resolve complaints on behalf of long-term care residents;

(d) Maintenance of a complaint documentation system;

(e) Ability to monitor the development and implementation of laws, policies, and regulations that apply to residential long-term care;

(f) Ability to recruit and provide standardized training for volunteers;

(g) Ability to respond in a timely fashion to requests from the Kentucky Long-term Care Ombudsman Program for statistical data and other information;

(h) Ability to receive training and continuing education from the Kentucky Long-term Care Ombudsman Program;

(i) Ability to assure confidentiality of files;

(j) Ability to inform and educate residents, sponsors, organizations, the long-term care industry, and the general public relative to issues affecting the long-term care system, the ombudsman program, and resident rights and concerns;

(k) Provision that an individual involved in the appointment of a subdivision of the office and that an officer, employee, or other representative of the office is not subject to a conflict of interest;

(l) Provision that representatives of the Kentucky Long-term Care Ombudsman Program shall not be liable under state law for the good faith performance of official duties; and

(m) Provision of an annual written statement that the district ombudsman program and contracted entity shall ensure there is not a conflict of interest for the following:

1. Staff;

2. Volunteers;

3. Governing board members;

4. Advisory board members; or

5. Other parties representing or providing oversight to the long-term care ombudsman program.

(3) Designated ombudsmen shall be representatives of the Kentucky Long-term Care Ombudsman Program and shall be accorded rights and privileges of that office.

(4) The district ombudsman agency shall coordinate with the Kentucky long-term care ombudsman prior to hiring a district ombudsman to confirm eligibility through verification of:

(a) Qualifications as defined in section 8 of this administrative regulation; and

(b) Free of any conflict of interest.

Section 5. Responsibilities of the District Ombudsman. The district ombudsman shall:

(1) Provide services as follows:

(a) There shall be a staff person, qualified by training and experience, responsible for administering each service and supervising assigned staff and volunteers;

(b) There shall be designated staff who are trained and skilled in assessing and dealing with the needs of older adults and in the delivery of each service;

(c) Volunteers and paid staff with the same responsibilities shall meet comparable requirements for training and skills;

(d) New staff shall receive an orientation and shall be trained and certified prior to assuming responsibilities;

(e) Staff shall attend required training and provide in-service training for staff and volunteers of local programs;

(f) Staff and volunteers shall not accept personal gifts or money from participants or vendors; and

(g) Staff and volunteers shall not pay bills or cash checks for clients or participants;

(2) Assure services are accessible to older persons by telephone, correspondence, or person-to-person contact;

(3) Represent residents residing in long-term care facilities within the assigned geographical areas;

(4) Assure residents' rights are upheld and promote quality care in long-term care facilities;

(5) Investigate and work to resolve complaints on behalf of long-term care residents;

(6) Promote community involvement in the program by:

(a) Publicizing the existence and function of the local and state programs;

(b) Advising the public about the availability of current state, local, and federal inspection reports, statements of deficiency, and plans for correction for individual long-term care facilities in the service area;

(c) Organizing and implementing an active volunteer program;

(d) Assisting in the development of resident or family and friends councils;

(e) Sponsoring community education and training programs for long-term care facilities, human service workers, families, and the general public about long-term care and residents' rights issues; and

(f) Promoting citizen involvement in order to ensure regular visitations, especially for those residents without available family or friends; ~~and~~

(7) Implement accurate recordkeeping procedures to assure that:

(a) An accurate record shall be maintained on each participant that documents:

1. Participant identification data;

2. Requests for assistance;

3. Eligibility for services provided;

4. Follow-up; and

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5. Closure;

(b) Reports for the Kentucky long-term care ombudsman are prepared and submitted in a format and time frame as directed;

(c) Procedures are followed to protect the identity, confidentiality, and privacy of clients; and

(d) Nonclient-specific statistical and financial data is submitted as required; and¹

(8) Ensure staff and volunteers remain active.

Section 6. Responsibilities of the Volunteer Ombudsman. The volunteer ombudsman shall:

(1) Complete required training, including training and certification requirements for those involved in complaint investigation;

(2) Provide regular visitation of residents in long-term care facilities;

(3) Adhere to guidelines provided by the Kentucky long-term care ombudsman and district ombudsmen; and

(4) Complete required paperwork.

Section 7. Ombudsman Advisory Council.

(1) The designated district ombudsman program shall have an advisory council whose functions are to:

(a) Review and advise programs on policies and procedures;

(b) Provide ongoing support and leadership; and

(c) Identify and generate funding resources for program viability.

(2) The advisory council shall be comprised as follows:

(a) Members shall be persons with a strong interest in improving the quality of life for the long-term care residents and for protecting their rights;

(b) Group size and composition shall be individualized to the needs of the local program but shall not be less than seven (7); and

(c) One-third (1/3) of the members shall be consumers or family members of consumers.

(3) Advisory council members shall not:

(a) Be responsible for certifying or licensing long-term care facilities;

(b) Be a provider of long-term care services or part of an association of providers;

(c) Have any interest or association that may impair the ability of the ombudsman to objectively and independently investigate and resolve complaints;

(d) Gain economically or receive any compensation from a long-term care facility or association;

(e) Be on the Vulnerable Adult Maltreatment[Adult Protective Services Caregiver Misconduct] Registry or the Kentucky Nurse Aide registry; or

(f) Have been found guilty of the following:

1. A violent crime as defined by KRS 439.3401;

2. Abuse, neglect, or exploitation of another person, including assault;

3. Felony theft offense; or

4. Felony drug offense.

Section 8. Qualifications, Certification, and Training of Long-Term Care Ombudsmen.

(1) The Kentucky long-term care ombudsman, regional long-term care ombudsman, and district long-term care ombudsman shall:

(a) Possess a minimum of a bachelor's degree in a health or human services profession from an accredited college or university with:

1. One (1) year experience in health or human services; or

2. The educational or experiential equivalent in the field of aging or physical disabilities; or

(b) Be a certified regional or district ombudsman [~~with no lapse in certification prior to October 19, 2016~~].

(2) The Kentucky long-term care ombudsman shall meet the qualifications of subsection (1)(a) or (b) of this section and have expertise in:

(a) Long-term services and supports or other direct services for older persons or individuals with disabilities;

(b) Consumer-oriented public policy advocacy;

(c) Leadership and program management skills; and

(d) Negotiation and problem solving skills.

(3) The Kentucky long-term care ombudsman, a district, regional, or volunteer ombudsman, advisory council member, and a friendly visitor shall have a completed background check conducted prior to hire using the following:

(a) The Vulnerable Adult Maltreatment[Adult Protective Services Caregiver Misconduct] Registry;

(b) The Kentucky Nurse Aide registry; and

(c) A criminal record check utilizing the Kentucky Administrative Office of the Courts or the Kentucky Justice and Public Safety Cabinet and not have been found guilty of the following:

1. A violent crime as defined by KRS 439.3401;

2. Abuse, neglect, or exploitation of another person, including assault;

3. Felony theft offense; or

4. Felony drug offense.

(4) Program sponsors, sub-contract agency directors, and directors of other sponsoring agencies shall receive basic training whenever possible.

(5) The long-term care ombudsman, program staff, and volunteers shall receive a minimum of ~~thirty-six (36)~~[~~twenty-four (24)~~] hours of training in order to be eligible for certification as a long-term care ombudsman, including at least the following areas:

(a) Governing statutes and regulations, the Older Americans Act, Ombudsman program federal rule at 45 C.F.R. 1324[The Older Americans Act of 1965, as amended, and the aging network];

(b) Ombudsman program organization and structure[Characteristics, special needs, and problems of the long-term care resident];

(c) Roles, functions, and responsibilities of the state[Characteristics of long-term care facilities including:

[1.] [Numbers of beds;]

[2.] [Levels of care;]

[3.] [Services; and]

[4.] [Costs;]

(d) Duties of designated representative of the office[The long-term care reimbursement system including:

[1.] [Medicaid;]

[2.] [Medicare;]

[3.] [SSI; and]

[4.] [State supplementation];

(e) Individual and organizational conflicts of interest[The regulation of facilities and the enforcement of regulations];

(f) Introduction to common health issues individuals may experience using long-term services and supports[Complaint investigation and resolution];

(g) Resident living experience in a long-term care situation[Guardianship];

(h) Residents' rights;

(i) The long-term care setting and levels of care[Development of resident and family councils];

(j) Myths and stereotypes about older adults and persons with disabilities[Recruiting, screening, selecting, training, placing, and supporting volunteers]; [and]

(k) Assessment, care planning, and person-centered care; [Use of public funds].

(l) Transfer and discharge requirements and challenges;

(m) Licensing survey and certification process;

(n) Resident and family councils;

(o) Confidentiality;

(p) Access to residents, facilities, and records;

(q) Disclosure of resident information and ombudsman program records;

(r) Resident decision-making;

(s) Guardianship and third-party decision makers;

(t) Complaint investigation;

(u) Problem solving including verification and resolution;

(v) Abuse, neglect, exploitation, and the role of the ombudsman program;

(w) Program policies and procedures;

(x) Resources and agencies;

(y) Documentation; and

(z) Communication.

(6) District ombudsmen shall attend training meetings as established by the Kentucky long-term care ombudsman.

(7) All certified long-term care ombudsmen [~~and volunteers~~] shall be:

(a) Certified within thirty (30) days of hire or prior to providing services; [~~and~~]

(b) Re-certified every four (4) [~~two (2)~~] years prior to the expiration of the current certification; and [-]

(c) Complete a minimum of eighteen (18) training hours per year, based on the date certification was issued.

(8) Certification shall be awarded after submitting certification documentation of:

(a) Verification of completion of minimum training requirements; and

(b) A score of at least eighty (80) percent on the certification examination.

(9) A maximum of twenty percent (20%) of the certification training may involve independent study, while a minimum of ten (10) hours shall be spent in the field.

(10) Long-term care ombudsman program volunteers who are not certified ombudsmen shall:

(a) Receive a minimum of two (2) hours initial training from the district ombudsman; and

(b) Complete a minimum of four (4) hours of continuing education annually based on the volunteer's start date.

Section 9. Confidentiality. Investigatory files, complaints, responses to complaints, and other information related to complaints or investigations maintained by the ombudsman program shall be considered confidential information in accordance with the Older Americans Act of 1965, 42 U.S.C. 3027(a)(12)(C). Confidentiality shall be maintained using the criteria established in this section.

(1) Persons who gain access to a resident's records shall not discuss or disclose information in the records or disclose a resident's identity outside of the program.

(2) The Kentucky long-term care ombudsman shall release information only with:

(a) A resident or resident representative who communicates informed consent orally, visually, or through the use of auxiliary aids and services and such consent is documented. The disclosure of identifying information of any complainant shall not be disclosed without informed consent orally, visually, or through the use of auxiliary aids and services and such consent is documented [~~Written consent of the resident~~]; or

(b) A court order to disclose.

(3) Information shall be secured as follows:

(a) Complaint files shall be contained in a locked file cabinet;

(b) Computerized systems shall have secured access codes; and

(c) Computer software containing confidential information shall be stored in a locked file.

(4) The confidentiality and disclosure criteria shall not preclude the ombudsman's use of otherwise confidential information in the files for preparation and disclosure of statistical, case study, and other data if the ombudsman does not disclose the identity of persons otherwise protected in this section.

Section 10. Rights of Access.

(1) Kentucky, regional, volunteer, and district ombudsmen shall have unrestricted access to long-term care facilities:

(a) Without prior notice;

(b) To meet with one (1) or more residents; and

(c) To observe the operation of the facility as it affects the patient.

(2) [~~Volunteer~~] Ombudsmen shall have access to the:

(a) Residents' dining area;

(b) Residents' living area;

(c) Residents' recreational area;

(d) Lounges; and

(e) Areas open to the general public.

(3) Certified representatives of the Kentucky Long-term Care Ombudsman Program shall have access to a resident's medical and

social records with permission of the resident or his legal guardian, except as provided for under KRS 209.030(7).

(4) Access shall not include the right to examine the financial records of the facility without the consent of the administrator.

(5) If the ombudsman is denied entry to a long-term care facility, or denied upon a request for copies of all licensing and certification records maintained by the state with respect to long-term care facilities, the ombudsman shall inform the [-]

[(a)] administrator or operator of the statutory authority for access. If access is still denied, the ombudsman shall inform the:

(a) [(b)] Kentucky long-term care ombudsman;

(b) [(c)] Office of Inspector General, Division of Health Care; and

(c) [(d)] Local law enforcement officials to secure assistance for entry if entry into a facility is denied.

(6)

(a) Willful interference, as governed by KRS 216.541(3), with representatives of the Kentucky Long-term Care Ombudsman Program in the performance of official duties shall be unlawful and result in a fine of \$100 to \$500 for each violation.

(b) Each day the violation continues shall constitute a separate offense.

Section 11. Referrals.

(1) Representatives of the long-term care ombudsman program shall be exempt from making reports of abuse, neglect, or exploitation [~~or spouse abuse~~] to the Department for Community Based Services, Division of Protection and Permanency, and, if appropriate, the Office of Inspector General, Division of Health Care, for investigation without appropriate consent or court order pursuant to 45 C.F.R. Part [~~Parts 1321 and~~] 1324.

(2) The ombudsman shall seek consent of the resident:

(a) To work to resolve complaints and make referrals to agencies; or

(b) When the ombudsman personally witnesses abuse, gross neglect, or exploitation of the resident.

(3) Communication of consent to reveal the identity of the resident or complainant may be made in writing, orally, or visually.

(4) When the resident is unable to communicate consent and has no resident representative, the ombudsman shall:

(a) Take steps to investigate complaints that adversely affect the health, safety, welfare, or rights of the resident; and

(b) Refer the matter and disclose identifying information of the resident to the management of the facility in which the resident resides or the appropriate agencies in the following circumstances:

1. The ombudsman personally witnesses suspected abuse, gross neglect, or exploitation of a resident and has no evidence indicating that the resident would not wish a referral to be made; and

2. The ombudsman has reasonable cause to believe that disclosure would be in the best interest of the resident.

(5) If the resident is unable to communicate consent and has a resident representative, the ombudsman shall contact the resident representative for consent.

(6) If there is reasonable cause to believe the resident representative through their action, inaction, or decision making may adversely affect the health, safety, welfare, or rights of the resident, the ombudsman shall:

(a) Seek permission of the KLTCO or designee during an investigation if a resident is unable to give consent and the resident representative is not acting in the best interest of the resident; and

(b) Make a referral to the appropriate agencies upon approval of the KLTCO or designee.

(7) Referrals under this section shall not affect the continuing duty, full freedom, and independence of the ombudsman to:

(a) Ensure the continued adequacy and responsiveness of complaint investigation and resolution, monitoring, and data collection systems consistent with the Older Americans Act of 1965, as amended;

(b) Maintain an independent capacity to investigate and resolve complaints as governed by Section 13 of this administrative regulation;

(c) Receive and process, on a regular basis, information related to the number, type, and source of complaints, facilities involved, and the manner of complaint resolution; and

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(d) Maintain by specific agreement the power, ability, and right to monitor the agency's complaint processing performance and take action necessary to correct and improve deficiencies.

(8) District ombudsmen shall address concerns regarding the investigation or resolution of complaints to the Kentucky long-term care ombudsman or designee.

(9) District ombudsmen shall make referrals to county attorneys, legal aid agencies, and legal assistance offices.

(10) District ombudsman shall report to the Kentucky long-term care ombudsman a referral to the Office of the Attorney General or any federal agency.

Section 12. Receiving Reports.

(1) The Kentucky long-term care ombudsman, regional ombudsmen, district ombudsmen, and persons identified and approved by these ombudsmen shall have the authority to provide intake of a complaint.

(2) The person receiving a report shall obtain as much information as possible, making a reasonable effort to obtain the:

(a) Name and location of the long-term care facility involved;

(b) Name and location of the resident;

(c) Name, address, and telephone number of the person responsible for the resident;

(d) Nature of the complaint as specifically as possible;

(e) Name and location of the alleged perpetrator; and

(f) Identity of the reporting source, though reports may be made anonymously.

(3) The person receiving the report may contact other agencies or individuals to secure additional information relevant to the investigation.

Section 13. Complaint Investigation.

(1) A long-term care facility resident shall have the right to:

(a) Voice grievances and recommend changes in policies and services to facility staff and outside representatives of the resident's choice, free from restraint, interference, coercion, discrimination, or reprisal;

(b) Associate and communicate privately with persons of the resident's choice; and

(c) Private meetings with the appropriate long-term care facility inspectors from the Cabinet for Health and Family Services.

(2) A long-term care ombudsman shall investigate and resolve complaints[;]

~~[(a)] made by or on behalf of an individual[an older individual] who is a resident of a long-term care facility relating to action that may adversely affect the health, safety, welfare, or[and] rights of the resident[; and]~~

~~[(b)] [Made by or on behalf of a younger long-term care facility resident if actions will:]~~

~~[4-]~~

~~[a.] [Benefit an older individual residing in the long-term care facility or older individuals residing in long-term care facilities generally; or]~~

~~[b.] [Be the only viable avenue of assistance available to the resident; and]~~

~~[2-] [Not significantly diminish the Long-term Care Ombudsman Program's efforts on behalf of long-term care residents].~~

(3) District and volunteer ombudsmen shall not investigate complaints unless certified by the Kentucky Long-term Care Ombudsman Program.

(4) The Kentucky and regional ombudsmen shall inform the district ombudsmen of on-site investigations conducted in their districts.

(5) The investigation shall be conducted according to the criteria established in this subsection.

(a) Investigation shall include contact with the resident, staff of the long-term care facility, and collateral contacts.

(b) A representative of the program shall, upon entering the facility, promptly notify the administrator or his designated representative of his presence.

(c) A representative of the program shall not enter the living area of a resident without identifying himself to the resident.

(6) The investigating ombudsman, with permission of the

resident or resident representative, shall take steps to investigate a complaint and attempt to resolve the complaint to the resident's satisfaction. Resolution may include:

(a) Collaborating or negotiating at the nursing home administrative level to change particular nursing home behavior, pattern, or practice affecting the resident;

(b) Consulting with a resident, relative, or nursing home staff member to resolve a problem;

(c) Effecting positive enforcement action by a regulatory agency;

(d) Proposing regulatory or statutory changes or additions;

(e) Communicating with community groups and professional organizations; and

(f) Encouraging the utilization of legal services assistance.

(7) Documentation shall be completed on complaint investigations and incorporated into the ombudsman data system as follows:

(a) The documentation entered into the data system shall be entered by the 15th of the month for all cases completed the prior month; and

(b) Documentation of the investigation shall include the:

1. Identity of the resident on whom the report is made;

2. Date the face-to-face visit with the resident was completed;

3. Identity of the long-term care facility;

4. Complaint;

5. Identity of persons interviewed and records or documents reviewed during the course of the investigation;

6. Factual information used to support findings and conclusions; and

7. Actions taken and services provided.

(8) Resolution shall include documented follow-up and ongoing monitoring of the situation for a reasonable period of time, depending on the complexity of the situation, through contact with the complainant or resident or, if appropriate, for the purpose of determining that the causes giving rise to the complaint have not been repeated and have not recurred.

(9)

(a) In accordance with KRS 216.541(2) and (3), retaliation and reprisals by a long-term care facility or other entity against an employee or resident for having filed a complaint or having provided information to the Kentucky Long-term Care Ombudsman Program shall be unlawful and shall result in a fine of \$100 to \$500 for each violation.

(b) Each day a violation continues shall constitute a separate offense.

Section 14. Reporting Requirements. The Kentucky Long-Term Care Ombudsman Program shall maintain a statewide uniform reporting system to collect and analyze information on complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems.

(1) The contracted agency providing the district long-term care program shall submit quarterly reports to the Kentucky long-term care ombudsman according to the contractual agreement.

(2) The district ombudsman shall submit an annual report to the Kentucky long-term care ombudsman no later than determined in the contractual agreement for inclusion in the annual state ombudsman report.

Section 15. Monitoring and Evaluation.

(1) District long-term care ombudsman programs shall be monitored annually by the contract agency or the Kentucky long-term care ombudsman according to contract or, if services are provided directly by the Kentucky long-term care ombudsman, by the DAIL.

(2) Formal evaluations of the district ombudsman program shall be conducted at regular intervals, at least annually, by the Kentucky long-term care ombudsman.

(3) The results of the evaluation, omitting client identifying information, shall be made available to the district long-term care ombudsman contracting agency to be used to plan and implement program changes to meet participant needs.

(4) The Kentucky long-term care ombudsman and district long-term care ombudsman contracting agency shall permit staff of the

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Cabinet for Health and Family Services, persons acting for the Cabinet for Health and Family Services, or staff designated by appropriate federal agencies to:

(a) Monitor and evaluate programs and activities initiated under the Older Americans Act of 1965, as amended, and other programs for which the department has administrative responsibility; and

(b) Interview clients by persons and agencies listed in this subsection, except if confidentiality requirements are applicable.

VICTORIA ELDRIDGE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 18, 2024

FILED WITH LRC: October 9, 2024 at 1:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 23, 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 December 16, 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 December 31, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Phyllis Sosa and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the operations of the state long-term care ombudsman program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the Cabinet to administer the procedures and operations of the state long-term care ombudsman program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing cabinet procedures for operations of the state long-term care ombudsman program, required by the Older Americans Act of 1965 as amended and as required by KRS 205.204.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes through its establishment of cabinet procedures for the operation and administration of the state Long-term Care Ombudsman Program

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

(a) How the amendment will change this existing administrative regulation: This amendment updates definitions, requires the state Long-term Care Ombudsman to establish agreements and working relationships with the licensure and certification agencies, ensures individuals being considered for hire meet eligibility requirements, adds advisory council members must have background checks completed, increases the minimum training hours for certification of ombudsmen, increases the minimum annual training requirements of certified ombudsmen and volunteers, and extends the certification

period from 2 to 4 years.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to operate the state long-term care ombudsman program in compliance with the Older Americans Act of 1965 as amended and the final rule 42 C.F.R. 3058.

(c) How the amendment conforms to the content of the authorizing statutes: This amended administrative regulation conforms to KRS 205.204, which designates the Cabinet for Health and Family Services to administer the Older American Act of 1965 as amended.

(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies terminology through definitions, provides clarity on hiring and training requirements, and provides additional safeguards by requiring background checks on advisory council members

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation directly affects the state long-term care ombudsman provider agencies operating within the 15 Area Development Districts (ADDs), the office of the state long-term care ombudsman, and the advisory councils. The office of the state long-term care ombudsman has one (1) state long-term care ombudsman, and two (2) regional ombudsmen. There are 15 district ombudsmen located in the ADDs, and 87 certified ombudsmen. There are 15 advisory councils located in the ADDs and 97 council members.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The state long-term care ombudsman (SLTCO) will need to develop a working relationship with the licensing agency, including meeting with the agency representatives to establish roles, responsibilities, and reporting. The ombudsmen and volunteers will complete the required initial and annual training as established by the SLTCO, and council members will agree to having a background check.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The establishment of working relationships is a normal part of doing business and should not incur additional costs. The additional training for ombudsmen and volunteers will not have a budgetary increase but will be a normal cost of doing business. The cost will be in staff time. The training can be completed online or virtually.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The SLTCO will have better working relationships and contacts for issues that need assistance in being resolved. The ombudsmen and volunteers will be better prepared to provide services to residents of long-term care facilities, and having council members that have cleared background checks provides a more professional and conflict-free oversight to the program.

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

(a) Initially: Initially, the cost of implementation will be approximately \$175.00 to complete background checks on current council members. Each background check costs approximately \$25, and the average council has seven (7) members.

(b) On a continuing basis: On a continuing basis, the provider agency will have to pay for background checks on new council members. Council members regularly rotate off and on the council, so the cost is dependent on the number of new council members being appointed to replace members rotating off. On average, each council will have two (2) new members annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The SLTCO program is funded in part through the Older Americans Act of 1965 as amended, State General Funds, and local donations.

(7) Provide an assessment of whether an increase in fees or

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funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There are no fees in the administration of this administrative regulation. No funding increase is necessary to implement this amended administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be implemented in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 3001 et seq 35(3058f-h)

(2) State compliance standards. KRS 194A.050; 205.204

(3) Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 3001 et seq 35(3058f-h)

(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 of 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 of 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.505, 205.204, 42 U.S.C. 3001 et seq 45.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Department for Aging and Independent Living

(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 change is expected.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Area Development Districts (ADDs)

(a) Estimate the following for the first year:

Expenditures: There will only be expenditures for completing background checks for advisory council members. The cost is determined by the background check company/source the provider chooses to utilize. The initial cost to each ADD will be approximately \$175.00 based on the cost of each background check being \$25.00 for each of the seven (7) council members.

Revenues: None

Cost Savings: None

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The cost will reduce in subsequent years since only new council members will have to have background checks completed. On average there will be two (2) new council members annually per ADD. The annual cost to the ADDs is approximately \$50.00.

(4) Identify additional regulated entities not listed in questions (2) or (3): There are no additional regulated entities affected by this amended regulation.

(a) Estimate the following for the first year:

Expenditures: None

Revenues: None

Cost Savings: None

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There are no changes expected in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is minimal fiscal impact to the agencies required to complete background checks on advisory council members. The cost of a background check is determined by the provider agency based on their contract with the average cost being \$25.

(b) Methodology and resources used to determine the fiscal impact: Each agency negotiates their own contract with an entity to conduct background checks on staff and volunteers. The advisory council members will now be included in those receiving a background check. The average cost of a background check is \$25, and on average there are seven (7) members on the advisory council, making the initial cost for compliance \$175.00 per ADD.

(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 administrative regulation will not have an overall negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion: The number of advisory council members multiplied by the cost of a background check would result in a minimal impact to the ADD. $\$25 \times 7$ council members = \$175.00 for the first-year $\times 15$ ADDs = \$2,625 total cost for the initial implementation, and for subsequent years the cost is reduced as background checks will be conducted on new council members. $\$25$ cost of background check $\times 2$ average new council members = $\$50.00 \times 15$ ADDs = \$750 annual cost statewide.

NEW ADMINISTRATIVE REGULATIONS

Public comment periods for ordinary, non-emergency regulations are at least two months long. For other regulations with open comment periods, please also see last month's [Administrative Register of Kentucky](#).

BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(New Administrative Regulation)

201 KAR 16:513. Fees for Allied Animal Health Professional (AAHP) Permits.

RELATES TO: KRS 321.175, 321.181(1)-(4), 321.235

STATUTORY AUTHORITY: KRS 321.175(2)(c), (5), 321.181(1)-(4), 321.235(1)(a)-(c), (2)(b)2

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.235(1)(a)-(c) and (2)(b)2. require the Kentucky Board of Veterinary Examiners to promulgate administrative regulations as it may deem necessary and proper to effectively carry out and enforce the provisions of KRS Chapter 321, including regulations to establish authorized fees. This administrative regulation establishes fees for allied animal health professional (AAHP) permits.

Section 1. Payment and Submission of Fees.

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

(2) All fees shall be nonrefundable.

(3) In the event the board carry forward balance at the end of a fiscal year falls below \$200,000, the board's fees shall automatically increase 20% for the duration of the fiscal biennium.

Section 2. Application Fees for Allied Animal Health Professional Permits

(1) The application fee for an AAHP permit shall be \$250.

(2) The fee shall be attached to the completed Application for Allied Animal Health Professional Permit form as found in 201 KAR 16:732 or online equivalent form, including all required attachments.

Section 3. Examination Fees for Allied Animal Health Professionals. The fee for the Kentucky Board of Veterinary Examiners State Jurisprudence Examination for AAHP applicants shall be \$100 paid directly to the board.

Section 4. Renewal Fees for Allied Animal Health Professional Permits. The following fees shall be paid to renew an AAHP permit.

(1) Except as established in paragraph 2(c) of this section, the annual renewal fee for an AAHP permit in active status shall:

- (a) Until June 30, 2026, be \$150;
- (b) Between July 1, 2026 and June 30, 2028, be \$175; and
- (c) After June 30, 2028, be \$200.

(2) Ontime renewal.

(a) The fee shall be attached to the complete Renewal for AAHP Permits form as found in 201 KAR 16:735 or online equivalent form, including all required attachments, continuing education credits, and other documents required by the board; and

(b) The complete package shall submitted to the board for review and approval not later than September 30 of each year.

(c) For an AHHP permittee who is initially permitted 120 days prior to the end of the renewal period, the permit renewal fee and any continuing education (CE) shall be waived during the first permit cycle.

(3)

(a) A renewal grace period shall be provided for sixty (60) days following the renewal deadline. During the grace period, an AAHP permittee who failed to meet the September 30 renewal deadline may continue to function as though permitted by the board until a late renewal application is submitted to the board.

(b) The late fee for renewal shall be \$300 in addition to the renewal fee as described in Section 4(1) of this administrative regulation.

(c) The fee shall be attached to the complete Renewal Application for AAHP Permits form as found in 201 KAR 16:735 or online equivalent form, including all required attachments, an accounting of earned continuing education hours, and other documents required by the board, to the board between October 1 and November 30. If audited by the board, the AAHP permittee shall provide proof of CE credits earned in accordance with 201 KAR 16:735.

(4) An AAHP's permit shall expire if no renewal application package and all attachments, and late fee if applicable, is paid to the board by November 30 of each year.

Section 5. Reinstatement Fees for Allied Animal Health Professional Permits.

(1) The reinstatement period is limited to five (5) years past date of permit expiration.

(a) Except as provided by Section 6(3)(b)3. of this administrative regulation, if not more than five (5) years have elapsed since the last date of permit expiration, an AAHP may pay a reinstatement fee of \$675 and submit a complete Reinstatement Application for AAHP Permits form as found in 201 KAR 16:775 16:732 or online equivalent form, including all required attachments, to the board for reinstatement of the permit.

(b) An AAHP permittee shall not apply for a new permit during this five (5) year window; a reinstatement application shall be required.

(2) If more than five (5) years have elapsed since the last date of permit expiration, an AAHP shall apply as a new applicant to obtain a new permit from the Kentucky Board of Veterinary Examiners.

Section 6. Inactive Status of Permits.

(1)

(a) An AAHP permittee shall request inactive licensure status in accordance with 201 KAR 16:580.

(b) If more than ninety (90) days prior to the renewal deadline or more than 150 days prior to the grace period deadline, the Request for Credential Status Change form incorporated in 201 KAR 16:580, or online equivalent form shall be required, and there shall not be a fee.

(c) If less than ninety (90) days prior to the renewal deadline or less than 150 days prior to the grace period deadline, the Renewal Application for AAHP Permits incorporate in 201 KAR 16:735, or online equivalent form shall be required, and the required fee shall paid as established in subsection (2) of this section.

(2) Renewal of an inactive AAHP permit.

(a) The annual renewal fee for inactive AAHP permits status shall be \$50 per renewal.

(b) The late fee for annual renewal of an inactive AAHP permit shall be \$150 in addition to the renewal fee as described in paragraph (a) of this subsection, and shall apply to a AAHP permit in an inactive status that was not renewed by September 30 of the renewal period.

(c) An AAHP permit in an inactive status that is not renewed by November 30 shall be moved to an expired status.

(3) Reinstatement of inactive AAHP permit status to active status.

(a) A AAHP permittee in inactive status may reinstate their permit to active status in accordance with 201 KAR 16:580.

(b) There shall be a reinstatement fee due at the time of application, as provided for in subparagraphs 1.-2. of this paragraph.

1. For an inactive AAHP permit that has been in inactive status less than twenty-four (24) months, the licensure reinstatement fee shall be \$600.

2. For an inactive AAHP permit that has been in inactive status greater than twenty-four (24) months to seven (7) years, the permit reinstatement fee shall be \$400.

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3. After seven (7) years, the permit shall expire and the permit holder shall be required to apply for a new AAHP permit.

MICHELLE M. SHANE, Executive Director on behalf of
JOHN C. PARK, DVM, Board Chair

APPROVED BY AGENCY: October 14, 2024

FILED WITH LRC: October 15, 2024 at 8:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2024, at 10:00 am EST, at the offices of the Kentucky Board of Veterinary Examiners, 4047 Iron Works Pkwy, Suite 104, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 December 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: Michelle M. Shane, Executive Director, Kentucky Board of Veterinary Examiners, 4047 Iron Works Parkway, Suite 104, Lexington, Kentucky 40511, Phone: 502-564-5433, Fax: 502-753-1458, Email: Michelle.Shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle M. Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the fees for persons seeking an allied animal health professional (AAHP) permit from the board to gain the ability to practice as an AAHP.

(b) The necessity of this administrative regulation: This new administrative regulation is necessary to establish the fees that the Kentucky Board of Veterinary Examiners (KBVE) approves for AAHP permitting, as mandated in KRS 321.175(2)(c), (5), 321.181(1)-(4), 321.235(1)(a)-(c), (2)(b)2.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235 mandates that the board administer and enforce KRS Chapter 321. KRS 321.203 and 321.236 specifically require the board to collect fees for new, inactive, late, renewal, and reinstatement applications.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation will assist in effective administration by clearly expressing what fees have been approved by the board in order to keep all mandated programs operational and responsive to constituent needs.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: N/A. 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: Approximately 20 persons in Kentucky offering AAHP services are estimated to 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: Applicants will be required to have paid the fee prior to permitting, renewal, or reinstatement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for application, renewal, and reinstatement.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the fees associated with permitting.

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

(a) Initially: The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term.

(b) On a continuing basis: The KBVE expects costs for all board operations to be approximately \$900,000 annually in future bienniums as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KBVE does not receive any general funds. Fees for the board come from license, certificate, permit, and registration fees established in this filing and the other fee filings.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no anticipation of an increase in fees to implement this administrative regulation, as the KBVE is already running an administrative program to process applications. The new fees for AAHP permittees establish revenue required for this new program.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are established directly.

(9) TIERING: Is tiering applied? Tiering is not applied; all AAHP permit applicants pay the same fees.

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 321.175(2)(c), (5), 321.181(1)-(4), 321.235(1)(a)-(c), (2)(b)2.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The promulgating agency is the Kentucky Board of Veterinary Examiners. There are no other affected state units, parts, or divisions.

(a) Estimate the following for the first year:

Expenditures: The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term. This includes the administration of the AAHP permit program, database management, infrastructure, overhead, and contractors, including legal counsel and investigators.

Revenues: This filing will generate approximately \$5,000 the first year.

Cost Savings: There will be no cost savings; this amendment simply codifies the requirements, making them easily accessible for regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The General Assembly empowered the board to set fees based on costs. AAHP permittees shall renew every year with approx. annual revenue of \$3,000. Staff time and database management will be required for record keeping. Costs will be minimal.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): KBVE does not anticipate that local entities will be impacted.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

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

(4) Identify additional regulated entities not listed in questions (2) or (3): KBVE does not anticipate that any other regulated entities will be impacted.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

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

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: Running an administrative program mandated by the General Assembly costs money. AAHP permit application, renewal, and reinstatement fees shall be used to pay programmatic costs and are shared across board operations to keep fees as low as possible. Costs include overhead, staffing and benefits, database usage and maintenance, contractors, legal counsel, etc. These fees shall ensure that the board and its staff remain operational, efficient, and responsive to both the public and constituent needs, while also implementing new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321. Once established and recurring, these fees are anticipated to generate revenue of approx. \$3,000 every year, critical revenue for the functionality of all board services.

(b) Methodology and resources used to determine the fiscal impact: A large spreadsheet was used to calculate all board fees and estimated quantities of applications based on historical numbers. Projections were calculated ten (10) years out to F.Y. 2036.

(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 new regulation shall not have a "major economic impact", as defined in KRS 13A.010(13). The fees are minimal and are used for board operations to run the permit program.

(b) The methodology and resources used to reach this conclusion: "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] In most cases, fees from this administrative regulation will be less than \$300 per application or renewal. Reinstatement fees will be slightly higher due to the extra staffing costs related to processing.

BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(New Administrative Regulation)

201 KAR 16:515. Fees for veterinary facility registrations.

RELATES TO: KRS 321.203, 321.235, 321.320

STATUTORY AUTHORITY: KRS 321.203, 321.205, 321.235(1)(c), 321.236, 321.320

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.235(1)(c) requires the Kentucky Board of Veterinary Examiners to promulgate administrative regulations to establish the fee amounts for all fees required by KRS Chapter 321 and the fees for services provided by the board. KRS 321.236(1)(a) and (4) allow the board to establish application fees for veterinary facilities and mobile units. This administrative regulation establishes fees for veterinary facility registrants and their associated mobile units, including the cost for application, renewal, and reinstatement.

Section 1. Payment and Submission of Fees.

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

(2) All fees shall be nonrefundable.

(3) In the event the board carry forward balance at the end of a fiscal year falls below \$200,000, the board's fees shall automatically increase 20% for the duration of the fiscal biennium.

Section 2. Application Fees for Veterinary Facility Registration.

(1)

(a) In accordance with KRS 321.236(2), the initial registration fee for a veterinary facility that is registered with the board by June 30, 2025, shall be \$200 and reduced by half to \$100 for facilities registered by the mandated deadline.

(b) After June 30, 2025, the initial application fee for a veterinary facility with up to two (2) mobile units shall:

1. Until June 30, 2026, be \$500;

2. Between July 1, 2026, and June 30, 2028, be \$550; and

3. After June 30, 2028, be \$625.

(2) In addition to the initial application fee for a registered veterinary facility, an additional fee shall be paid to the board, calculated based on the number of mobile units associated with the facility, as follows:

(a) For a registered veterinary facility with two (2) or fewer mobile units identified on the application, no additional fees shall be collected;

(b) For a registered veterinary facility with three (3) or more mobile units identified on the application, an additional fee per mobile unit shall be due to the board with the initial application for each additional mobile unit beyond two (2) mobile units per veterinary facility:

1. Until June 30, 2025, \$25 per unit;

2. Between July 1, 2025, and June 30, 2027, \$50 per unit;

3. Between July 1, 2027, and June 30, 2029, \$75 per unit; and

4. After June 30, 2029, be \$100 per unit.

(3) The fees shall be attached to the completed Application for Registration as a Veterinary Facility form as found in 201 KAR 16:762 or online equivalent form, including all required attachments.

Section 3. Renewal Fees for Veterinary Facility Registration.
The following fees shall be paid biennially for the renewal of a veterinary facility registration:

(1)

(a) Except as provided for in subsection (3) of this section, the base renewal fee for a veterinary facility registration in active status shall:

1. Until September 30, 2027, be \$450;

2. Between October 1, 2027, and September 30, 2029, be \$550; and

3. After September 30, 2029, be \$650.

(b) The fees shall be attached to the Renewal Application for Veterinary Facility Registrations form as found in 201 KAR 16:765 or online equivalent form.

1. To qualify for renewal, the form shall be complete, including all required attachments, continuing education credits if required, and fee payment; and

2. The complete package is submitted to the board for review and approval not later than September 30 of each odd-numbered year.

(2) In addition to the renewal base fee for a registered veterinary facility, an additional fee shall be paid to the board, calculated based on the number of mobile units associated with the facility, as follows:

(a) For a registered veterinary facility with two (2) or fewer mobile units identified on the registration, no additional fees shall be collected;

(b) For a registered veterinary facility with three (3) or more mobile units identified on the registration, an additional fee per mobile unit shall be due to the board with the biennial renewal application for each additional mobile unit beyond two (2) mobile units per veterinary facility registration:

1. Until September 30, 2027, \$50 per unit;

2. Between October 1, 2027, and September 30, 2029, \$75 per unit; and

3. After September 30, 2029, be \$100 per unit.

(3) For a veterinary facility initially registered less than 120 days prior to the end of the renewal period, the registration renewal fees shall be waived during the first registration cycle.

(4) There shall be no renewal grace period provided for veterinary facility registrations. Veterinary facilities that fail to renew their registration by September 30 of each odd-numbered year shall expire. If a veterinary facility intends to continue operations following

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a missed renewal, the registered responsible party or veterinary manager shall apply for reinstatement for the veterinary facility and obtain board approval before continuing operations at the registered facility.

Section 4. Reinstatement Fees for Veterinary Facility Registration.

(1) To reinstate a veterinary facility registration following expiration, the registered responsible party or veterinary manager shall submit a complete Reinstatement Application for Veterinary Facilities form as found in 201 KAR 16:765 or online equivalent form, including all required attachments and fees, to the board for reinstatement of the veterinary facility registration.

(a) If less than six (6) months has elapsed since the expiration date of the facility registration, the veterinary facility shall pay a reinstatement fee of \$675.

(b) If more than six (6) months and not more than five (5) years have elapsed since the expiration date of the facility registration, the veterinary facility reinstatement fee shall:

1. Until June 30, 2027, be \$725;
2. Between July 1, 2027, and June 30, 2029, be \$900; and
3. After June 30, 2029, 2028, be \$1,050.

(2) A veterinary facility shall not apply for a new registration during this five (5) year window; a reinstatement application shall be required.

(3) If more than five (5) years have elapsed since the last date of registration expiration, a veterinary facility shall apply as a new applicant to obtain a new veterinary facility registration in the Commonwealth of Kentucky.

MICHELLE M. SHANE, Executive Director on behalf of
JOHN C. PARK, DVM, Board Chair

APPROVED BY AGENCY: October 14, 2024

FILED WITH LRC: October 15, 2024 at 8:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2024, at 10:00 am EST, at the offices of the Kentucky Board of Veterinary Examiners, 4047 Iron Works Pkwy, Suite 104, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 December 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: Michelle M. Shane, Executive Director, Kentucky Board of Veterinary Examiners, 4047 Iron Works Parkway, Suite 104, Lexington, Kentucky 40511, Phone: 502-564-5433, Fax: 502-753-1458, Email: Michelle.Shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle M. Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the fees for persons and businesses seeking a veterinary facility registration from the board to gain the ability to operate a veterinary facility in Kentucky.

(b) The necessity of this administrative regulation: This new administrative regulation is necessary to establish the fees that the Kentucky Board of Veterinary Examiners (KBVE) approves for veterinary facility registration, as mandated in KRS 321.203, 321.205, 321.235(1)(c), 321.236, and 321.320.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235 mandates that the board administer and enforce KRS Chapter 321. KRS 321.203, 321.235(1)(c), and 321.236 specifically require the board to collect fees for new, renewal, and reinstatement applications on registered facilities.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This new administrative regulation will assist in effective administration by clearly expressing what fees have been approved by the board in order to keep all mandated programs operational and responsive to constituent needs.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: N/A. 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: Approximately 500 businesses in Kentucky offering veterinary services are estimated to 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: Applicants will be required to have paid the fee prior to registration, renewal, or reinstatement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for application, renewal, and reinstatement.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the fees associated with registration.

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

(a) Initially: The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term.

(b) On a continuing basis: The KBVE expects costs for all board operations to be approximately \$900,000 annually in future bienniums as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KBVE does not receive any general funds. Fees for the board come from license, certificate, permit, and registration fees established in this filing and the other fee filings.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no anticipation of an increase in fees to implement this administrative regulation, as the KBVE is already running an administrative program to process applications and an inspection program to ensure compliance. The new fees for veterinary facility registration establish revenue required for this new program.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are established directly.

(9) TIERING: Is tiering applied? Yes, tiering is applied to the fees based on the number of mobile units associated with the veterinary facility. If a veterinary facility has more than two (2) mobile units, there is a small fee for each additional mobile unit to account for additional staff time processing applications and database management.

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 321.203, 321.205, 321.235(1)(c), 321.236, and 321.320.

(2) Identify the promulgating agency and any other affected

state units, parts, or divisions: The promulgating agency is the Kentucky Board of Veterinary Examiners. There are no other affected state units, parts, or divisions.

(a) Estimate the following for the first year:

Expenditures: The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term. This includes the administration of the veterinary facility registration program, database management, infrastructure, overhead, and contractors, including legal counsel and investigators.

Revenues: This filing will generate approximately \$50,000 the first year.

Cost Savings: There will be no cost savings; this amendment simply codifies the requirements, making them easily accessible for regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The General Assembly provided a low initial registration fee of \$100 and empowered the board to set fees based on costs in subsequent years. The board is phasing in fees so businesses have time to prepare. Further, veterinary facility registrations shall renew only every other year. Consequently, the annual amount varies significantly. In F.Y.s ending in even numbers, the regulation will generate approx. \$250,000; in F.Y.s ending in odd numbers, there is anticipated to be virtually no revenue (i.e., only new facilities, projected to be less than \$2,000). Staff time and database management will be required for record keeping. Costs will be minimal.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Counties that run animal shelters which offer veterinary services to the public will need to register the animal shelter as a veterinary facility.

(a) Estimate the following for the first year:

Expenditures: The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term. This includes the administration of the veterinary facility registration program, database management, infrastructure, overhead, and contractors, including legal counsel and investigators.

Revenues: This filing will generate approximately \$50,000 the first year.

Cost Savings: There will be no cost savings; this amendment simply codifies the requirements, making them easily accessible for regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The General Assembly empowered the board to set fees based on costs in subsequent years. The board is phasing in fees so businesses have time to prepare. Further, veterinary facility registrations shall renew only every other year. Consequently, the annual amount varies significantly. In F.Y.s ending in even numbers, the regulation will generate approx. \$250,000; in F.Y.s ending in odd numbers, there is anticipated to be virtually no revenue (i.e., only new facilities, likely less than \$2,000).

(4) Identify additional regulated entities not listed in questions (2) or (3): KBVE does not anticipate that any other regulated entities will be impacted.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

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

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: Running an administrative program mandated by the General Assembly costs money. Fees for veterinary facility registration, renewal, and reinstatement shall be used to pay programmatic costs and are shared across board operations to keep fees as low as possible. Costs include overhead, staffing and benefits, database usage and maintenance, contractors, legal counsel, etc. These fees shall ensure that the board and its staff remain operational, efficient, and responsive to both the public and constituent needs, while also implementing new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321. Once established and recurring, these fees are anticipated to generate revenue of approx. \$250,000 every two years, critical revenue for

the functionality of all board services.

(b) Methodology and resources used to determine the fiscal impact: A large spreadsheet was used to calculate all board revenues, expenditures, proposed fees, and estimated quantities of applications based on historical numbers. Projections were calculated ten (10) years out to F.Y. 2036.

(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 new regulation shall not have a "major economic impact", as defined in KRS 13A.010(13). The fees are minimal and are used for board operations to run the registration program.

(b) The methodology and resources used to reach this conclusion: "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] In most all cases, fees from this administrative regulation will be less than \$550 per application or renewal. Reinstatement fees will be slightly higher due to the extra staffing costs related to processing.

BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(New Administrative Regulation)

201 KAR 16:517. Fees for AAHP facility registrations.

RELATES TO: KRS 321.203, 321.205, 321.235, 321.320
STATUTORY AUTHORITY: KRS 321.203, 321.205,
321.235(1)(c), 321.236, 321.320

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.235(1)(c) requires the Kentucky Board of Veterinary Examiners to promulgate administrative regulations to establish the fee amounts for all fees required by KRS Chapter 321 and the fees for services provided by the board. KRS 321.236(1)(a) and (4) allow the board to establish application fees for allied animal health professional (AAHP) facilities and mobile units. This administrative regulation establishes fees for AAHP facility registrants and their associated mobile units, including the cost for application, renewal, and reinstatement.

Section 1. Payment and Submission of Fees.

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

(2) All fees shall be nonrefundable.

(3) In the event the board carry forward balance at the end of a fiscal year falls below \$200,000, the board's fees shall automatically increase 20% for the duration of the fiscal biennium.

Section 2. Application Fees for Allied Animal Health Professional (AAHP) Facility Registration.

(1)

(a) In accordance with KRS 321.236(2), the initial registration fee for an AAHP facility shall be \$200 and if the facility is registered with the board by June 30, 2025, the fee shall be reduced by half to \$100.

(b) After June 30, 2025, the initial application fee for an AAHP facility registration with up to two (2) mobile units shall:

1. Until June 30, 2026, be \$500;
2. Between July 1, 2026 and June 30, 2028, be \$550; and
3. After June 30, 2028, be \$625.

(2) In addition to the initial application fee for a registered AAHP facility, an additional fee shall be paid to the board, calculated based on the number of mobile units associated with the facility, as follows:

(a) For a registered AAHP facility with two (2) or fewer mobile units identified on the application, no additional fees shall be collected;

(b) For a registered AAHP facility with three (3) or more mobile units identified on the application, an additional fee per mobile unit

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shall be due to the board with the initial application for each additional mobile unit beyond two (2) mobile units per AAHP facility:

1. Until June 30, 2025, \$25 per unit;
2. Between July 1, 2025, and June 30, 2027, \$50 per unit;
3. Between July 1, 2027, and June 30, 2029, \$75 per unit; and
4. After June 30, 2029, be \$100 per unit.

(3) The fees shall be attached to the completed Application for Registration as an AAHP Facility form as found in 201 KAR 16:772 or online equivalent form, including all required attachments.

Section 3. Renewal Fees for AAHP Facility Registration. The following fees shall be paid biennially for the renewal of an AAHP facility registration:

(1)

(a) Except as provided in subsection (3) of this section, the renewal base fee for a AAHP facility registration in active status shall:

1. Until September 30, 2027, be \$375;
2. Between October 1, 2027, and September 30, 2028, be \$425; and
3. After September 30, 2028, be \$450.

(b) The fees shall be attached to the completed Renewal Application for AAHP Facility Registration form as found in 201 KAR 16:775 or online equivalent form.

1. To qualify for renewal, the form shall be complete, including all required attachments, and continuing education credits, if required, and fee payment; and

2. The complete package is submitted to the board for review and approval not later than September 30 of each odd-numbered year.

(2) In addition to the renewal base fee for a registered AAHP facility, an additional fee shall be paid to the board, calculated based on the number of mobile units associated with the facility, as follows:

(a) For a registered AAHP facility with two (2) or fewer mobile units identified on the registration, no additional fees shall be collected;

(b) For a registered AAHP facility with three (3) or more mobile units identified on the registration, an additional fee shall be due to the board with the biennial renewal application for each additional mobile unit beyond two (2) mobile units per AAHP facility registration.

1. Until September 30, 2027, \$50 per unit;
2. Between October 1, 2027, and September 30, 2029, \$75 per unit; and
3. After September 30, 2029, be \$100 per unit.

(3) For an AAHP facility initially registered less than 120 days prior to the end of the renewal period, the registration renewal fee shall be waived during the first registration cycle.

(4) There shall be no grace period afforded to registered AAHP facilities. AAHP facilities that fail to renew their registration by September 30 of each odd-numbered year shall expire. If an AAHP facility intends to continue operations following a missed renewal, the registered responsible party or AAHP manager shall apply for reinstatement for the AAHP facility and obtain board approval before continuing operations at the registered facility.

Section 4. Reinstatement Fees for AAHP Facility Registration.

(1) To reinstate an AAHP facility registration following expiration, the registered responsible party or AAHP manager shall submit a complete Reinstatement Application for AAHP Facilities form as found in 201 KAR 16:775 or online equivalent form, including all required attachments and fees, to the board for reinstatement of the AAHP facility registration.

(a) If less than six (6) month has elapsed since the expiration date of the facility registration, the AAHP facility shall pay a reinstatement fee of \$675.

(b) If more than six (6) months and not more than five (5) years have elapsed since the expiration date of the facility registration, the AAHP facility reinstatement fee shall:

1. Until June 30, 2027, be \$725;
2. Between July 1, 2027, and June 30, 2029, be \$900; and
3. After June 30, 2029, be \$1,050.

(2) An AAHP facility shall not apply for a new registration during

this five (5) year window; a reinstatement application shall be required.

(3) If more than five (5) years have elapsed since the last date of license expiration, an AAHP facility shall apply as a new applicant to obtain a new AAHP facility registration in the Commonwealth of Kentucky.

MICHELLE M. SHANE, Executive Director on behalf of
JOHN C. PARK, DVM, Board Chair

APPROVED BY AGENCY: October 14, 2024

FILED WITH LRC: October 15, 2024 at 8:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2024, at 10:00 am EST, at the offices of the Kentucky Board of Veterinary Examiners, 4047 Iron Works Pkwy, Suite 104, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 December 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: Michelle M. Shane, Executive Director, Kentucky Board of Veterinary Examiners, 4047 Iron Works Parkway, Suite 104, Lexington, Kentucky 40511, Phone: 502-564-5433, Fax: 502-753-1458, Email: Michelle.Shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle M. Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the fees for persons and businesses seeking an allied animal health professional (AAHP) facility registration from the board to gain the ability to operate an AAHP facility in Kentucky.

(b) The necessity of this administrative regulation: This new administrative regulation is necessary to establish the fees that the Kentucky Board of Veterinary Examiners (KBVE) approves for AAHP facility registration, as mandated in KRS 321.203, 321.205, 321.235(1)(c), 321.236, and 321.320.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235 mandates that the board administer and enforce KRS Chapter 321. KRS 321.203, 321.235(1)(c), and 321.236 specifically require the board to collect fees for new, renewal, and reinstatement applications on registered facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation will assist in effective administration by clearly expressing what fees have been approved by the board in order to keep all mandated programs operational and responsive to constituent needs.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: N/A. 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: Approximately ten (10) businesses in Kentucky offering AAHP services are estimated to be affected.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative

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regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be required to have paid the fee prior to registration, renewal, or reinstatement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for application, renewal, and reinstatement.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the fees associated with registration.

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

(a) Initially: The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term.

(b) On a continuing basis: The KBVE expects costs for all board operations to be approximately \$900,000 annually in future bienniums as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KBVE does not receive any general funds. Fees for the board come from license, certificate, permit, and registration fees established in this filing and the other fee filings.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no anticipation of an increase in fees to implement this administrative regulation, as the KBVE is already running an administrative program to process applications and an inspection program to ensure compliance. The new fees for AAHP facility registration establish revenue required for this new program.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are established directly.

(9) TIERING: Is tiering applied? Yes, tiering is applied to the fees based on the number of mobile units associated with the AAHP facility. If an AAHP facility has more than two (2) mobile units, there is a small fee for each additional mobile unit to account for additional staff time processing applications and database management.

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 321.203, 321.205, 321.235(1)(c), 321.236, and 321.320.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The promulgating agency is the Kentucky Board of Veterinary Examiners. There are no other affected state units, parts, or divisions.

(a) Estimate the following for the first year:

Expenditures: The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term. This includes the administration of the AAHP facility registration program, database management, infrastructure, overhead, and contractors, including legal counsel and investigators.

Revenues: This filing will generate approximately \$500-\$1,000 the first year.

Cost Savings: There will be no cost savings; this amendment simply codifies the requirements, making them easily accessible for regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The General Assembly provided a low initial registration fee of \$100 and empowered the board to set fees based on costs in subsequent years. The board is phasing in fees so businesses have time to prepare. Further, AAHP facility registrations shall renew only every other year. Consequently, the annual amount varies significantly. In F.Y.s ending in even numbers, the regulation will generate approx. \$3,700-\$5,800; in F.Y.s ending in odd numbers, there is anticipated to be virtually no revenue (i.e., only new facilities,

projected to be less than \$2,000). Staff time and database management will be required for record keeping. Costs will be minimal.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): KBVE does not anticipate that any local entities will be impacted.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

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

(4) Identify additional regulated entities not listed in questions (2) or (3): KBVE does not anticipate that any other regulated entities will be impacted.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

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

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: Running an administrative program mandated by the General Assembly costs money. Fees for AAHP facility registration, renewal, and reinstatement shall be used to pay programmatic costs and are shared across board operations to keep fees as low as possible. Costs include overhead, staffing and benefits, database usage and maintenance, contractors, legal counsel, etc. These fees shall ensure that the board and its staff remain operational, efficient, and responsive to both the public and constituent needs, while also implementing new programs as mandated by the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321. Once established and recurring, these fees are anticipated to generate revenue of approx. \$2,200 every two years, critical revenue for the functionality of all board services.

(b) Methodology and resources used to determine the fiscal impact: A large spreadsheet was used to calculate all board revenues, expenditures, proposed fees, and estimated quantities of applications based on historical numbers. Projections were calculated ten (10) years out to F.Y. 2036.

(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 new regulation shall not have a "major economic impact", as defined in KRS 13A.010(13). The fees are minimal and are used for board operations to run the registration program.

(b) The methodology and resources used to reach this conclusion: "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] In most all cases, fees from this administrative regulation will be less than \$550 per application or renewal. Reinstatement fees will be slightly higher due to the extra staffing costs related to processing.

BOARDS AND COMMISSIONS Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:730. Approved allied animal health professional (AAHP) programs; education requirements.

RELATES TO: KRS 321.175, 321.181(1)-(4), 321.235

STATUTORY AUTHORITY: KRS 321.175(2)(c), (5), 321.181(1)-(4), 321.235(1)(a)-(c), (2)(b)2

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.235(1)(b) authorizes the board to promulgate administrative regulations to implement KRS Chapter 321. KRS 321.235(2)(b)2. provides the board authority to promulgate administrative regulations to limit the scope of practice of allied animal health professional (AAHP) work on animals and to require an AAHP

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applicant to have received training from an approved allied animal health professional program in order to qualify for a permit from the board. This administrative regulation establishes an allied animal health professional's allowable scope of work on animals and establishes the allied animal health professional educational programs approved by the board.

Section 1. Definitions.

(1) "Allied animal health professional" or "AAHP" is defined by KRS 321.181(1).

(2) "Approved allied animal health professional program" is defined by KRS 321.181(9).

Section 2. Education Requirements. An applicant for an AAHP permit shall meet and show proof of the following requirements to be considered for approval by the board.

(1) For an AAHP animal chiropractic permit, shall hold current licensure in good standing from the Kentucky Board of Chiropractic Examiners.

(2) Maintain a current certificate in good standing with an approved allied animal health professional program designated in Section 3 of this administrative regulation.

Section 3. Approved allied animal health professional programs.

The board approves the following allied animal health professional programs for animal chiropractic practice on animals:

- (1) American Veterinary Chiropractic Association (AVCA); or
- (2) International Veterinary Chiropractic Association (IVCA); or
- (3) An accredited program of the AVCA or IVCA.

Section 4. Continuing education required. As one part of the requirements for an allied animal health professional permit to be granted and renewed, the allied professional shall provide proof that the degree or certificate obtained from the approved allied animal health professional program is in an 'active' or 'current' status with:

(1) If applicable to the credential holder and required by the board, the professional licensing board as required in Section 2(1) of this administrative regulation; and

(2) The allied animal health professional program certifying entity identified in Section 3 of this administrative regulation. At the time of application, the AAHP permittee shall show proof satisfactory to the board that all continuing education requirements for these credentials have been met and are current.

MICHELLE M. SHANE, Executive Director on behalf of
JOHN C. PARK, DVM, Board Chair

APPROVED BY AGENCY: October 14, 2024

FILED WITH LRC: October 15, 2024 at 8:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2024, at 10:00 am EST, at the offices of the Kentucky Board of Veterinary Examiners, 4047 Iron Works Pkwy, Suite 104, Lexington, KY 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 December 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: Michelle M. Shane, Executive Director, Kentucky Board of Veterinary Examiners, 4047 Iron Works Pkwy, Suite 104, Lexington, KY 40511, Phone: 502-564-5433, Fax: 502-753-1458, Email: Michelle.Shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle M. Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes an allied animal health professional's

allowable scope of work on animals and establishes the allied animal health professional (AAHP) educational programs approved by the board

(b) The necessity of this administrative regulation: This regulation is necessary to establish the scope of work and required AAHP educational programs approved by the board and provide clarity to constituents regarding the requirements for permitting.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.175(2)(c) and (5) establish that the intent of the Kentucky Veterinary Medicine Practice Act is to regulate the professions of veterinary medicine, including the work of allied animal health professionals. KRS 321.181(1)-(4) define the AAHP person and the requirement for a board approved permit to practice. KRS 321.235(1)(a)-(c) and (2)(b)2 require the board to ensure the competence of credential holders and to administer credentialing programs to ensure competency to practice and to protect the public. This new administrative regulation will assist in effective administration by clearly expressing what requirements have been established by the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly defining which AAHP educational programs have been approved by the KBVE.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: N/A - 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: Future applicants to the board for an AAHP permit. The board anticipates receiving approximately 20 initial applications for this credential under the new laws, and one-two (1-2) annually in future years.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be required to complete a board approved AAHP educational program within the approved scope for the AAHP work to qualify for permitting as an AAHP in Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be any additional costs to the applicant. This administrative regulation simply clarifies the basic education requirements needed to obtain an AAHP permit and provide public protection related to competency to perform services.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants who complete the required AAHP education shall have met one of the requirements of the board for permitting as an AAHP.

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

(a) Initially: The KBVE currently runs licensing and certificate programs for other credentials to ensure competency to practice for public protections. This program will be added to the current operations. The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term.

(b) On a continuing basis: The KBVE expects costs for all board operations to be approximately \$900,000 annually in future bienniums as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(6) What is the source of the funding to be used for the

implementation and enforcement of this administrative regulation: KBVE does not receive any general funds. All funds for the agency come from licensing fees, service fees, and administrative fines.

(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: 201 KAR 16:513 and 16:517 have been filed concurrently with this regulation to establish fees to help support the funding requirements for administrative services to run the new AAHP permitting and AAHP facility registration programs.

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

(9) TIERING: Is tiering applied? Tiering is not applied. With the exception of a small window for legacy candidate applications, educational requirements are the same for all AAHP permit applicants.

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 321.175(2)(c), (5), 321.181(1)-(4), 321.235(1)(a)-(c), (2)(b)2.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The promulgating agency is the Kentucky Board of Veterinary Examiners. There are no other affected state units, parts, or divisions.

(a) Estimate the following for the first year:

Expenditures: This is a new program, but will not generate much revenue. The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term.

Revenues: There is no revenue generated by this filing.

Cost Savings: There will be no cost savings; this amendment simply codifies the requirements, making them easily accessible for regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Staff time and database management will be required for record keeping. Costs will be minimal.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): KBVE does not anticipate that any local entities will be impacted.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

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

(4) Identify additional regulated entities not listed in questions (2) or (3): KBVE does not anticipate that any other regulated entities will be impacted.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

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

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation does not set fees and will not bring in revenue. Local entities will not be impacted by this regulation. This filing only impacts candidates for permitting as an allied animal health professional (AAHP).

(b) Methodology and resources used to determine the fiscal impact: A large spreadsheet was used to calculate all board revenues, expenditures, proposed fees, and estimated quantities of applications based on historical numbers. Projections were calculated ten (10) years out to F.Y. 2036.

(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 new

administrative regulation shall not have a "major economic impact", as defined in KRS 13A.010(13). This administrative regulation does not set fees and will not bring in revenue.

(b) The methodology and resources used to reach this conclusion: This amendment will not have a negative impact, as no fees are established or collected as a part of this administrative regulation.

BOARDS AND COMMISSIONS Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:731. Examination requirements for AAHP providers.

RELATES TO: KRS 321.175, 321.181(1)-(4), 321.235
STATUTORY AUTHORITY: KRS 321.175(2)(c), (5), 321.181(1)-(4), 321.235(1)(a)-(c), (2)(b)2.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.235(1)(b) and (2)(b) authorize the board to promulgate administrative regulations in accordance with KRS Chapter 13A to effectively carry out and enforce the provisions of the Kentucky Veterinary Medicine Practice Act. KRS 321.235(2)(b)2. requires the Kentucky Board of Veterinary Examiners to establish examination requirements and passing scores for allied animal health professionals. This administrative regulation establishes examination requirements as one part of the requirements to qualify for an allied animal health professional (AAHP) permit from the board.

Section 1. State Exam Qualifications for Allied Animal Health Professional providers.

(1) The board shall require a passing score on the Kentucky Board of Veterinary Examiners Jurisprudence Examination for AAHPs as one requirement for permitting by the board as an allied animal health professional.

(2) Candidates seeking an AAHP permit shall pay a state examination fee pursuant to 201 KAR 16:513.

(3) Candidates shall successfully complete the Kentucky Board of Veterinary Examiners Jurisprudence Examination for AAHPs, which shall cover the specific requirements of KRS Chapter 321 and 201 KAR Chapter 16, in either paper or electronic format.

(4) To successfully complete the Kentucky Board of Veterinary Examiners Jurisprudence Examination, Applicants for an AAHP permit shall be required to achieve a score of eighty (80) percent or higher.

Section 2. National Exam Qualifications for Allied Animal Health Professionals.

(1) The examination required for permitting by the board as an allied animal health professional shall be the successful completion of a certification exam required by an approved allied animal health professional program, pursuant to 201 KAR 16:730.

(a) A candidate shall be limited to five (5) examination attempts.

(b) An official score report, verified certificate of completion, or other official documentation from the certifying body shall be provided directly from the certifying body to the board to provide proof of successful completion of the board approved exam.

(2) For AAHP animal chiropractor providers, the board approved examinations and passing scores are established in this paragraph.

(a) American Veterinary Chiropractic Association (ACVA) passing score shall be the passing score set by ACVA.

(b) International Veterinary Chiropractic Association (ICVA) passing score shall be the passing score set by ICVA.

(3) Applicants for an AAHP permit to the board shall pay any required national exam or score transfer fees directly to the approved allied animal health professional program, their designee, or official records custodian.

MICHELLE M. SHANE, Executive Director on behalf of
JOHN C. PARK, DVM, Board Chair

APPROVED BY AGENCY: October 14, 2024

FILED WITH LRC: October 15, 2024 at 8:15 a.m.

VOLUME 51, NUMBER 5– November 1, 2024

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2024, at 10:00 am EST, at the offices of the Kentucky Board of Veterinary Examiners, 4047 Iron Works Pkwy, Suite 104, Lexington, KY 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 December 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: Michelle M. Shane, Executive Director, Kentucky Board of Veterinary Examiners, 4047 Iron Works Pkwy, Suite 104, Lexington, KY 40511, Phone: 502-564-5433, Fax: 502-753-1458, Email: Michelle.Shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle M. Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes examination requirements as one part of the requirements to qualify for an allied animal health professional (AAHP) permit from the board.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the required examinations needed for applicants to qualify for an AAHP permit from the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235(1)(b) and (2)(b) authorize the board to promulgate administrative regulations in accordance with KRS Chapter 13A to effectively carry out and enforce the provisions of the Kentucky Veterinary Medicine Practice Act. KRS 321.235(2)(b)2. requires the Kentucky Board of Veterinary Examiners to establish examination requirements and passing scores for allied animal health professionals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly defining the testing requirements for AAHP permittees as approved by the KBVE.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: N/A - 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: Future applicants to the board for an AAHP permit. The board anticipates receiving approximately 20 initial applications for this credential under the new laws, and one-two (1-2) annually in future years.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be required to complete a board approved AAHP exam within the approved scope for the AAHP work to qualify for permitting as an AAHP in Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be any additional costs to the applicant. This administrative regulation simply clarifies the testing

requirements needed to obtain an AAHP permit and provide public protection related to competency to preform services.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants who complete the required AAHP exams shall have met one of the requirements of the board for permitting as an AAHP.

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

(a) Initially: The KBVE currently runs licensing and certificate programs for other credentials to ensure competency to practice for public protections. This program will be added to the current operations. The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term.

(b) On a continuing basis: The KBVE expects costs for all board operations to be approximately \$900,000 annually in future bienniums as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KBVE does not receive any general funds. All funds for the agency come from licensing fees, service fees, and administrative fines.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no anticipation of an increase in fees to implement this administrative regulation, as the KBVE is already running an administrative program to process applications and an enforcement program to ensure compliance.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this new administrative regulation applies to all entities holding an AAHP permit.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.175(2)(c), (5), 321.181(1)-(4), 321.235(1)(a)-(c), (2)(b)2.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The promulgating agency is the Kentucky Board of Veterinary Examiners. There are no other affected state units, parts, or divisions.

(a) Estimate the following for the first year:

Expenditures: This is a new program, but will not generate much revenue. The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term.

Revenues: There is no revenue generated by this filing.

Cost Savings: There will be no cost savings; this amendment simply codifies the requirements, making them easily accessible for regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Staff time and database management will be required for record keeping. Costs will be minimal.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): KBVE does not anticipate that any local entities will be impacted.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

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

(4) Identify additional regulated entities not listed in questions (2) or (3): KBVE does not anticipate that any other regulated entities will be impacted.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

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

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation does not set fees and will not bring in revenue. Local entities will not be impacted by this regulation. This filing only impacts candidates for permitting as an allied animal health professional (AAHP).

(b) Methodology and resources used to determine the fiscal impact: A large spreadsheet was used to calculate all board revenues, expenditures, proposed fees, and estimated quantities of applications based on historical numbers. Projections were calculated ten (10) years out to F.Y. 2036.

(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 new administrative regulation shall not have a "major economic impact", as defined in KRS 13A.010(13). This administrative regulation does not set fees and will not bring in revenue.

(b) The methodology and resources used to reach this conclusion: This amendment will not have a negative impact, as no fees are established or collected as a part of this administrative regulation.

BOARDS AND COMMISSIONS
Kentucky Board of Veterinary Examiners
(New Administrative Regulation)

201 KAR 16:732. Application requirements for AAHP permits -- reinstatement.

RELATES TO: KRS 321.175, 321.181(1)-(4), 321.235

STATUTORY AUTHORITY: KRS 321.175(2)(c), (5), 321.181(1)-(4), 321.235(1)(a)-(c), (2)(b)2.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.235(1)(b) authorizes the board to promulgate administrative regulations to implement KRS Chapter 321. KRS 321.235(2)(b)2. provides the board authority to promulgate administrative regulations to limit the scope of practice of allied animal health professional (AAHP) work on animals and to require an AAHP applicant to apply to the board on an approved application to qualify for a permit from the board. This administrative regulation establishes application requirements for individuals applying for an AAHP permit from the board in the Commonwealth of Kentucky.

Section 1. Definitions.

(1) "Allied animal health professional" or "AAHP" is defined by KRS 321.181(1).

(2) "Allied animal health professional facility" or "AAHP facility" is defined KRS 321.181(2).

(3) "Allied animal health professional manager" or "AAHP manager" is defined by KRS 321.181(3)

(4) "Allied animal health professional permit" or "AAHP permit" is defined by KRS 321.181(4)

(5) "Fixed facility" is defined by KRS 321.181(38).

(6) "Legacy candidate" means a candidate for permitting that did not complete the board approved allied animal health professional program or board approved qualifying exam for an AAHP permit, but holds significant experience as defined in Section 3 of this administrative regulation which shall qualify the person for consideration of an AAHP permit from the board.

(7) "Mobile facility" or "mobile unit" is defined by KRS 321.181(46).

(8) "Registered responsible party" is defined by KRS 321.181(57).

(9) "Veterinarian" is defined by KRS 321.181(67).

Section 2. Allied animal health professional provider practice falls under the scope and meaning of the practice of veterinary medicine.

(1) A veterinarian shall not be subject to the limitations proscribed to an allied animal health professional permittee regarding the scope of practice.

(2) Pursuant to KRS 321.200(1)(o), after receiving a permit from the board, an AAP provider shall be limited to providing services for animal patients within the scope designated within 201 KAR 16:737.

(3) Practice on animals without a board credential shall be prohibited. Except as provided for in KRS 321.200, no person may provide veterinary or allied animal health professional services to any animal without holding a valid credential in active status issued by the board.

Section 3. Legacy Candidates.

(1) In lieu of proof of completion of a board approved allied animal health professional program and board approved qualifying exam for an AAHP permit, legacy candidates may submit application materials in accordance with the provisions of this section.

(2) For AAHP animal chiropractor provider (ACP) applicants, legacy candidates shall be eligible until June 30, 2026. ACP legacy candidates shall submit:

(a) Proof of employment or 1099 showing self-employment as an ACP for a minimum of ten (10) years prior to the date of application;

(b) Identification of school where trained and hours of training;

(c) Letters of recommendation from at least two (2) licensed veterinarians;

(d) Letters of recommendation from at least two (2) licensed chiropractors;

(e) Details regarding the duration of experience and times during which practice occurred, including:

1. Length of time of practice; and

2. Average number of hours practicing per year;

(f) Letter of Good Standing from any other jurisdictions in which they are credentialed; and

(g) Information about CE earned each year (number of hours, etc.).

(3) The board shall conduct a mandatory interview of each legacy candidate to confirm their eligibility and experience.

(4) Legacy candidates awarded an AAHP certificate by the board shall be required to comply with all terms of permitting, including earning continuing education requirements as established by the board in administrative regulation.

Section 4. Approval of an Allied Animal Health Professional provider permit application. The board shall issue a permit as an AAHP provider in a specific area of practice, as defined in KRS 321.181, to an applicant who meets the following requirements:

(1) Has completed an Application for Allied Animal Health Professional Permit form or online equivalent form, including all required attachments;

(2) Has paid the appropriate fees as established in 201 KAR 16:513;

(3) Is a person of good moral character. As one (1) element of good moral character, the board shall require each applicant for licensure to submit a full set of the applicant's fingerprints for the purpose of obtaining criminal records checks, pursuant to applicable law and KRS 321.189. All good moral character information, including the information obtained through the criminal background checks, shall be relevant to permit eligibility determinations to the extent permitted by law;

(4) Has graduated and received a degree or certificate from an approved allied animal health professional program, as approved by the board in 201 KAR 16:730, or qualifies as a legacy candidate during the legacy application window;

(5) Has achieved passing examination scores, on examinations required by the board, as established in 201 KAR 16:731, or qualifies as a legacy candidate during the legacy application window;

(6) Holds licensure in the AAHP practice area as established in 201 KAR 16:730, Section 2, or qualifies as a legacy candidate.

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- (7) Has been approved for permitting by the board; and
- (8) Has complied with any other requirement of the board.

Section 5. New Application for an Allied Animal Health Professional Permit.

(1) A new application to the board for an allied animal health professional permit shall include the following components:

(a) A completed application on an Application for Allied Animal Health Professional (AAHP) Provider Permit form or online equivalent form, including all required attachments;

(b) Designation of one or more qualified AAHP scopes as listed in the application, and designated as available scope of practice in KRS 321.181 and 201 KAR 16:730;

(c) A current color photograph of the applicant not smaller than 2 in. x 2 in., or a color copy of the applicant's current valid driver's license or passport with photo;

(d) An official licensure verification letter from the professional licensing board in Kentucky in the human AAHP discipline, if required by the application;

(e) An official copy of the certificate of completion or diploma showing graduation from an approved allied animal health professional program established in 201 KAR 16:730;

(f) A copy of any court documents, final orders, settlement agreements, or other documents required by the board in support of the application;

(g) The completed Kentucky Board of Veterinary Examiners Jurisprudence Examination for Allied Animal Health Professionals Exam Answer Sheet; and

(h) Payment for the application fee required by 201 KAR 16:513.

(2) In addition to the requirements listed in subsection (1) of this section, requirements for AAHP permit endorsement applications shall include: Verifications of good standing from all jurisdictions in which an applicant once held or currently holds a permit or equivalent credential by the jurisdictional entities which regulate the applicant's profession in both human and animal practice.

Section 6. Permit Renewal Required. An AAHP permit holder of the board shall renew their permit pursuant to 201 KAR 16:735.

Section 7. Inactive Status for an AAHP Permit. An AAHP permit holder may place their permit into an inactive status in accordance with 201 KAR 16:580.

Section 8. An allied animal health professional may apply for reinstatement of an expired permit if not more than five (5) years have elapsed since the last date of permit expiration.

(1) A reinstatement application shall be required during this period; an application for a new permit shall not be accepted until five (5) years after the last date of expiration. Legacy candidates five (5) years after the last date of expiration shall be required to meet the current requirements of the Kentucky Veterinary Medicine Practice Act and 201 KAR Chapter 16 and shall no longer qualify for the legacy candidate pathway.

(2) Reinstatement applications to the board for a permit as an allied animal health professional shall include the following components:

(a) A completed application on a Reinstatement Application for AAHP Permits form or online equivalent form, including all required attachments;

(b) A copy of any court documents, final orders, settlement agreements, or other documents requested by the board in support of the application;

(c) Proof of current certification in the allied animal health profession, including any required continuing education by the board-approved allied animal health professional program;

(d) Payment for the reinstatement application fee pursuant to 201 KAR 16:513, and

(e) If the permit is in expired status for more than one (1) year since the date of expiration, an official licensure verification letter from the professional licensing board in Kentucky in the human AAHP discipline, if required by the application;

(f) If the permit is in expired status for more than two (2) years since the date of expiration,

(g) A background check pursuant to Section 9 of this

administrative regulation; and

(h) Verifications of good standing from all jurisdictions in which an applicant once held or currently holds a permit or equivalent credential by the jurisdictional entities which regulate the profession;

Section 9. Background checks. Pursuant to KRS 321.189, the board may:

(1) Conduct a national or jurisdictional level background check on each applicant for licensure. The check shall be processed by a board-approved background check provider, and may include a copy of the applicant's fingerprints captured at a board-approved location;

(2) Reject background checks that do not have an official seal or watermark, or that are more than ninety (90) days old; and

(3) Impose additional requirements as a condition of licensure or deny licensure following the board's review of findings from a background check.

Section 10. Denial. If any of the requirements of this regulation are not met by the applicant, the board shall deny the permit application.

Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Allied Animal Health Professional (AAHP) Provider Permit", 10/2024; and

(b) "Reinstatement Application for AAHP Permits", 10/2024.

(2) This material may be inspected, copied, or obtained, subjected to applicable copyright law, at the Kentucky Board of Veterinary Examiners, 4047 Iron Works Parkway, Lexington, Kentucky 40511, Monday through Friday, 8:30 a.m. to 4:30 p.m. This material may also be obtained at kbve.ky.gov.

MICHELLE M. SHANE, Executive Director on behalf of
JOHN C. PARK, DVM, Board Chair

APPROVED BY AGENCY: October 14, 2024

FILED WITH LRC: October 15, 2024 at 8:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2024, at 10:00 am EST, at the offices of the Kentucky Board of Veterinary Examiners, 4047 Iron Works Pkwy, Suite 104, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 December 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: Michelle M. Shane, Executive Director, Kentucky Board of Veterinary Examiners, 4047 Iron Works Pkwy, Suite 104, Lexington, Kentucky 40511, Phone: 502-564-5433, Fax: 502-753-1458, Email: Michelle.Shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle M. Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes application requirements for allied animal health professionals (AAHPs) applying for an AAHP permit from the board in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the application requirements for individuals to apply for an AAHP permit from the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235(1)(b) authorizes the board to promulgate administrative regulations to implement KRS Chapter 321. KRS 321.235(2)(b)2. provides the board authority to promulgate administrative regulations to limit the scope of practice of allied animal health professional (AAHP) work on animals and to require an AAHP

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applicant to apply to the board on an approved application to qualify for a permit from the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly defining the application requirements for AAHP permittees as approved by the KBVE.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: N/A - 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: Future applicants to the board for an AAHP permit. The board anticipates receiving approximately 20 initial applications for this credential under the new laws, and one-two (1-2) annually in future years.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be required to complete a board approved application to apply for an AAHP permit in Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be any additional costs to the applicant. This administrative regulation simply clarifies the application requirements needed to obtain an AAHP permit and provide public protection related to competency to perform services.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants who complete the required AAHP application shall have met one of the requirements of the board for permitting as an AAHP.

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

(a) Initially: The KBVE currently runs licensing and certificate programs for other credentials to ensure competency to practice for public protections. This program will be added to the current operations. The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term.

(b) On a continuing basis: The KBVE expects costs for all board operations to be approximately \$900,000 annually in future bienniums as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KBVE does not receive any general funds. All funds for the agency come from licensing fees, service fees, and administrative fines.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no anticipation of an increase in fees to implement this administrative regulation, as the KBVE is already running an administrative program to process applications and an enforcement program to ensure compliance.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this new administrative regulation applies to all entities holding an AAHP permit.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative

regulation. KRS 321.175(2)(c), (5), 321.181(1)-(4), 321.235(1)(a)-(c), (2)(b)2.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The promulgating agency is the Kentucky Board of Veterinary Examiners. There are no other affected state units, parts, or divisions.

(a) Estimate the following for the first year:

Expenditures: This is a new program, but will not generate much revenue. The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term.

Revenues: There is no revenue generated by this filing.

Cost Savings: There will be no cost savings; this amendment simply codifies the requirements, making them easily accessible for regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Staff time and database management will be required for record keeping. Costs will be minimal.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): KBVE does not anticipate that any local entities will be impacted.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

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

(4) Identify additional regulated entities not listed in questions (2) or (3): KBVE does not anticipate that any other regulated entities will be impacted.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

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

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation does not set fees and will not bring in revenue. Local entities will not be impacted by this regulation. This filing only impacts candidates for permitting as an allied animal health professional (AAHP).

(b) Methodology and resources used to determine the fiscal impact: A large spreadsheet was used to calculate all board revenues, expenditures, proposed fees, and estimated quantities of applications based on historical numbers. Projections were calculated ten (10) years out to F.Y. 2036.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This new administrative regulation shall not have a "major economic impact", as defined in KRS 13A.010(13). This administrative regulation does not set fees and will not bring in revenue.

(b) The methodology and resources used to reach this conclusion: This amendment will not have a negative impact, as no fees are established or collected as a part of this administrative regulation.

BOARDS AND COMMISSIONS Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:735. Renewal requirements for AAHP permits - renewal notice -- expiration.

RELATES TO: KRS 321.175, 321.181(1)-(4), 321.235
STATUTORY AUTHORITY: KRS 321.175(2)(c), (5),
321.181(1)-(4), 321.235(1)(a)-(c), (2)(b)1.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.235(1)(b) authorizes the board to promulgate administrative regulations to implement KRS Chapter 321. KRS 321.235(1)(a)-(c) provides the board authority to promulgate administrative regulations to evaluate the qualifications of applicants for applicants for an allied animal health professional (AAHP) permit. KRS

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321.235(2)(b)1. authorizes the board to require an AAHP permittee to obtain appropriate continuing education to ensure continued competency. This administrative regulation establishes renewal requirements and renewal notification procedures for AAHP permittees of the board, as well as required continuing education for AAHP permittees.

Section 1. Renewal Notices and Timeliness of Renewal Applications.

(1) The board shall, not later than July 1 of each year, email or mail to each permitted allied animal health professional a renewal notice.

(2) The renewal application shall be completed by the permittee and returned to the board, including all required attachments and, if required by the board, proof of course completion for the required continuing education.

(3) Timely receipt of renewal application.

(a) Renewals bearing a postmark, or, if an online renewal, a timestamp, of September 30 or earlier shall be considered received on time.

(b) Renewals bearing a postmark, or, if an online renewal, a timestamp, between October 1 and November 30 shall be considered late and therefore incur a late fee pursuant to 201 KAR 16:513.

(4) The renewal fee shall be attached to the completed renewal form when it is returned to the board or paid online.

Section 2. Continuing Education Required.

(1) Every AAHP permittee shall list their continuing education hours received on the Renewal Application for AAHP Permits form or online equivalent form, including all required attachments, and if required, proof of attendance or completion of training to the board.

(2) Continuing education hours applied toward a reinstatement application shall not be eligible for credit on the renewal application.

(3) Continuing education hours earned during the grace period of a renewal cycle shall not be eligible for credit on the subsequent renewal application.

(4) The board shall not renew the permit of any person who fails to appropriately document the required hours of continuing education.

Section 3. The board shall not be held responsible or liable for lost renewal notices, or renewal notices not received, or not received on time.

(1) Regardless of cause, the board shall not be required to refund money to a permit holder who fails to renew in a timely manner pursuant to Section 1(4) of this administrative regulation.

(2) Failure to renew by the grace period deadline and in compliance with all requirements of the board shall cause the permit to move to expired status. The permit holder shall no longer be eligible to practice as an allied animal health professional in Kentucky.

(3) The former permit holder may apply for reinstatement of the permit within five (5) years from the date of expiration in accordance with 201 KAR 16:732. A reinstatement application shall be required during this period; an application for a new license shall not be accepted until five (5) years after the last date of expiration.

Section 4. Duty to Report. Every AAHP permit holder shall:

(1) File their legal name with the board;

(2) File their legal residential address with the board;

(3) File their legitimate mailing address with the board. The mailing address shall be subject to public disclosure;

(4) File their current employer with the board;

(5) File a current email address and phone number with the board; and

(6) Within thirty (30) days, notify the board of any changes to their name or addresses or email address by submitting a completed Request for Name or Address Change form as found in 201 KAR 16:570 or online equivalent form.

Section 5. Incorporation by Reference.

(1) "Renewal Application for AAHP Permits", 10/2024, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subjected to applicable copyright law, at the Kentucky Board of Veterinary Examiners, 4047 Iron Works Parkway, Suite 104, Kentucky 40511, Monday through Friday, 8:30 a.m. to 4:30 p.m. This material may also be obtained at kbve.ky.gov.

MICHELLE M. SHANE, Executive Director on behalf of
JOHN C. PARK, DVM, Board Chair

APPROVED BY AGENCY: October 14, 2024

FILED WITH LRC: October 15, 2024 at 8:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2024, at 10:00 am EST, at the offices of the Kentucky Board of Veterinary Examiners, 4047 Iron Works Pkwy, Suite 104, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 December 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: Michelle M. Shane, Executive Director, Kentucky Board of Veterinary Examiners, 4047 Iron Works Pkwy, Suite 104, Lexington, Kentucky 40511, Phone: 502-564-5433, Fax: 502-753-1458, Email: Michelle.Shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle M. Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes renewal requirements and renewal notification procedures for allied animal health professional (AAHP) permittees, as well as required continuing education for AAHP permittees.

(b) The necessity of this administrative regulation: This new administrative regulation is necessary to establish the requirements approved by the board for the application for an AAHP permit and the continuing education requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235(1)(b) authorizes the board to promulgate administrative regulations to implement KRS Chapter 321. KRS 321.235(1)(a)-(c) provides the board authority to promulgate administrative regulations to evaluate the qualifications of applicants for applicants for an AAHP permit. KRS 321.235(2)(b)1. authorizes the board to require an AAHP permittee to obtain appropriate continuing education to ensure continued competency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation will assist in effective administration by clearly expressing the application requirements approved by the board for AAHP permittees.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: N/A. 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: An estimated twenty (20) persons in Kentucky offering AAHP services are estimated to 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: Applicants will be required to complete the appropriate application to apply to the board for AAHP permit.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for AAHP permit applications.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the fees associated with registration.

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

(a) Initially: The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term.

(b) On a continuing basis: The KBVE expects costs for all board operations to be approximately \$900,000 annually in future bienniums as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KBVE does not receive any general funds. All funds for the agency come from licensing fees, service fees, and administrative fines.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no anticipation of an increase in fees to implement this administrative regulation, as the KBVE is already running an administrative program to process applications and an inspection program to ensure compliance.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this new administrative regulation applies to all persons providing AAHP services, except those entities excluded under KRS 321.200.

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 321.175(2)(c), (5), 321.181(1)-(4), 321.235(1)(a)-(c), (2)(b)1.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The promulgating agency is the Kentucky Board of Veterinary Examiners. There are no other affected state units, parts, or divisions.

(a) Estimate the following for the first year:

Expenditures: The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term. This includes the administration of the AAHP permit program, database management, infrastructure, overhead, and contractors, including legal counsel and investigators.

Revenues: There is no revenue generated by this filing.

Cost Savings: There will be no cost savings; this administrative regulation simply codifies the requirements, making them easily accessible for regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Staff time and database management will be required for record keeping. Costs will be minimal.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): KBVE does not anticipate that any local entities will be impacted.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

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

(4) Identify additional regulated entities not listed in questions (2) or (3): KBVE does not anticipate that any other regulated entities will be impacted.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

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

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation does not set fees and will not bring in revenue. Local entities will not be impacted by this regulation. This filing only impacts applicants for an AAHP permit in Kentucky.

(b) Methodology and resources used to determine the fiscal impact: A large spreadsheet was used to calculate all board revenues, expenditures, proposed fees, and estimated quantities of applications based on historical numbers. Projections were calculated ten (10) years out to F.Y. 2036.

(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 new administrative regulation shall not have a "major economic impact", as defined in KRS 13A.010(13). This administrative regulation does not set fees and will not bring in revenue.

(b) The methodology and resources used to reach this conclusion: This amendment will not have a negative impact, as no fees are established or collected as a part of this administrative regulation.

BOARDS AND COMMISSIONS Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:737. Responsibilities for AAHP providers; limitations on practice.

RELATES TO: KRS 321.175, 321.181(1)-(4), 321.203, 321.205, 321.235

STATUTORY AUTHORITY: KRS 321.175(2)(c), (5), 321.181(1)-(4), 321.203, 321.205, 321.235(1)(a)-(c) and (2)(b)2., 321.236

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.235(1)(b) requires the board to promulgate administrative regulations to implement and enforce KRS Chapter 321 and 201 KAR Chapter 16. KRS 321.235(2)(b)2. provides the board authority to promulgate administrative regulations to establish conditions for permitting and limitations upon allied animal health professional (AAHP) permittees. This administrative regulation establishes the responsibilities for AAHP providers permitted by the board and limitations on their practice on animal patients.

Section 1. Prohibitions on Practicing Veterinary Medicine.

(1) Except as provided for in KRS 321.200 and this administrative regulation, an allied animal health professional permittee shall be prohibited from practicing veterinary medicine.

(2) An AAHP provider shall be held to the same standard of care as a veterinarian when the provider performs the procedure allowed by the scope of work described in this administrative regulation.

Section 2. Communications with Veterinarians.

(1) An allied animal health professional permit holder shall communicate with an animal patient's veterinarian prior to any clinical encounters, as defined by 201 KAR 16:701, Section 1(1), on an animal to ensure:

(a) Appropriate treatments are provided, and

(b) No concerns exist related to an animal patient's condition and medicines.

(2) Should a veterinarian be non-responsive to communication from an AAHP permittee within three (3) business days, the permittee shall not be prevented from proceeding with appropriate treatment with the informed consent of the client.

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(3) After each clinical encounter, AAHP permittees shall communicate findings, treatments, or relevant information to the client and the client's veterinarian within an appropriate timeframe according to the condition, but no more than three (3) business days after identification.

(4) Communication between an AAHP permittee and a veterinarian shall be recorded in the medical record.

Section 3. Limitations on Practice.

(1) An AAHP permittee shall be limited in their practice on animal patients, as established in this section, or the practice shall be considered the practice of veterinary medicine and subject to penalty for practicing without a veterinarian license from the board.

(2) An AAHP permittee's practice shall not be construed to allow any of the following on animals:

- (a) Performance of radiographs or other medical imaging;
- (b) Performance of surgery;
- (c) Performance of shockwave, laser, ultrasound, electrotherapy, or similar therapies;
- (d) Rehabilitation activities;
- (e) Prescription, dispensation, or administration of medications, supplements, or nutraceuticals; or
- (f) Practice of veterinary medicine outside the scope of the allied animal health professional's permitted practice area.

(3) For AAHP permittees specializing in animal chiropractic, the applicant shall:

- (a) Conform with applicable requirements of the Horseracing Integrity and Safety Authority (HISA) and the Kentucky Horse Racing and Gaming Corporation; and
- (b) Comply with other state and federal laws.

Section 4. Record Keeping. An AAHP permittee shall keep medical records on all animal patients on which they practice their profession pursuant to KRS 321.187 and this section of this administrative regulation.

(1) The AAHP permittee's animal patient medical records shall contain sufficient information to justify and describe the course of care on the patient. The records shall contain, at a minimum:

- (a) Name, address, and telephone number of the client, as defined in KRS 321.181(21);
- (b) Identity of the animal patient, including name, age, sex, and breed;
- (c) Name, address, and telephone number of the animal patient's veterinarian;
- (d) Dates of consultations, examinations, or treatments;
- (e) Brief history of the condition of each animal treated;
- (f) Working allied animal health professional diagnosis;
- (g) Treatment plan including expected duration and frequency;
- (h) Daily treatments, including areas adjusted or otherwise treated;
- (i) Progress and disposition of the case;
- (j) Name of practitioner(s) providing service to the patient;
- (k) Name and contact information of any person consulted for medical advice on the treatment of the patient; and
- (l) Communication attempts of the AAHP permittee to the veterinarian of record.

(2) Patient medical records shall be complete and accurate.

(3) Patient medical records shall be maintained in the AAHP permittee's office for at least five (5) years past the date of the last patient visit. Cessation from practice, either temporarily or permanently, does not relieve the practitioner from compliance with this section.

(4) An AAHP permittee shall not violate the confidential relationship between the permittee and the client, pursuant to KRS 321.187(6). Consultation by the permittee with another AAHP permittee or veterinarian for the benefit of the patient shall not constitute a violation of confidentiality.

(a) An AAHP permittee shall not release information concerning a client or care of a client's animal, except as authorized by KRS 321.187(6):

(b) An AAHP permittee shall, if requested by the client, communicate their findings, treatment plan, or records with the client's designated veterinarian.

Section 5. Duty to Report. AAHP permittees shall report to the board:

- (1) Any change of name, address, phone, or email within thirty (30) days;
- (2) Provide a written response to a grievance or inquiry from the board in accordance with 201 KAR 16:610; and
- (3) Disciplinary action or conviction in any jurisdiction.

Section 6. Compliance and Disciplinary Action.

(1) AAHP permittees shall be subject to disciplinary action for violation of:

- (a) KRS Chapter 321 and 201 KAR Chapter 16; and
- (b) Other applicable federal, state, and local laws.

(2) The board shall report any grievance or disciplinary action received against an AAHP permittee to the professional licensing board in the human area of specialty and may consult with that board as experts in their professional field.

MICHELLE M. SHANE, Executive Director on behalf of
JOHN C. PARK, DVM, Board Chair

APPROVED BY AGENCY: October 14, 2024

FILED WITH LRC: October 15, 2024 at 8:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2024, at 10:00 am EST, at the offices of the Kentucky Board of Veterinary Examiners, 4047 Iron Works Pkwy, Suite 104, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 December 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: Michelle M. Shane, Executive Director, Kentucky Board of Veterinary Examiners, 4047 Iron Works Parkway, Suite 104, Lexington, Kentucky 40511, Phone: 502-564-5433, Fax: 502-753-1458, Email: Michelle.Shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle M. Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the responsibilities for AAHP permittees and limitations on their practice on animal patients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to communicate clear requirements regarding limitations on practice and duties of AAHP permittees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235(1)(b) requires the board to promulgate administrative regulations to implement and enforce KRS Chapter 321 and 201 KAR Chapter 16. KRS 321.235(2)(b)2. provides the board authority to promulgate administrative regulations to establish conditions for permitting and limitations upon allied animal health professional (AAHP) permittees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation will assist in effective administration by clearly expressing limitations on practice and duties of AAHP permittees approved 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: N/A. This is a new administrative regulation.

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

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

(d) How the amendment will assist in the effective administration

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of the statutes: N/A. 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: An estimated twenty (20) persons in Kentucky offering AAHP services are estimated to 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: AAHP permittees must practice on animals within the scope and limitations established within this administrative regulation, and ensure compliance with KRS Chapter 321 and 201 KAR Chapter 16.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this administrative regulation simply establishes the duties and limitations on AAHP permittees as approved by the board.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the limited scope of practice and responsibilities for AAHP permittees.

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

(a) Initially: The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term.

(b) On a continuing basis: The KBVE expects costs for all board operations to be approximately \$900,000 annually in future bienniums as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KBVE does not receive any general funds. All funds for the agency come from licensing fees, service fees, and administrative fines.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no anticipation of an increase in fees to implement this administrative regulation, as the KBVE is already running an administrative program to process applications and an enforcement program to ensure compliance.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this new administrative regulation applies to all entities holding an AAHP permit.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.175(2)(c), (5), 321.181(1)-(4), 321.203, 321.205, 321.235(1)(a)-(c) and (2)(b)2., 321.236

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The promulgating agency is the Kentucky Board of Veterinary Examiners. There are no other affected state units, parts, or divisions.

(a) Estimate the following for the first year:

Expenditures: The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term. This includes the administration of the AAHP facility registration program, database management, infrastructure, overhead, and contractors, including legal counsel and investigators.

Revenues: There is no revenue generated by this filing.

Cost Savings: There will be no cost savings; this administrative regulation simply codifies the requirements, making them easily accessible for regulated entities.

(b) How will expenditures, revenues, or cost savings differ in

subsequent years? Staff time and database management will be required for record keeping. Costs will be minimal.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): KBVE does not anticipate that any local entities will be impacted.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

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

(4) Identify additional regulated entities not listed in questions (2) or (3): KBVE does not anticipate that any other regulated entities will be impacted.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

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

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation does not set fees and will not bring in revenue. Local entities will not be impacted by this regulation. This filing only impacts AAHP facility registrants in Kentucky.

(b) Methodology and resources used to determine the fiscal impact: A large spreadsheet was used to calculate all board revenues, expenditures, proposed fees, and estimated quantities of applications based on historical numbers. Projections were calculated ten (10) years out to F.Y. 2036.

(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 new administrative regulation shall not have a "major economic impact", as defined in KRS 13A.010(13). This administrative regulation does not set fees and will not bring in revenue.

(b) The methodology and resources used to reach this conclusion: This amendment will not have a negative impact, as no fees are established or collected as a part of this administrative regulation.

BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(New Administrative Regulation)

201 KAR 16:762. Application requirements for veterinary facility registration; veterinarian managers; registered responsible parties.

RELATES TO: KRS 258.043, 321.203, 321.236

STATUTORY AUTHORITY: KRS 321.203, 321.235(2)(b)1.c., (2)(b)3.b., (2)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.175(4) states the purpose of the Kentucky Veterinary Medicine Practice Act is to promote, preserve, and protect the public health, safety, and welfare by and through, in part, the registration and regulation of veterinary facilities and mobile facilities where and from which the practice of veterinary medicine occurs. KRS 321.236(1)(a) allows the Kentucky Board of Veterinary Examiners to promulgate administrative regulations defining the application requirements and fees for veterinary facilities. KRS 321.235(1)(b) requires the Kentucky Board of Veterinary Examiners to promulgate administrative regulations to effectively carry out and enforce the provisions of KRS Chapter 321. This administrative regulation establishes application requirements for veterinary facilities.

Section 1. Definitions.

(1) "Fixed facility" has the same meaning as KRS 321.181(38).

(2) "Mobile facility" or "mobile unit" has the same meaning as KRS 321.181(46). A veterinary facility mobile unit shall be primarily used for the practice of veterinary medicine or the practice of veterinary technology.

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(3) "Practice of veterinary medicine" is defined by KRS 321.181(50).

(4) "Practice of veterinary technology" is defined by KRS 321.181(51).

(5) "Premises" is defined by KRS 321.181(52).

(6) "Registered responsible party" is defined by KRS 321.181(57).

(7) "Veterinarian manager" is defined by KRS 321.181(68)

(8) "Veterinary facility" is defined by KRS 321.181(71).

Section 2. General Requirements. Each veterinary facility that is located in Kentucky where the practice of veterinary medicine or practice of veterinary technology occurs shall possess a veterinary facility registration issued by the Kentucky Board of Veterinary Examiners. Pursuant to KRS 321.236(2), all existing veterinary facilities in Kentucky shall be registered by June 30, 2025.

(1) A veterinary facility registration shall not be issued without a physical facility, either a fixed facility or mobile unit.

(2) A veterinary facility shall be a dedicated space equipped for, staffed, and primarily devoted to the practice of veterinary medicine.

(3) A mobile facility shall be registered as an affiliate unit on a fixed facility registration, or independently under a unique veterinary facility registration with a designated physical location for parking and storage.

(4) A registered facility shall have no more than two (2) mobile units under its registration without incurring additional registration and renewal fees as established in 201 KAR 16:515.

(5) A registered veterinary facility shall prominently display the current registration certificate in a public area of the registered facility. The registration certificate shall:

(a) Legible; and

(b) Show the current dates of registration.

Section 3. Exemptions from Requirements for Veterinary Facility Registration. The following premises shall be exempt from the requirements of this administrative regulation:

(1) Premises identified in KRS 321.181(71)(b).

(2) An expert who provides consulting services only to other veterinarians, who does not engage in the practice of veterinary medicine on a patient directly, and who does not have a physical facility, either fixed or mobile, where the consultant practices on animal patients.

(3) Public rabies vaccines clinics held in accordance with KRS 258.043.

(a) The local health department or veterinarian providing services under KRS 258.043 shall register the rabies clinic with the board at least thirty (30) days in advance of the event by submitting a completed application on a Registration for Mass Rabies Immunization Clinic form or online equivalent form, including all required attachments.

(b) If other services are rendered, including the administration of other vaccines or veterinary products are sold, then the veterinarian must practice at a registered veterinary facility, either fixed or mobile, and a medical exam shall be provided to each patient and a complete medical record shall be established in accordance with 201 KAR 16:701.

Section 4. Registered Responsible Party.

(1) Each application for a veterinary facility registration shall name the facility and identify each registered responsible party.

(2) Pursuant to KRS 321.236(5), each registered responsible party shall be accountable for ensuring the requirements of KRS Chapter 321 and 201 KAR Chapter 16 are met, including the timely designation of a veterinarian manager for the veterinary facility in accordance with the provisions of 201 KAR 16:767.

(3) When it is determined that a registered responsible party has violated any provisions of the Kentucky Veterinary Medicine Practice Act or 201 KAR Chapter 16, the board may take disciplinary action equal to that for a licensed veterinarian as provided by the Kentucky Veterinary Medicine Practice Act.

Section 5. Veterinarian Manager.

(1) Each application for a veterinary facility registration shall designate a veterinarian manager. The application shall include the

veterinarian manager's original signature, or, if completed online, an equivalent digital signature.

(2) A veterinarian manager shall be responsible for meeting the requirements of KRS Chapter 321 and 201 KAR Chapter 16, including ensuring the requirements for minimum standards are met and maintained.

Section 6. New Application Requirements. A new application to the board for registration as a veterinary facility shall include the following components:

(1) A completed application on an Application for Veterinary Facility Registration form or online equivalent form, including all required attachments and fees;

(2) A complete list of persons or entities who shall be the registered responsible party;

(3) Identification of the veterinarian manager;

(4) Identification of the name, phone, address, and email address of the registered facility;

(5) A copy of the business registration from the Kentucky Secretary of State;

(6) Identification of the species served from one or more in a list provided by the board;

(7) Identification of the patient services offered at the veterinary facility from one (1) or more in a list provided by the board;

(8) A complete list of veterinarians working at the facility, excluding veterinarians providing locum services less than fourteen (14) days in a calendar year to the facility;

(9) A complete list of licensed veterinary technicians working at the facility;

(10) A complete list of allied animal health professional (AAHP) permittees working at the facility;

(11) A complete list of mobile units affiliated with the veterinary facility;

(12) Disclosure of after-hours care arrangements;

(13) For fixed facilities, county of facility location and counties served;

(14) If the facility offers a haul-in installation;

(15) For mobile units, a list of the counties served by the mobile unit;

(16) Hours of operation;

(17) A copy of any court documents, final orders, settlement agreements, or other documents requested by the board in support of the application; and

(18) Any other information requested by the board in support of the application.

Section 7. Background Checks. Pursuant to KRS 321.189, the board may:

(1) Conduct a national or jurisdictional level background check on each veterinarian manager applicant for registration. The check shall be processed by a board approved background check provider and may include a copy of the applicant's fingerprints captured at a board-approved location;

(2) Reject background checks that do not have an official seal or watermark, or that are more than ninety (90) days old.

(3) Impose additional requirements as a condition of registration or deny registration following the board's review of findings from a background check; and

(4) Waive the background check requirement for a veterinarian manager who is already licensed in Kentucky and when a background check was previously conducted as a condition of licensure.

Section 8. Renewal and Reinstatement of Veterinary Facility Registrations. Pursuant to 201 KAR 16:765, a registered responsible party or veterinarian manager shall:

(1) Ensure the timely renewal of the veterinary facility registration; and

(2) If applicable, ensure an appropriate reinstatement application is made to the board.

Section 9. The veterinary facility registration certificate shall be posted in a publicly viewable area on the facility premises or on mobile unit.

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Section 10. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Veterinary Facility Registration", 10/2024; and

(b) "Registration for Mass Rabies Immunization Clinic", 10/2024.

(2) This material may be inspected, copied, or obtained, subjected to applicable copyright law, at the Kentucky Board of Veterinary Examiners, 4047 Iron Works Parkway, Suite 104, Lexington, Kentucky 40511, Monday through Friday, 8:30 a.m. to 4:30 p.m. This material may also be obtained at kbve.ky.gov.

MICHELLE M. SHANE, Executive Director on behalf of
JOHN C. PARK, DVM, Board Chair

APPROVED BY AGENCY: October 14, 2024

FILED WITH LRC: October 15, 2024 at 8:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2024, at 10:00 am EST, at the offices of the Kentucky Board of Veterinary Examiners, 4047 Iron Works Pkwy, Suite 104, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 December 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: Michelle M. Shane, Executive Director, Kentucky Board of Veterinary Examiners, 4047 Iron Works Parkway, Suite 104, Lexington, Kentucky 40511, Phone: 502-564-5433, Fax: 502-753-1458, Email: Michelle.Shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle M. Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes application requirements for registered veterinary facilities.

(b) The necessity of this administrative regulation: This new administrative regulation is necessary to establishes requirements approved by the board for veterinary facility registration applications.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.175(4) states the purpose of the Kentucky Veterinary Medicine Practice Act is to promote, preserve, and protect the public health, safety, and welfare by and through, in part, the registration and regulation of veterinary facilities and mobile facilities where and from which the practice of veterinary medicine occurs. KRS 321.236(1)(a) allows the Kentucky Board of Veterinary Examiners to promulgate administrative regulations defining the application requirements and fees for veterinary facilities. KRS 321.235(1)(b) requires the agency to promulgate administrative regulations to effectively carry out and enforce the provisions of KRS Chapter 321.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation will assist in effective administration by clearly expressing the application requirements approved by the board for veterinary facility registration applicants.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: N/A. 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: An estimated 500 businesses in Kentucky offering veterinary services are estimated to 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: Applicants will be required to complete the appropriate application to request approval from the board for registration, renewal, or reinstatement of a veterinary facility registration.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for application, renewal, and reinstatement.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the application requirements associated with registration.

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

(a) Initially: The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term.

(b) On a continuing basis: The KBVE expects costs for all board operations to be approximately \$900,000 annually in future bienniums as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KBVE does not receive any general funds. All funds for the agency come from licensing fees, service fees, and administrative fines.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no anticipation of an increase in fees to implement this administrative regulation, as the KBVE is already running an administrative program to process applications and an enforcement program to ensure compliance.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this new administrative regulation applies to all premises at which the practice of veterinary medicine occurs, except those entities excluded under KRS 321.200.

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 321.203, 321.235(2)(b)1.c., (2)(b)3.b., and (2)(e).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The promulgating agency is the Kentucky Board of Veterinary Examiners. There are no other affected state units, parts, or divisions.

(a) Estimate the following for the first year:

Expenditures: The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term. This includes the administration of the veterinary facility registration program, database management, infrastructure, overhead, and contractors, including legal counsel and investigators.

Revenues: There is no revenue generated by this filing.

Cost Savings:

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Staff time and database management will be required for record keeping. Costs will be minimal.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Kentucky counties may be

impacted if the county animal control agency or animal shelter offers veterinary services to the public or conducts surgeries onsite.

(a) Estimate the following for the first year:

Expenditures: The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term. This includes the administration of the veterinary facility registration program, database management, infrastructure, overhead, and contractors, including legal counsel and investigators.

Revenues: There is no revenue generated by this filing.

Cost Savings: There will be no cost savings; this administrative regulation simply codifies the requirements, making them easily accessible for regulated entities.

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

(4) Identify additional regulated entities not listed in questions (2) or (3): KBVE does not anticipate that any other regulated entities will be impacted.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

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

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation does not set fees and will not bring in revenue. This filing only impacts applicants for a veterinary facility registration in Kentucky.

(b) Methodology and resources used to determine the fiscal impact: A large spreadsheet was used to calculate all board revenues, expenditures, proposed fees, and estimated quantities of applications based on historical numbers. Projections were calculated ten (10) years out to F.Y. 2036.

(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 new administrative regulation shall not have a "major economic impact", as defined in KRS 13A.010(13). This administrative regulation does not set fees and will not bring in revenue.

(b) The methodology and resources used to reach this conclusion: This amendment will not have a negative impact, as no fees are established as a part of this administrative regulation.

BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(New Administrative Regulation)

201 KAR 16:765. Veterinary facilities -- Renewal notice -- Requirements for renewal and reinstatement.

RELATES TO: KRS 321.203, 321.205, 321.235

STATUTORY AUTHORITY: KRS 321.175(2)(c), (5), 321.203(1), (2), (5), 321.203, 321.205, 321.235(1)(b), (2)(e), (2)(f)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.235(1)(b) requires the Kentucky Board of Veterinary Examiners to promulgate administrative regulations to effectively carry out and enforce the provisions of KRS Chapter 321. KRS 321.236 requires all veterinary facilities to register with the Kentucky Board of Veterinary Examiners. This administrative regulation establishes requirements for the renewal and reinstatement of veterinary facility registrations.

Section 1. Renewal Notices and Timeliness of Renewal Applications.

(1) The board shall, not later than July 1 of each odd-numbered year, email or mail to each registered allied animal health professional facility a biennial renewal notice.

(2) The renewal application shall be completed by the permittee and returned to the board, including all required attachments and, if required by the board, proof of course completion for the required continuing education.

(3) Timely receipt of renewal application.

(a) Renewals bearing a postmark, or, if an online renewal, a timestamp, of September 30 or earlier shall be considered received on time.

(b) Renewals bearing a postmark, or, if an online renewal, a timestamp, between October 1 and November 30 shall be considered late and therefore incur a late fee pursuant to 201 KAR 16:513.

(4) The renewal fee shall be attached to the completed renewal form when it is returned to the board or paid online.

Section 2. Renewal application.

(1) The renewal application for a veterinary facility shall be completed by the registered responsible party or veterinarian manager and returned to the board, including all required attachments.

(2) A renewal application to the board for a veterinary facility registration shall include the following components:

(a) A completed application on a Renewal Application for Registered Veterinary Facilities form or online equivalent form, including all required attachments and fees;

(b) Identification of any changes to the registered responsible party;

(c) Identification of the veterinarian manager;

(d) Identification of the name, phone, or email address of the registered facility;

(e) A current copy of the business registration from the Kentucky Secretary of State;

(f) Identification of the species served from one or more in a list provided by the board;

(g) Identification of the patient services offered at the veterinary facility from one (1) or more in a list provided by the board;

(h) A complete list of veterinarians working at the facility, excluding veterinarians providing locum services on a temporary basis to the facility;

(i) A complete list of licensed veterinary technicians working at the facility;

(j) A complete list of allied animal health professional (AAHP) permittees working at the facility;

(k) A complete list of mobile units affiliated with the veterinary facility;

(l) Disclosure of afterhours care arrangements;

(m) For fixed facilities, county of facility location and counties served;

(n) If the facility offers a haul-in instillation;

(o) For mobile units, a list of the counties served by the mobile unit;

(p) Hours of operation;

(q) A copy of any court documents, final orders, settlement agreements, or other documents requested by the board in support of the application; and

(r) Any other information requested by the board in support of the application.

(3) A change in 50% or more of ownership or of the registered responsible parties shall be cause for the board to deny the renewal for a veterinary facility registration and require a new veterinary facility registration application.

Section 3. Timely receipt of renewal application.

(1) Renewals bearing a postmark, or, if an online renewal, a timestamp, of September 30 of every odd numbered year beginning in 2027 and each odd numbered year thereafter shall be considered received on time.

(2) Renewals bearing a postmark or, if an online renewal, a timestamp, after September 30 of the renewal period shall be considered late and shall cause the facility registration status to be changed to expired. There shall be no grace period for registered facility renewal.

(3) Renewal fee.

(a) The renewal fee shall be paid in accordance with 201 KAR 16:515; and

(b) The renewal fee shall be attached to the completed renewal form when it is returned to the board or paid online with the completion of the online renewal form.

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(4) Applicants for renewal that miss the veterinary facility registration renewal deadline shall:

- (a) Immediately cease operations; and
- (b) If the registered responsible party desires to continue operations, submit a complete a reinstatement application in accordance with Section 4 of this administrative regulation.

Section 4. Reinstatement. A registered responsible party or veterinarian manager shall apply for reinstatement of an expired veterinary facility registration if not more than five (5) years have elapsed since the last date of registration expiration pursuant to KRS 321.203.

(1) A reinstatement application to the board for a veterinary facility registration shall include the following components:

(a) A completed application on a Reinstatement Application for Registered Veterinary Facilities form or online equivalent form, including the following components, all required attachments, and fees pursuant to 201 KAR 16:515;

(b) Identification of any changes to the registered responsible party;

(c) Identification of the veterinarian manager;

(d) Identification of the name, phone, and email address of the registered facility;

(e) A copy of the business registration from the Kentucky Secretary of State;

(f) Identification of the species served from one or more in a list provided by the board;

(g) Identification of the patient services offered at the veterinary facility from one (1) or more in a list provided by the board;

(h) A complete list of veterinarians working at the facility, excluding veterinarians providing locum services on a temporary basis to the facility;

(i) A complete list of licensed veterinary technicians working at the facility;

(j) A complete list of AAHP permittees working at the facility;

(k) A complete list of all mobile units affiliated with the veterinary facility;

(l) Disclosure of afterhours care arrangements;

(m) For fixed facilities, county of location and counties served;

(n) If the facility offers a haul-in instillation;

(o) For mobile units, a list of the counties served by the mobile unit;

(p) Hours of operation;

(q) A copy of any court documents, final orders, settlement agreements, or other documents requested by the board in support of the application; and

(r) Any other information requested by the board in support of the application.

(2) Reinstatement fee.

(a) The reinstatement fee shall be paid in accordance with 201 KAR 16:515; and

(b) The reinstatement fee shall be attached to the completed reinstatement form when it is returned to the board or paid online with the completion of the online reinstatement form, if available.

Section 5. Background checks. Pursuant to KRS 321.189, the board may:

(1) Conduct a national or jurisdictional level background check on each veterinarian manager applicant for veterinary facility registration. The check shall be processed by a board approved background check provider and may include a copy of the applicant's fingerprints captured at a board-approved location;

(2) Reject background checks that do not have an official seal or watermark, or that are more than ninety (90) days old; and

(3) Impose additional requirements as a condition of registration or deny registration following the board's review of findings from a background check.

Section 6. Incorporation by reference.

(1) The following material is incorporated by reference:

(a) "Renewal Application for Registered Veterinary Facilities", 10/2024; and

(b) "Reinstatement Application for Registered Veterinary

Facilities", 10/2024.

(2) This material may be inspected, copied, or obtained, subjected to applicable copyright law, at the Kentucky Board of Veterinary Examiners, 4047 Iron Works Parkway, Suite 104, Lexington, Kentucky 40511, Monday through Friday, 8:30 a.m. to 4:30 p.m. This material may also be obtained at kbve.ky.gov.

MICHELLE M. SHANE, Executive Director on behalf of
JOHN C. PARK, DVM, Board Chair

APPROVED BY AGENCY: October 14, 2024

FILED WITH LRC: October 15, 2024 at 8:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2024, at 10:00 am EST, at the offices of the Kentucky Board of Veterinary Examiners, 4047 Iron Works Pkwy, Suite 104, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 December 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: Michelle M. Shane, Executive Director, Kentucky Board of Veterinary Examiners, 4047 Iron Works Parkway, Suite 104, Lexington, Kentucky 40511, Phone: 502-564-5433, Fax: 502-753-1458, Email: Michelle.Shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle M. Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements approved by the board for the renewal and reinstatement of veterinary facility registrations.

(b) The necessity of this administrative regulation: This new administrative regulation is necessary to establish requirements for renewal and reinstatement of veterinary facility registration applications.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235(1)(b) requires the Kentucky Board of Veterinary Examiners to promulgate administrative regulations to effectively carry out and enforce the provisions of KRS Chapter 321. KRS 321.236 requires all veterinary facilities to register with the Kentucky Board of Veterinary Examiners.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation will assist in effective administration by clearly expressing the application requirements approved by the board for veterinary facility registration applicants.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: N/A. 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: An estimated 500 businesses in Kentucky offering veterinary services are estimated to 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: Applicants will be required to complete the appropriate application to petition the board for registration, renewal, or reinstatement of an veterinary facility registration.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for application, renewal, and reinstatement.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the fees associated with registration.

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

(a) Initially: The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term.

(b) On a continuing basis: The KBVE expects costs for all board operations to be approximately \$900,000 annually in future bienniums as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KBVE does not receive any general funds. All funds for the agency come from licensing fees, service fees, and administrative fines.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no anticipation of an increase in fees to implement this administrative regulation, as the KBVE is already running an administrative program to process applications and an inspection program to ensure compliance.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this new administrative regulation applies to all premises at which the practice of veterinary medicine occurs, except those entities excluded under KRS 321.200.

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 321.175(2)(c), (5), 321.203(1), (2), (5), 321.203, 321.205, 321.235(1)(b), (2)(e), and (2)(f).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The promulgating agency is the Kentucky Board of Veterinary Examiners. There are no other affected state units, parts, or divisions.

(a) Estimate the following for the first year:

Expenditures: The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term. This includes the administration of the veterinary facility registration program, database management, infrastructure, overhead, and contractors, including legal counsel and investigators.

Revenues: There is no revenue generated by this filing.

Cost Savings: There will be no cost savings; this administrative regulation simply codifies the requirements, making them easily accessible for regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Staff time and database management will be required for record keeping. Costs will be minimal.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Kentucky counties may be impacted if the county animal control agency or animal shelter offers veterinary services to the public or conducts surgeries onsite.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: There is no revenue generated by this filing.

Cost Savings: There will be no cost savings; this administrative regulation simply codifies the requirements, making them easily accessible for regulated entities.

(b) How will expenditures, revenues, or cost savings differ in

subsequent years? N/A

(4) Identify additional regulated entities not listed in questions (2) or (3): KBVE does not anticipate that any other regulated entities will be impacted.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

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

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation does not set fees and will not bring in revenue. This filing only impacts applicants for a veterinary facility registration in Kentucky.

(b) Methodology and resources used to determine the fiscal impact: A large spreadsheet was used to calculate all board revenues, expenditures, proposed fees, and estimated quantities of applications based on historical numbers. Projections were calculated ten (10) years out to F.Y. 2036.

(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 new administrative regulation shall not have a "major economic impact", as defined in KRS 13A.010(13). This administrative regulation does not set fees and will not bring in revenue.

(b) The methodology and resources used to reach this conclusion: This amendment will not have a negative impact, as no fees are established or collected as a part of this administrative regulation.

BOARDS AND COMMISSIONS Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:767. Registered veterinary facilities – Duties of registered responsible parties and veterinarian managers.

RELATES TO: KRS 321.203, 321.205, 321.235, 321.236

STATUTORY AUTHORITY: KRS 321.235(1)(b), 321.236(1)(b)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.235(1)(b) requires the Kentucky Board of Veterinary Examiners to promulgate administrative regulations to effectively carry out and enforce the provisions of KRS Chapter 321. KRS 321.236 requires all veterinary facilities to register with the Kentucky Board of Veterinary Examiners. KRS 321.236(5) requires each registered veterinary facility to identify both a veterinarian manager and each registered responsible party who shall be responsible for the operation and management of the veterinary facility. This administrative regulation establishes the responsibilities for registered responsible parties and veterinarian managers.

Section 1. Definitions.

(1) "Fixed facility" is defined by KRS 321.181(38).

(2) "Mobile facility" or "mobile unit" is defined by KRS 321.181(46).

(3) "Practice of veterinary medicine" is defined by KRS 321.181(50).

(4) "Practice of veterinary technology" is defined by KRS 321.181(51).

(5) "Registered responsible party" is defined by KRS 321.181(57).

(6) "Veterinarian manager" is defined by KRS 321.181(68)

(7) "Veterinary facility" is defined by KRS 321.181(71).

Section 2. Duties of Registered Responsible Parties. A registered responsible party shall

(1) Be responsible for maintaining minimum standards as promulgated by the board in administrative regulation;

(2) Designate a veterinarian manager for the registered veterinary facility;

(3) Comply with the requirements of and ensure employees and

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volunteers at the veterinary facility comply with the provisions of KRS Chapter 321 and 201 KAR Chapter 16 are met in addition to all local, state, and federal laws governing operations at the veterinary facility; and

(4) Comply with all duties to report, in accordance with Section 4 of this administrative regulation, including the timely designation of a veterinarian manager for the facility.

Section 3. Duties of Veterinarian Managers.

(1) A veterinarian manager shall:

(a) Be responsible for maintaining minimum standards as promulgated by the board in administrative regulation;

(b) Maintain a Kentucky Board of Veterinary Examiners veterinarian license;

(c) Comply with all provisions of the Kentucky Veterinary Medicine Practice Act and 201 KAR Chapter 16, in addition to all local, state, and federal laws governing operations at the veterinary facility; and

(d) Ensure the current board approved veterinary facility registration is posted in the registered facility and viewable by the public.

(2) The veterinarian manager shall be:

(a) The individual who oversees veterinary services at a veterinary facility;

(b) Knowledgeable about the veterinary facility and its:

1. Daily operations,
2. Standard protocols,
3. Drugs and supplies,
4. Patient areas,
5. Storage structures,
6. Other organizational spaces, and
7. Parts and spaces, both indoors and outdoors;

(c) Present at the veterinary facility with enough frequency to have knowledge of and control over the facility's methods for complying with minimum standards and the degree to which the minimum standards are being met; and

(d) Available and responsive to the board, its staff, inspectors, or other board designees, in the event of a facility inspection or any inquiry or investigation by the board.

Section 4. Duty to Report. Either the registered responsible parties or veterinarian managers shall report to the board:

(1) Within thirty (30) days, any change of name, address, phone, or email to the registered facility by completing and submitting to the board the Request for Facility Information Change form or online equivalent form provided by the board, including all required attachments;

(2) Within ten (10) days, a change in the veterinarian manager for the registered veterinary facility on the Request for a New Veterinarian Manager form or online equivalent form, including all required attachments; and

(3) A written response to a grievance or inquiry from the board in accordance with 201 KAR 16:610.

Section 5. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Request for Facility Information Change", 10/2024; and

(b) "Request for a New Veterinarian Manager", 10/2024.

(2) This material may be inspected, copied, or obtained, subjected to applicable copyright law, at the Kentucky Board of Veterinary Examiners, 4047 Iron Works Parkway, Suite 104, Lexington, Kentucky 40511, Monday through Friday, 8:30 a.m. to 4:30 p.m. This material may also be obtained at kbve.ky.gov

MICHELLE M. SHANE, Executive Director on behalf of
JOHN C. PARK, DVM, Board Chair

APPROVED BY AGENCY: October 14, 2024

FILED WITH LRC: October 15, 2024 at 8:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2024, at 10:00 am EST, at the offices of the Kentucky Board of Veterinary Examiners, 4047 Iron Works Pkwy, Suite 104, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the

hearing, of their intent to attend. If no notification of intent to attend the hearing 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 December 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: Michelle M. Shane, Executive Director, Kentucky Board of Veterinary Examiners, 4047 Iron Works Parkway, Suite 104, Lexington, Kentucky 40511, Phone: 502-564-5433, Fax: 502-753-1458, Email: Michelle.Shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle M. Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the responsibilities for registered responsible parties and veterinarian managers at registered facilities as approved by the board.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure clear requirements regarding expectations and duties of registered responsible parties and veterinarian managers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235(1)(b) requires the Kentucky Board of Veterinary Examiners to promulgate administrative regulations to effectively carry out and enforce the provisions of KRS Chapter 321. KRS 321.236 requires all veterinary facilities to register with the Kentucky Board of Veterinary Examiners. KRS 321.236(5) requires each registered veterinary facility to identify both a veterinarian manager and each registered responsible party who shall be responsible for the operation and management of the veterinary facility.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation will assist in effective administration by clearly expressing the responsibilities for registered responsible parties and veterinarian managers approved 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: N/A. This is a new administrative regulation.

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

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

(d) How the amendment will assist in the effective administration of the statutes: N/A. 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: An estimated 500 businesses in Kentucky offering veterinary services are estimated to 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: Veterinary facility registered responsible parties and veterinarian managers will be required to provide timely and current contact information to the board, provide oversight in specific areas at the registered facility identified by the board, and ensure compliance with KRS Chapter 321 and 201 KAR Chapter 16.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this administrative regulation simply establishes the duties of veterinary facility registered responsible parties and veterinarian managers, as approved by the board.

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

entities identified in question (3): Administrative ease of clear communications of the fees associated with registration.

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

(a) Initially: The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term.

(b) On a continuing basis: The KBVE expects costs for all board operations to be approximately \$900,000 annually in future bienniums as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KBVE does not receive any general funds. All funds for the agency come from licensing fees, service fees, and administrative fines.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no anticipation of an increase in fees to implement this administrative regulation, as the KBVE is already running an administrative program to process applications and an inspection program to ensure compliance.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this new administrative regulation applies to all premises at which the practice of veterinary medicine occurs, except those entities excluded under KRS 321.200.

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 321.235(1)(b), 321.236(1)(b)

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The promulgating agency is the Kentucky Board of Veterinary Examiners. There are no other affected state units, parts, or divisions.

(a) Estimate the following for the first year:

Expenditures: The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term. This includes the administration of the veterinary facility registration program, database management, infrastructure, overhead, and contractors, including legal counsel and investigators.

Revenues: There is no revenue generated by this filing.

Cost Savings: There will be no cost savings; this administrative regulation simply codifies the requirements, making them easily accessible for regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Staff time and database management will be required for record keeping. Costs will be minimal.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Kentucky counties may be impacted if the county animal control agency or animal shelter offers veterinary services to the public or conducts surgeries onsite.

(a) Estimate the following for the first year:

Expenditures: There will not be additional expenditures as a result of this filing. The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term.

Revenues: There is no revenue generated by this filing.

Cost Savings: There will be no cost savings; this new administrative regulation simply codifies the requirements, making them easily accessible for regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Staff time and database management will be required for record keeping. Costs will be minimal.

(4) Identify additional regulated entities not listed in questions (2) or (3): KBVE does not anticipate that any other regulated entities will be impacted.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

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

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation does not set fees and will not bring in revenue. This filing only impacts veterinary facility registrants in Kentucky.

(b) Methodology and resources used to determine the fiscal impact: A large spreadsheet was used to calculate all board revenues, expenditures, proposed fees, and estimated quantities of applications based on historical numbers. Projections were calculated ten (10) years out to F.Y. 2036.

(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 new administrative regulation shall not have a "major economic impact", as defined in KRS 13A.010(13). This administrative regulation does not set fees and will not bring in revenue.

(b) The methodology and resources used to reach this conclusion: This amendment will not have a negative impact, as no fees are established or collected as a part of this administrative regulation.

BOARDS AND COMMISSIONS Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:772. Application requirements for AAHP facility registration; AAHP managers; Registered responsible parties.

RELATES TO: KRS 321.175, 321.181(1)-(4), 321.203, 321.205, 321.235

STATUTORY AUTHORITY: KRS 321.175(2)(c), (5), 321.181(1)-(4), 321.203, 321.205, 321.235(1)(a)-(c) and (2)(b)2., 321.236

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.235(1)(b) requires the board to promulgate administrative regulations to implement KRS Chapter 321. KRS 321.235(2)(b)2. provides the board authority to promulgate administrative regulations to establish conditions for applications and permitting of allied animal health professional (AAHP) facilities. This administrative regulation establishes application requirements for AAHP facilities, registered responsible parties at AAHP facilities, and AAHP managers.

Section 1. Definitions.

(1) "Allied animal health professional" or "AAHP" is defined by KRS 321.181(1).

(2) "Allied animal health professional facility" or "AAHP facility" is defined by KRS 321.181(2).

(3) "Fixed facility" is defined by KRS 321.181(38).

(4) "Mobile facility" or "mobile unit" is defined by KRS 321.181(46). An AAHP mobile unit shall be primarily used for the practice of an AAHP permittee.

(5) "Registered responsible party" is defined by KRS 321.181(57).

Section 2. General Requirements. Each AAHP facility located in Kentucky at which an AAHP permittee practices on animal patients shall possess an AAHP facility registration issued by the Kentucky Board of Veterinary Examiners, unless the AAHP permittee is practicing at a registered veterinary facility.

(1) An AAHP facility registration shall not be issued without a physical facility, either a fixed facility or mobile facility.

(2) An AAHP facility shall contain a dedicated space equipped for staffed, and primarily devoted to the practice of the allied animal health profession on animal patients.

(3) A mobile facility shall be registered as an affiliate unit on a fixed facility registration, or independently under a unique AAHP facility registration with a designated physical location for parking

and storage.

(4) A registered facility shall have no more than two (2) mobile units under its registration without incurring additional registration and renewal fees as established in 201 KAR 16:515.

(5) A registered AAHP facility shall prominently display the current registration certificate in a public area of the registered facility. The registration certificate shall:

- (a) Be legible; and
- (b) Show the current dates of registration.

Section 3. Exemptions from Requirements for AAHP Facility Registration. The following premises shall be exempt from the requirements of this administrative regulation:

- (1) Premises identified in KRS 321.181(2)(c).
- (2) An expert who provides consulting services only to other veterinarians or AAHP permittees, who does not engage in practice on a patient directly, and who does not have a regular physical facility where the consultant practices on animal patients.
- (3) An AAHP Permittee who utilizes their personal vehicle for transport provided the equipment for AAHP services being transported is limited to an aide for height. Transportation of any other equipment for services or pharmaceuticals shall trigger the requirement for registration of the vehicle as an AAHP facility or mobile unit.

Section 4. Registered Responsible Party.

- (1) Each application for an AAHP facility registration shall name the facility and identify each registered responsible party.
- (2) Pursuant to KRS 321.236(5), each registered responsible party shall be accountable for ensuring the requirements of KRS Chapter 321 and 201 KAR Chapter 16 are met, including the timely designation of an allied animal health professional manager for the facility, in accordance with 201 KAR 16:737.
- (3) When it is determined that a registered responsible party has violated any provisions of the Kentucky Veterinary Medicine Practice Act or 201 KAR Chapter 16, the board may take disciplinary action equal to that for a licensed veterinarian as provided by the Kentucky Veterinary Medicine Practice Act.

Section 5. AAHP Manager.

- (1) Each application for an AAHP facility registration shall name the facility and designate an AAHP manager. The application shall include the AAHP manager's original signature, or, if completed online, an equivalent digital signature.
- (2) An AAHP manager shall be primarily responsible for meeting the requirements of KRS Chapter 321 and 201 KAR Chapter 16, including ensuring that minimum standards are met and maintained.

Section 6. New Application Requirements. A new application to the board for registration as a AAHP facility shall include the following components:

- (1) A completed application on an Application for AAHP Facility Registration form or online equivalent form, including all required attachments and fees;
- (2) A complete list of persons or entities who shall be the registered responsible party;
- (3) Identification of the AAHP manager;
- (4) A copy of the business registration from the Kentucky Secretary of State;
- (5) Identification of the type of AAHP facility from one or more in a list provided by the board;
- (6) Identification of the species served from one or more in a list provided by the board;
- (7) Identification of the patient services offered at the AAHP facility from one (1) or more in a list provided by the board;
- (8) A complete list of AAHP permittees working at the facility;
- (9) A complete list of all mobile units affiliated with the AAHP facility;
- (10) Disclosure of afterhours care arrangements;
- (11) For fixed facilities, county of location and counties served;
- (12) For mobile units, a list of the counties served by the mobile unit;
- (13) Hours of facility operation; and
- (14) A copy of any court documents, final orders, settlement

agreements, or other documents requested by the board in support of the application.

Section 7. Background Checks. Pursuant to KRS 321.189, the board may:

- (1) Conduct a national or jurisdictional level background check on each AAHP permit applicant. The check shall be processed by a board approved background check provider and may include a copy of the applicant's fingerprints captured at a board-approved location;
- (2) Reject background checks that do not have an official seal or watermark, or that are more than ninety (90) days old;
- (3) Impose additional requirements as a condition of registration or deny the application following the board's review of findings from a background check; and
- (4) Waive the background check requirement for an AAHP manager who is already permitted in Kentucky and when a background check was previously conducted as a condition of permitting.

Section 8. Renewal and Reinstatement of AAHP Facility Registrations. Pursuant to 201 KAR 16:775, a registered responsible party or AAHP manager shall:

- (1) Ensure the timely renewal of the AAHP facility registration;
- (2) If applicable, ensure an appropriate reinstatement application is made to the board.

Section 9. Incorporation by Reference.

- (1) "Application for AAHP Facility Registration", 10/2024, is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subjected to applicable copyright law, at the Kentucky Board of Veterinary Examiners, 4047 Iron Works Parkway, Suite 104, Lexington, Kentucky 40511, Monday through Friday, 8:30 a.m. to 4:30 p.m. This material may also be obtained at kbve.ky.gov.

MICHELLE M. SHANE, Executive Director on behalf of
JOHN C. PARK, DVM, Board Chair

APPROVED BY AGENCY: October 14, 2024

FILED WITH LRC: October 15, 2024 at 8:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2024, at 10:00 am EST, at the offices of the Kentucky Board of Veterinary Examiners, 4047 Iron Works Pkwy, Suite 104, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 December 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: Michelle M. Shane, Executive Director, Kentucky Board of Veterinary Examiners, 4047 Iron Works Parkway, Suite 104, Lexington, Kentucky 40511, Phone: 502-564-5433, Fax: 502-753-1458, Email: Michelle.Shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle M. Shane

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes application requirements for registered AAHP facilities.
 - (b) The necessity of this administrative regulation: This new administrative regulation is necessary to establish requirements approved by the board for AAHP facility registration applications.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.175(4) states the purpose of the Kentucky Veterinary Medicine Practice Act is to promote, preserve, and protect the public health, safety, and welfare by and through, in part, the registration and regulation of veterinary facilities and mobile

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facilities where and from which the practice of veterinary medicine occurs. KRS 321.236(1)(a) allows the Kentucky Board of Veterinary Examiners to promulgate administrative regulations defining the application requirements and fees for AAHP facilities. KRS 321.235(1)(b) requires the agency to promulgate administrative regulations to effectively carry out and enforce the provisions of KRS Chapter 321.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation will assist in effective administration by clearly expressing the application requirements approved by the board for AAHP facility registration applicants.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: N/A. 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: An estimated ten (10) businesses in Kentucky offering AAHP services are estimated to 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: Applicants will be required to complete the appropriate application to request approval from the board for registration, renewal, or reinstatement of an AAHP facility registration.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for application, renewal, and reinstatement.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the application requirements associated with registration.

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

(a) Initially: The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term.

(b) On a continuing basis: The KBVE expects costs for all board operations to be approximately \$900,000 annually in future bienniums as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KBVE does not receive any general funds. All funds for the agency come from licensing fees, service fees, and administrative fines.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no anticipation of an increase in fees to implement this administrative regulation, as the KBVE is already running an administrative program to process applications and an enforcement program to ensure compliance.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this new administrative regulation applies to all premises at which the practice of AAHP services occur, except those entities excluded under KRS 321.200.

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 321.175(2)(c), (5), 321.181(1)-(4), 321.203, 321.205, 321.235(1)(a)-(c) and (2)(b)2., 321.236

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The promulgating agency is the Kentucky Board of Veterinary Examiners. There are no other affected state units, parts, or divisions.

(a) Estimate the following for the first year:

Expenditures: The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term. This includes the administration of the veterinary facility registration program, database management, infrastructure, overhead, and contractors, including legal counsel and investigators.

Revenues: There is no revenue generated by this filing.

Cost Savings: There will be no cost savings; this amendment simply codifies the requirements, making them easily accessible for regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Staff time and database management will be required for record keeping. Costs will be minimal.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): KBVE does not anticipate that any local entities will be impacted.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

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

(4) Identify additional regulated entities not listed in questions (2) or (3): KBVE does not anticipate that any other regulated entities will be impacted.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

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

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation does not set fees and will not bring in revenue. Local entities will not be impacted by this regulation. This filing only impacts candidates seeking a permit as an allied animal health provider in Kentucky.

(b) Methodology and resources used to determine the fiscal impact: A large spreadsheet was used to calculate all board revenues, expenditures, proposed fees, and estimated quantities of applications based on historical numbers. Projections were calculated ten (10) years out to F.Y. 2036.

(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 new administrative regulation shall not have a "major economic impact", as defined in KRS 13A.010(13). This administrative regulation does not set fees and will not bring in revenue.

(b) The methodology and resources used to reach this conclusion: This amendment will not have a negative impact, as no fees are established as a part of this administrative regulation.

BOARDS AND COMMISSIONS Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:775. AAHP facilities -- Renewal notice -- Requirements for renewal and reinstatement.

RELATES TO: KRS 321.175, 321.181(1)-(4), 321.203, 321.205, 321.235

STATUTORY AUTHORITY: KRS 321.175(2)(c), (5), 321.181(1)-(4), 321.203, 321.205, 321.235(1)(a)-(c), (2)(b)2., 321.236

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.235(1)(b) requires the board to promulgate administrative

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regulations to implement KRS Chapter 321. KRS 321.235(2)(b)2. provides the board authority to promulgate administrative regulations to establish conditions for applications and permitting of allied animal health professional (AAHP) facilities. This administrative regulation establishes requirements for AAHP facility registration renewal and reinstatement applications.

Section 1. Renewal Notices and Timeliness of Renewal Applications.

(1) The board shall, not later than July 1 of each odd-numbered year, email or mail to each registered AAHP facility a biennial renewal notice.

(2) The renewal application shall be completed by the AAHP manager or registered responsible party and returned to the board, including all required attachments and, if required by the board, proof of course completion for the required continuing education.

(3) Timely receipt of renewal application.

(a) Renewals bearing a postmark, or, if an online renewal, a timestamp, of September 30 of every odd year or earlier shall be considered received on time.

(b) Renewals bearing a postmark, or, if an online renewal, a timestamp, on or after October 1 of every odd year shall be considered late and shall cause the registration status to be changed to expired. There shall be no grace period for registered facility renewal.

(4) Applicants for renewal that miss the deadline will be required to complete a reinstatement application in accordance with Section 4 of this administrative regulation.

Section 2. Renewal Application.

(1) The renewal application shall be completed by the registered responsible party or AAHP manager and returned to the board, including all required attachments.

(2) A renewal application to the board for an AAHP facility registration shall include the following components:

(a) A completed application on the Renewal Application for Registered AAHP Facilities form or online equivalent form, including all required attachments and fees;

(b) Identification of any changes to the registered responsible party;

(c) Identification of the AAHP manager;

(d) A copy of the business registration from the Kentucky Secretary of State;

(e) Identification of the type of AAHP facility from one or more in a list provided by the board;

(f) Identification of the species served by the facility from one or more in a list provided by the board;

(g) Identification of the patient services offered at the veterinary facility from one (1) or more in a list provided by the board;

(h) A complete list of AAHP permittees working at the facility;

(i) A complete list of all mobile units affiliated with the AAHP facility;

(j) Disclosure of afterhours care arrangements;

(k) For fixed facilities, county of location and counties served;

(l) For mobile units, a list of the counties served by the mobile unit;

(m) Hours of facility operation; and

(n) A copy of any court documents, final orders, settlement agreements, or other documents requested by the board in support of the application.

(3) A change in fifty (50) percent or more of ownership or of the registered responsible parties shall be cause for the board to deny an AAHP facility renewal and require a new AAHP facility application.

Section 3. Renewal Fee.

(1) The renewal fee shall be paid in accordance with 201 KAR 16:517; and

(2) The renewal fee shall be attached to the completed renewal form when it is returned to the board or paid online with the completion of the online renewal form.

Section 4. Reinstatement. A registered responsible party or AAHP manager may apply for reinstatement of an expired AAHP

facility registration if not more than five (5) years have elapsed since the last date of registration expiration pursuant to KRS 321.203. Applications to the board for reinstatement of a AAHP facility registration shall include the following components:

(1) A completed application on a Reinstatement Application for Registered AAHP Facilities form or online equivalent form, including the following components and all required attachments and fees pursuant to 201 KAR 16:517;

(2) Identification of any changes to the registered responsible party;

(3) Identification of the AAHP manager;

(4) A copy of the business registration from the Kentucky Secretary of State;

(5) Identification of the type of AAHP facility from one or more in a list provided by the board;

(6) Identification of the type of AAHP facility from one or more in a list provided by the board;

(7) Identification of the species served by the facility from one or more in a list provided by the board;

(8) Identification of the patient services offered at the veterinary facility from one (1) or more in a list provided by the board;

(9) A complete list of AAHP permittees working at the facility;

(10) A complete list of all mobile units affiliated with the AAHP facility;

(11) Disclosure of afterhours care arrangements;

(12) For fixed facilities, county of location and counties served;

(13) For mobile units, a list of the counties served by the mobile unit;

(14) Hours of facility operation; and

(15) A copy of any court documents, final orders, settlement agreements, or other documents requested by the board in support of the application.

Section 5. Background Checks. Pursuant to KRS 321.189, the board may:

(1) Conduct a national or jurisdictional level background check on each AAHP manager applicant for AAHP facility registration. The check shall be processed by a board approved background check provider and may include a copy of the applicant's fingerprints captured at a board-approved location;

(2) Reject background checks that do not have an official seal or watermark, or that are more than ninety (90) days old; and

(3) Impose additional requirements as a condition of registration or deny the AAHP facility application or the designated veterinarian manager following the board's review of findings from a background check.

Section 6. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Renewal Application for Registered AAHP Facilities", 10/2024; and

(b) "Reinstatement Application for Registered AAHP Facilities", 10/2024.

(2) This material may be inspected, copied, or obtained, subjected to applicable copyright law, at the Kentucky Board of Veterinary Examiners, 4047 Iron Works Parkway, Suite 104, Lexington, Kentucky 40511, Monday through Friday, 8:30 a.m. to 4:30 p.m. This material may also be obtained at kbve.ky.gov.

MICHELLE M. SHANE, Executive Director on behalf of
JOHN C. PARK, DVM, Board Chair

APPROVED BY AGENCY: October 14, 2024

FILED WITH LRC: October 15, 2024 at 8:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2024, at 10:00 am EST, at the offices of the Kentucky Board of Veterinary Examiners, 4047 Iron Works Pkwy, Suite 104, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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

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public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 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: Michelle M. Shane, Executive Director, Kentucky Board of Veterinary Examiners, 4047 Iron Works Parkway, Suite 104, Lexington, Kentucky 40511, Phone: 502-564-5433, Fax: 502-753-1458, Email: Michelle.Shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle M. Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for allied animal health professional (AAHP) facility registration renewal and reinstatement applications.

(b) The necessity of this administrative regulation: This new administrative regulation is necessary to establish clear requirements for renewal and reinstatement applications for AAHP facility registrations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235(1)(b) requires the board to promulgate administrative regulations to implement KRS Chapter 321. KRS 321.235(2)(b)2. provides the board authority to promulgate administrative regulations to establish conditions for applications and permitting of AAHP facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation will assist in effective administration by clearly expressing the application requirements approved by the board for the renewal and reinstatement of AAHP facility registrations.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: N/A. 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: An estimated ten (10) businesses in Kentucky offering AAHP services are estimated to 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: Applicants will be required to complete the appropriate application to apply to the board for renewal or reinstatement of an AAHP facility registration.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for renewal and reinstatement applications.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the fees associated with registration.

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

(a) Initially: The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term.

(b) On a continuing basis: The KBVE expects costs for all board operations to be approximately \$900,000 annually in future bienniums as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KBVE does not receive any general funds. All funds for the agency come from licensing fees, service fees, and administrative fines.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no anticipation of an increase in fees to implement this administrative regulation, as the KBVE is already running an administrative program to process applications and an inspection program to ensure compliance.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this new administrative regulation applies to all entities seeking to renew or reinstate an AAHP facility registration.

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 321.175(2)(c), (5), 321.181(1)-(4), 321.203, 321.205, 321.235(1)(a)-(c) and (2)(b)2., and 321.236.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The promulgating agency is the Kentucky Board of Veterinary Examiners. There are no other affected state units, parts, or divisions.

(a) Estimate the following for the first year:

Expenditures: The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term. This includes the administration of the AAHP facility registration program, database management, infrastructure, overhead, and contractors, including legal counsel and investigators.

Revenues: There is no revenue generated by this filing.

Cost Savings: There will be no cost savings; this administrative regulation simply codifies the requirements, making them easily accessible for regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Staff time and database management will be required for record keeping. Costs will be minimal.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): KBVE does not anticipate that any local entities will be impacted.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

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

(4) Identify additional regulated entities not listed in questions (2) or (3): KBVE does not anticipate that any other regulated entities will be impacted.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

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

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation does not set fees and will not bring in revenue. Local entities will not be impacted by this regulation. This filing only impacts applicants for an AAHP facility registration in Kentucky.

(b) Methodology and resources used to determine the fiscal impact: A large spreadsheet was used to calculate all board revenues, expenditures, proposed fees, and estimated quantities of applications based on historical numbers. Projections were calculated ten (10) years out to F.Y. 2036.

(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 new administrative regulation shall not have a "major economic impact", as defined in KRS 13A.010(13). This administrative regulation does not set fees and will not bring in revenue.

(b) The methodology and resources used to reach this conclusion: This amendment will not have a negative impact, as no fees are established or collected as a part of this administrative regulation.

BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(New Administrative Regulation)

201 KAR 16:777. Registered AAHP facilities – Duties of registered responsible parties and AAHP managers.

RELATES TO: KRS 321.203, 321.205, 321.235, 321.236

STATUTORY AUTHORITY: KRS 321.235(1)(b), 321.236(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.235(1)(b) requires the Kentucky Board of Veterinary Examiners to promulgate administrative regulations to effectively carry out and enforce the provisions of KRS Chapter 321. KRS 321.236 requires all allied animal health professional (AAHP) facilities to register with the Kentucky Board of Veterinary Examiners. KRS 321.236(5) requires each registered AAHP facility to identify both an AAHP manager and each registered responsible party who shall be responsible for the operation and management of the AAHP facility. This administrative regulation establishes the responsibilities for registered responsible parties and AAHP managers.

Section 1. Definitions.

(1) "Allied animal health professional" or "AAHP" has the same meaning as KRS 321.181(1).

(2) "Allied animal health professional facility" or "AAHP facility" has the same meaning as KRS 321.181(2).

(3) "Fixed facility" has the same meaning as KRS 321.181(38).

(4) "Mobile facility" or "mobile unit" has the same meaning as KRS 321.181(46).

(5) "Registered responsible party" has the same meaning as KRS 321.181(57).

Section 2. Duties of Registered Responsible Parties. A registered responsible party shall

(1) Be responsible for maintaining minimum standards as promulgated by the board in administrative regulation;

(2) Designate an AAHP manager for the registered AAHP facility;

(3) Ensure the requirements of KRS Chapter 321 and 201 KAR Chapter 16 are met in addition to all local, state, and federal laws governing operations at the veterinary facility;

(4) Comply with all duties to report, in accordance with Section 4 of this administrative regulation, including the timely designation of an AAHP manager for the facility; and

Section 3. Duties of AAHP Managers.

(1) An AAHP manager shall:

(a) Be responsible for maintaining minimum standards as promulgated by the board in administrative regulation;

(b) Maintain a Kentucky Board of Veterinary Examiners AAHP permit in good standing;

(c) Comply with all provisions of the Kentucky Veterinary Medicine Practice Act and 201 KAR Chapter 16, in addition to all local, state, and federal laws governing operations at the AAHP facility; and

(d) Ensure the current board approved AAHP facility registration is posted in the registered facility and viewable by the public.

(2) The AAHP manager shall be:

(a) The individual who oversees AAHP services at the AAHP facility;

(b) Knowledgeable about the AAHP facility, its:

1. Daily operations;

2. Standard protocols;

3. Drug supplies;

4. Patient areas;

5. Storage structures;

6. Other organizational spaces; and

7. Parts and spaces, both indoors and outdoors;

(c) Present at the AAHP facility with enough frequency to have knowledge of and control over the facility's methods for complying with minimum standards and the degree to which the minimum standards are being met; and

(d) Available and responsive to the board, its staff, inspectors, or other board designees, in the event of a facility inspection or any inquiry or investigation by the board.

Section 4. Duty to Report. Either the registered responsible party or AAHP managers shall report to the board:

(1) Within thirty (30) days, any change of name, address, phone, or email to the registered AAHP facility by completing and submitting to the board the Request for Facility Information Change form as found in 201 KAR 16:767, or online equivalent form, including all required attachments, provided by the board;

(2) Within ten (10) days, a change in the AAHP manager for the registered facility by completing and submitting to the board a Request for a New AAHP Manager form or online equivalent form, including all required attachments, provided by the board; and

(3) A written response to a grievance or inquiry from the board pursuant to 201 KAR 16:610.

Section 5. Registration and Inspection of Allied Animal Health Professional Facilities.

(1) Each AAHP permittee and AAHP facility or mobile facility shall be subject to KRS Chapter 321 and 201 KAR Chapter 16.

(2) During a facility inspection or investigation, the board or its designee shall be provided unrestricted access to animal use areas.

(3) Inspections of an AAHP facility shall be limited to the animal treatment areas unless the board or its designee is accompanied by at least one representative from the professional licensing board or certifying body in the human area of specialty.

Section 6. Separate Human and Animal Treatment Areas Required. An AAHP permittee who treats both animal and human patients in the same registered facility shall:

(1) Post a conspicuous sign in the reception area of that facility informing customers that nonhuman patients are treated on the premises;

(2) Maintain a separate, non-carpeted room for the purpose of practicing on animal patients;

(3) Utilize separate furniture and equipment for use with animal patients which shall not be used for human patients;

(4) Apply appropriate biosecurity measures to prevent contamination and the spread of zoonotic disease;

(5) In the event of an animal bite, report to the local health department within twelve (12) hours and comply with state law regarding required actions and, if necessary, quarantine the animal.

Section 7. Incorporation by Reference.

(1) "Request for a New AAHP Manager", 10/2024, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subjected to applicable copyright law, at the Kentucky Board of Veterinary Examiners, 4047 Iron Works Parkway, Suite 104, Lexington, Kentucky 40511, Monday through Friday, 8:30 a.m. to 4:30 p.m. This material may also be obtained at kbve.ky.gov.

MICHELLE M. SHANE, Executive Director on behalf of
JOHN C. PARK, DVM, Board Chair

APPROVED BY AGENCY: October 14, 2024

FILED WITH LRC: October 15, 2024 at 8:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2024, at 10:00 am EST, at the offices of the Kentucky Board of Veterinary Examiners, 4047 Iron Works Pkwy, Suite 104, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend

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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 December 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: Michelle M. Shane, Executive Director, Kentucky Board of Veterinary Examiners, 4047 Iron Works Parkway, Suite 104, Lexington, Kentucky 40511, Phone: 502-564-5433, Fax: 502-753-1458, Email: Michelle.Shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle M. Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the responsibilities for registered responsible parties and AAHP managers at registered facilities as approved by the board.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to communicate clear requirements regarding expectations and duties of registered responsible parties and AAHP managers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235(1)(b) requires the Kentucky Board of Veterinary Examiners to promulgate administrative regulations to effectively carry out and enforce the provisions of KRS Chapter 321. KRS 321.236 requires all allied animal health professional (AAHP) facilities to register with the Kentucky Board of Veterinary Examiners. KRS 321.236(5) requires each registered AAHP facility to identify both an AAHP manager and each registered responsible party who shall be responsible for the operation and management of the AAHP facility.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation will assist in effective administration by clearly expressing the responsibilities for registered responsible parties and AAHP managers approved 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: N/A. This is a new administrative regulation.

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

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

(d) How the amendment will assist in the effective administration of the statutes: N/A. 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: An estimated ten (10) businesses in Kentucky offering AAHP services are estimated to 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: AAHP facility registered responsible parties and veterinarian managers will be required to provide timely and current contact information to the board, provide oversight in specific areas at the registered facility identified by the board, and ensure compliance with KRS Chapter 321 and 201 KAR Chapter 16.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this administrative regulation simply establishes the duties of AAHP facility registered responsible parties and AAHP managers, as approved by the board.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear

communications of the responsibilities for registered responsible parties and AAHP managers at AAHP facilities.

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

(a) Initially: The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term.

(b) On a continuing basis: The KBVE expects costs for all board operations to be approximately \$900,000 annually in future bienniums as new programming is brought online, per the mandates in the modernized Kentucky Veterinary Medicine Practice Act, KRS Chapter 321.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KBVE does not receive any general funds. All funds for the agency come from licensing fees, service fees, and administrative fines.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no anticipation of an increase in fees to implement this administrative regulation, as the KBVE is already running an administrative program to process applications and an inspection program to ensure compliance.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this new administrative regulation applies to all entities holding an AAHP facility registration.

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 321.235(1)(b), 321.236(1)(b)

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The promulgating agency is the Kentucky Board of Veterinary Examiners. There are no other affected state units, parts, or divisions.

(a) Estimate the following for the first year:

Expenditures: The KBVE expects costs for all board operations to be approximately \$759,700 annually in the near term. This includes the administration of the AAHP facility registration program, database management, infrastructure, overhead, and contractors, including legal counsel and investigators.

Revenues: There is no revenue generated by this filing.

Cost Savings: There will be no cost savings; this administrative regulation simply codifies the requirements, making them easily accessible for regulated entities.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Staff time and database management will be required for record keeping. Costs will be minimal.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): KBVE does not anticipate that any local entities will be impacted.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

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

(4) Identify additional regulated entities not listed in questions (2) or (3): KBVE does not anticipate that any other regulated entities will be impacted.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

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

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation does not set fees and will not bring in

revenue. Local entities will not be impacted by this regulation. This filing only impacts AAHP facility registrants in Kentucky.

(b) Methodology and resources used to determine the fiscal impact: A large spreadsheet was used to calculate all board revenues, expenditures, proposed fees, and estimated quantities of applications based on historical numbers. Projections were calculated ten (10) years out to F.Y. 2036.

(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 new administrative regulation shall not have a "major economic impact", as defined in KRS 13A.010(13). This administrative regulation does not set fees and will not bring in revenue.

(b) The methodology and resources used to reach this conclusion: This amendment will not have a negative impact, as no fees are established or collected as a part of this administrative regulation.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Criminal Justice Training
(New Administrative Regulation)**

503 KAR 3:140. Telecommunications (Public Safety Dispatch) Academy trainee requirements; misconduct; penalties; discipline procedures.

RELATES TO: KRS 15.530-15.590

STATUTORY AUTHORITY: KRS 15.590, 15A.070(1), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.070(1) requires the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel. KRS 15A.070(5) authorizes the commissioner to promulgate administrative regulations. This administrative regulation establishes conduct requirements of trainees attending the telecommunications (public safety dispatch) academy conducted by the Department of Criminal Justice Training, procedures for disciplinary action, and penalties for violations of conduct requirements.

Section 1. Criminal History Records Check Required. Prior to the trainee arriving at the Academy, the trainee's employing agency shall submit Form 151 to the department stating that:

(1) A criminal history check required by KRS 15.540(1) has been conducted within ninety (90) days before the trainee attends the Academy; and

(2) The trainee is not prohibited by state or federal law from accessing the Criminal Justice Information System (CJIS) or any other restricted records database.

Section 2. Removing a Trainee from the Academy.

(1) Unqualified trainee. After a trainee arrives on campus, if it is discovered that a trainee does not meet the law enforcement telecommunicator qualifications in KRS 15.540, the trainee shall:

(a) Be removed from the academy by the commissioner or designee; and

(b) Not receive credit for completed portions of academy training.

(2) If a trainee is removed from the academy, pursuant to subsection (1) of this section, within thirty (30) days of the removal, the trainee may request in writing an administrative hearing, which shall comply with KRS Chapter 13B.

(3) Agency request. The department shall remove a trainee from the academy upon written request of the trainee's agency. Depending on the circumstances, the trainee may not receive credit for completed portions of academy training.

Section 3. Trainee Performance Report.

(1) The department shall provide at the conclusion of the academy a trainee performance report that includes trainee conduct, demonstrated leadership abilities, examination scores, and overall effort on performance, observed social and interpersonal skills, and appearance.

(2) The trainee and the trainee's agency head or designee shall have access to the trainee's training record without filing an open records request pursuant to KRS 61.870 through KRS 61.884.

Section 4. Authority to Impose Discipline.

(1) A trainee may receive a verbal warning from a department instructor, section supervisor, branch manager, division director, or the commissioner or designee without meeting the requirements of the formal disciplinary procedures provided by Section 21 of this administrative regulation.

(2) A trainee may receive a written reprimand or loss of privileges from a section supervisor, branch manager, division director, or the commissioner or designee without meeting the requirements of the formal disciplinary procedures provided by Section 21 of this administrative regulation.

(3) Before a penalty set out in subsection (1) or (2) above may be imposed, the trainee shall have the opportunity to give an explanation.

(4) Any penalty set out in subsection (1) and (2) that is imposed on a trainee shall be reviewed by and may be rescinded or modified by the immediate supervisor of the staff member that imposed the penalty.

(5) The trainee shall have the opportunity to give an explanation to the reviewing immediate supervisor.

(6) Only the commissioner or designee may impose any penalty on a trainee regarding criminal conduct, and for all conduct for which a suspension or expulsion is allowed after an investigation has been conducted.

Section 5. Uniforms and hygiene.

(1) A trainee shall wear the required uniform and practice good personal hygiene while participating in the academy. Exceptions shall be approved in advance by the branch manager.

(2) The required uniform shall consist of:

(a) Men:

1. Department issued shirt;
2. Solid black dress pants with belt loops. Cargo pants or low-cut pants shall not be worn;
3. Black belt;
4. Black short sleeved undershirt;
5. Black socks above the ankles. Footies shall not be worn; and
6. Black, plain-toe, dress shoes, or tactical style duty boots; or

(b) Women:

1. Department issued shirt;
2. Solid black dress pants with belt loops or knee-length skirt. Cargo pants or low-cut pants shall not be worn;
3. Black belt;
4. Black short sleeved undershirt;
5. Black socks or hose above the ankles. Footies or anklets shall not be worn; and
6. Black, plain, closed-toe, dress shoes, or tactical style duty boots.

(3) A dark blue or black jacket or sweater may be worn with the uniform.

(4) A name tag, provided by the department, shall be worn on the right shirt breast.

(5) Sleeves on long-sleeved shirts shall not be rolled up.

(6) Additional clothing may be worn during an academy activity if authorized by the instructor.

(7) Uniforms shall be clean, pressed, and in good condition.

(8) The eligible penalties for a violation of this section shall be verbal warning or written reprimand.

Section 6. Residence Hall. If a trainee resides in a residence hall designated by the department, the trainee shall:

(1) Report and return to the trainee's residence hall by curfew times designated by the coordinator, Sunday through Thursday evenings, and remain there until 5:00 a.m. the next morning. Exceptions shall require approval from the class coordinator. The eligible penalties shall be verbal warning, written reprimand, or loss of privileges.

(2) Clean the trainee's area as directed by the coordinator. The eligible penalties shall be verbal warning or written reprimand.

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(3) Keep doors of the trainee's room locked whenever the room is unoccupied. The eligible penalties shall be verbal warning or written reprimand.

(4) Not use hot plates or other table-top cooking surfaces. The eligible penalties shall be verbal warning, written reprimand, or loss of privileges.

(5) Not allow a visitor in the trainee's room after 9:00 p.m. The eligible penalties shall be verbal warning, written reprimand, or loss of privileges.

(6) Not keep pets or animals of any kind in the trainee's room, except ADA-defined service animals with advanced, written approval from the commissioner or designee. The eligible penalties shall be verbal warning, written reprimand, or loss of privileges.

(7) Not engage in dangerous or disruptive behavior. The eligible penalties shall be verbal warning, written reprimand, loss of privileges, or suspension.

Section 7. Department Property.

(1) A trainee shall:

(a) Not damage, destroy, or fail to return property of the department or any other facility used by the department;

(b) Use department property in a manner that conserves resources and avoids waste; and

(c) Not use department property for personal benefit or gain.

(2) A trainee shall not be allowed to graduate until the trainee has returned all issued items or made satisfactory arrangements to pay for unreturned or damaged items.

(3) The eligible penalties for a violation of this section shall be verbal warning, written reprimand, loss of privileges, suspension, or expulsion.

Section 8. Absences.

(1) A trainee shall:

(a) Be considered tardy if the trainee is not physically present at a class or other required department activity for fewer than ten (10) minutes;

(b) Be considered absent if the trainee is not physically present in a class or other required department activity for more than ten (10) minutes; and

(c) Give advance notice of an absence or tardy, if possible.

(2) Excused absence or tardy.

(a) An absence or tardy may be excused if due to:

1. Illness;

2. Illness of an immediate family member;

3. Death of an immediate family member;

4. Necessity of the trainee's agency; or

5. Emergency circumstances.

(b) The determination as to whether an absence or tardy is excused shall be made by the section supervisor or branch manager.

(c) If a trainee's absence is excused, the trainee shall make up for the absence by completing an assignment provided by the instructor who taught the missed unit. Failure to make up the work shall be deemed a failure for that missed unit.

(d) If a trainee's absence is excused and the trainee misses more than ten (10) percent of the total hours of the academy, the trainee shall be withdrawn from the academy and reenrolled in a subsequent class beginning at the point at which the trainee was first absent. The time period for reenrollment in a subsequent class shall not exceed six (6) months from the date of the class from which the trainee was withdrawn.

(3) Unexcused absence or tardy.

(a) If a trainee's tardy is unexcused the eligible penalties shall be verbal warning or written reprimand.

(b) The eligible penalties for an unexcused absence shall be verbal warning, written reprimand, loss of privileges, or suspension.

(c) If a trainee's absence is unexcused and the trainee misses more than ten (10) percent of the total hours of the academy, the trainee shall be withdrawn from the academy and receive no credit for completed training.

Section 9. Tobacco, food, and drink products.

(1) A trainee shall not possess tobacco products while on

department property or other facility used by the department.

(2) A trainee shall not bring food or drink into an academy activity unless so permitted by the branch manager or above.

(3) The eligible penalties for a violation of this section shall be verbal warning or written reprimand.

Section 10. Electronic devices. A trainee shall not possess any personal electronic devices during scheduled training hours unless written permission is granted by the class coordinator. The eligible penalties for a violation of this section shall be verbal warning or written reprimand.

Section 11. Alcohol. A trainee shall not possess, consume, or be under the influence of alcoholic beverages while present at the academy, or participating in academy activities. Any alcoholic beverage and its container shall be confiscated. The eligible penalties for a violation of this section shall be written reprimand, loss of privileges, suspension, or expulsion.

Section 12. Controlled Substances.

(1) A trainee shall advise the class coordinator or the section supervisor in writing of the use of a controlled substance, cannabis, or any medication that could impair their judgment or compromise safety. The eligible penalties for a violation of this section shall be verbal warning, written reprimand, or suspension.

(2) A trainee shall not possess or consume any controlled substance not prescribed or certified by a qualified medical professional while present at the academy or participating in academy activities. The eligible penalties shall be suspension or expulsion.

(3) If a trainee is under the influence of a controlled substance to the extent that the trainee may be impaired or may endanger him or herself or other persons or property the trainee shall not participate in any academy activity.

Section 13. Deadly Weapons. A trainee shall not possess deadly weapons (as defined in KRS 500.080), ammunition, destructive devices (as defined in KRS 237.030), booby trap devices (as defined in KRS 237.030), hazardous substances (as defined in KRS 224.1-400), fireworks, knives (except an ordinary pocketknife), or instruments used by law enforcement for control purposes (such as batons, stun guns, Mace, and pepper spray) on property used by the department except under circumstances specifically authorized by the department. The eligible penalties for a violation of this section shall be verbal warning, written reprimand, loss of privileges, suspension, or expulsion.

Section 14. Dangerous or Disruptive Conduct.

(1) A trainee shall not threaten to engage in or engage in any conduct that reasonably creates or may create a risk of injury to self or others.

(2) If the conduct or condition of a trainee constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of a department activity, a department staff member may take reasonable steps necessary to resolve the situation.

(3) The eligible penalties for a violation of this section shall be verbal warning, written reprimand, loss of privileges, or suspension or expulsion.

Section 15. Chain of command. All communications shall follow the chain of command of the department. Exceptions to use of the chain of command shall be the unavailability of a supervisor or the trainee's complaint regarding a supervisor. The eligible penalties for a violation of this section shall be verbal warning or written reprimand.

Section 16. Insubordination. A trainee shall obey an instruction from a department staff member unless the trainee has a reasonable basis for belief that the order is unlawful or contrary to regulations. The eligible penalties for a violation of this section shall be verbal warning, written reprimand, loss of privileges, or suspension.

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Section 17. Obscene Material. A trainee shall not possess obscene material as defined in KRS 531.010. The eligible penalties for a violation of this section shall be verbal warning, written reprimand, loss of privileges, suspension, or expulsion.

Section 18. Sexual harassment.

(1) Unwelcome sexual advances; requests for sexual acts or favors, with or without accompanying promises, threats, or reciprocal favors or actions; or other verbal or physical conduct of a sexual nature that creates or has the intention of creating a hostile or offensive working environment are prohibited.

(2) Complaints of sexual harassment will be promptly investigated, and all trainees shall be free from any and all reprisal or retaliation for filing such complaints.

(3) Further, all trainees are assured that they will be free from any and all reprisal and retaliation for participating in an investigation of sexual harassment.

(4) Any trainee who is made aware of a complaint of sexual harassment while enrolled at the academy has a duty to immediately notify the class coordinator or section supervisor. If the section supervisor is the subject of the problem, the trainee shall immediately notify the branch manager.

(5) Trainees may also bring the complaint to the attention of the agency human resources administrator or EEO Coordinator, or the State EEO Coordinator at (502) 564-8000.

(6) The privacy of the complainant and the person accused of harassment shall be protected to the fullest extent permitted by law.

(7) If the investigation reveals that the complaint appears to be valid, immediate and appropriate corrective action will be taken to stop sexual harassment and prevent its recurrence.

(8) Disciplinary action may be taken against persons found to have knowingly and purposely filed false claims about sexual harassment and all anti-discrimination or harassment policies.

(9) The eligible penalties for a violation of this section shall be verbal warning, written reprimand, loss of privileges, suspension or expulsion.

Section 19. Criminal Conduct.

(1) While enrolled in the academy, if a trainee is convicted of, charged with, or under investigation for a felony, the commissioner or designee shall determine the penalty after consultation with the investigating or prosecuting agency, and the trainee's agency. Depending on the nature of the conduct and whether the trainee is convicted of, charged with, or under investigation for a felony, the trainee shall be penalized by suspension or expulsion.

(2) While enrolled in the academy, if a trainee is convicted of, charged with, or under investigation for a misdemeanor or violation, the commissioner or designee shall determine the penalty after consultation with the investigating or prosecuting agency, and the trainee's agency. Depending on the nature of the conduct and whether the trainee is convicted of, charged with, or under investigation for a misdemeanor or violation, the trainee shall be penalized by a verbal warning, written reprimand, loss of privileges, suspension, or expulsion.

Section 20. Other Conduct.

(1) A trainee shall refrain from:

(a) Vulgarity, rudeness, confrontation, dishonesty, or other disrespectful conduct directed toward a department staff member, guest, or other trainee.

(b) Conduct that is patently offensive; and

(c) Conduct that creates a disruptive learning environment.

(2) The eligible penalties shall be verbal warning, written reprimand, loss of privileges, suspension, or expulsion.

Section 21. Classroom activities.

(1) A trainee shall be attentive during academy activities. The eligible penalties shall be verbal warning or written reprimand.

(2) A trainee shall not take a break without permission or in an area restricted by the department. The eligible penalties shall be verbal warning or written reprimand.

(3) Insufficient performance of assignments.

(a) A trainee shall not submit for credit an assignment that is incomplete or does not meet the standards established for that

assignment. Incomplete work includes a trainee's refusal to participate in group assignments or a required task. The eligible penalties shall be written reprimand, loss of privileges, or suspension.

(b) A trainee shall not represent as their own work and submit for credit any written material or other tangible deliverable created in whole or in part by another, unless it is a joint project. The eligible penalties shall be written reprimand, loss of privileges, suspension, or expulsion.

(c) A trainee shall not submit any plagiarized materials for credit. Plagiarism is using the work, words, or ideas of another without attribution. The eligible penalties shall be written reprimand, loss of privileges, suspension, or expulsion.

(d) A trainee shall not submit for credit unprofessional work product that is patently offensive or presented to others with the intent to offend. The eligible penalties shall be written reprimand, loss of privileges, suspension, or expulsion.

(4) A trainee shall not cheat or attempt to cheat on a test or on any other assignment or activity. The eligible penalties shall be verbal warning, written reprimand, loss of privileges, suspension, or expulsion.

Section 22. Penalties for Misconduct.

(1) The penalties established in this section shall apply to a trainee's failure to meet conduct requirements of the department and shall be applied depending on the frequency and severity of the violations.

(a) Verbal warning. The trainee is warned verbally that he or she has violated a conduct requirement.

(b) Written reprimand. The trainee is reprimanded in writing for violating a conduct requirement.

(c) Loss of privileges. The trainee's privileges as specified in the imposed penalty are rescinded for a stated period of time. The trainee's participation in academy activities is not affected.

(d) Suspension. The trainee is suspended from the academy for a period of time specified by the commissioner or designee and privileges are rescinded during the suspension period.

(e) Expulsion. The trainee is dismissed from the academy, all privileges are terminated, credit shall not be awarded for the completed portion of the course, and the trainee shall not return to the telecommunications academy for a period of two (2) years unless the trainee obtains permission from the commissioner or designee.

(2) Second and subsequent violations.

(a) If a trainee has received a penalty for violating a conduct requirement, for a second violation of any conduct requirement the next higher penalty shall be added to the list of penalties that may be imposed for the second violation.

(b) If a trainee has previously received two (2) penalties for violating two (2) conduct requirements, for a third or subsequent violation of any conduct requirement, the next two (2) higher penalties shall be added to the list of penalties that may be imposed for the third or subsequent violation.

(3) Notice of disciplinary action.

(a) The department shall give written notice to a trainee and his or her agency of any penalty imposed upon the trainee.

(b) If the penalty exceeds Summary Discipline as defined in Section 22, the department shall provide verbal notification of the proposed disciplinary action to the trainee's agency head prior to written notice.

(4) Discipline records. A copy of any disciplinary notice and penalty imposed on a trainee shall be placed in the trainee's training file.

Section 23. Summary Discipline.

(1) Summary discipline is a verbal warning, written reprimand, and loss of privileges.

(2) A department instructor may summarily impose a verbal warning and a section supervisor or above may summarily impose a verbal warning, written reprimand, or loss of privileges without meeting the requirements of the formal disciplinary procedures provided by Sections 22 through 26 of this administrative regulation.

(3) To have the authority to impose summary discipline, the staff

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member shall believe by a preponderance of the evidence that the trainee has engaged in the misconduct.

Section 24. Complaint. Anyone having reasonable grounds for believing that a trainee has violated a conduct requirement identified in this administrative regulation may file a complaint with the section supervisor or branch manager. This complaint shall be in writing setting forth the facts upon which the complaint is based.

Section 25. Investigation.

(1) If the section supervisor or above receives a complaint of or witnesses apparent misconduct, the section supervisor or other department employee designated by the commissioner or designee shall take statements and otherwise investigate the matter. A notice of investigation shall be provided to the trainee.

(2) After investigating the matter, the section supervisor shall, with the concurrence of his or her branch manager:

(a) Take no action if none is justified by the evidence;

(b) Impose appropriate summary discipline; or

(c) File, with the commissioner or designee, a written request that charges be brought against the trainee. The request for charges shall describe the alleged misconduct and designate the specific conduct requirements violated. All pertinent evidence and documents including the complaint and statements of the trainee and witnesses shall be included.

Section 26. Review by Commissioner.

(1) The commissioner or designee shall review the request for charges and the supporting evidence and documents.

(2) The commissioner or designee may make or cause further inquiry into the matter for additional information.

(3) The commissioner or designee shall:

(a) File any charges against the trainee the commissioner or designee believes are justified by the evidence; or

(b) Deny the request for charges if the evidence does not support any charges. If the commissioner or designee declines to file charges, the commissioner or designee shall provide the trainee with a statement of the reasons for not filing charges.

(4) The charging document shall:

(a) Be in writing;

(b) Particularly describe the alleged misconduct so as to reasonably inform the trainee of the nature of the allegation;

(c) State the time, date, and place the trainee shall make an initial appearance before the commissioner or designee to answer the charges;

(d) Be signed by the commissioner or designee;

(e) Be served upon the trainee at least one (1) hour before his initial appearance before the commissioner or designee; and

(f) State the trainee's right to be represented by legal counsel.

Section 27. Removal from the Academy Pending an Initial Appearance before the Commissioner. If a request for charges is filed against a trainee, the commissioner or designee may remove the trainee from some or all training until the trainee's initial appearance before the commissioner, if the commissioner or designee has reasonable grounds to believe the alleged misconduct took place and:

(1) The commissioner or designee has reasonable suspicion to believe the trainee would be dangerous or disruptive if not removed; or

(2) The trainee may be charged with misconduct serious enough to authorize suspension or expulsion.

Section 28. Initial Appearance before the Commissioner.

(1) The initial appearance before the commissioner or designee shall be held no more than three (3) training days after the charges have been served on the trainee. If the trainee, after receiving proper notice, fails to appear, the commissioner or designee may proceed in his or her absence and the trainee shall be notified in writing of any action taken.

(2) At the initial appearance before the commissioner or designee:

(a) The commissioner or designee shall:

1. Read the charges to the trainee; and

2. Explain to the trainee:

a. The charges;

b. The trainee's right to a hearing in accordance with KRS Chapter 13B; and

c. The trainee's right to be represented by legal counsel.

(b) The commissioner or designee shall explain to the trainee the possible answers to the charges including:

1. Admit the charges are true;

2. Deny the charges are true but waive a hearing; or

3. Deny the charges are true and ask for a hearing.

(c) The commissioner or designee shall advise the trainee of the penalty that will be imposed if the trainee admits the charges or waives a hearing.

(d) The trainee shall be requested to answer the charges.

(e) If the trainee chooses to waive his rights and admits the charges or denies the charges but waives a hearing:

1. The trainee shall be permitted to make a statement of explanation; and

2. The commissioner or designee shall impose a penalty.

(f) If the trainee denies the charges and requests a hearing or refuses to answer the charges, the commissioner or designee shall set a date for the hearing. A notice of administrative hearing as required by KRS 13B.050 shall be served on the trainee within forty-eight (48) hours after the initial appearance before the commissioner or designee.

(3) The hearing shall be conducted in accordance with KRS Chapter 13B.

(4) The commissioner or designee may remove the trainee from some or all training until the hearing if:

(a) The commissioner or designee has reasonable grounds to believe the trainee would be dangerous or disruptive if not removed; or

(b) The trainee is charged with misconduct serious enough to authorize suspension or expulsion as a possible penalty.

Section 29. Incorporation by Reference.

(1) DOCJT Form 151, "Applicant Confirmation", 2024 Edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Criminal Justice Training, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475-3102, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the department's Web site at <https://docjt.ky.gov/> on the forms page.

MIKE BOSSE, Interim Commissioner

APPROVED BY AGENCY: October 14, 2024

FILED WITH LRC: October 15, 2024 at 9:45 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, December 23, 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 December 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: Nathan Goens, Staff Attorney III, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, Justice.RegContact@ky.gov, telephone number (502) 564-8216, facsimile number (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goens

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes conduct requirements, procedures for

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disciplinary action, and penalties for violations of conduct requirements of trainees attending the Public Safety Dispatch Academy conducted by the Department of Criminal Justice Training.

(b) The necessity of this administrative regulation: KRS 15A.070(1) requires the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement and any other justice or nonlaw-enforcement-related personnel. KRS 15A.070(5) authorizes the Commissioner to promulgate administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation governs the operations of the department concerning training programs for justice and nonlaw-enforcement-related personnel. This administrative regulation complies with the requirements to promulgate administrative regulations as stated in (b).

(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 Department of Criminal Justice Training concerning training programs for justice and nonlaw-enforcement-related personnel. It provides direction and information to department employees and trainees attending the telecommunications (public safety dispatch) academy conducted by the Department of Criminal Justice Training.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Department of Criminal Justice Training, Public Safety Dispatch Academy; approximately thirty (30) students per class attending six (6) to (8) academies per calendar year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no actions that the Department of Criminal Justice Training is required to take for implementation of this regulation. All rules and regulations are explained in academy orientation to the trainees. Trainees need only to follow the rules.

(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 impact as a result of this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational procedures will assist in the effective and orderly management of the Public Safety Dispatch Academy.

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

(a) Initially: There will be no additional impact as a result of this regulation.

(b) On a continuing basis: There will be no additional impact as a result of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Criminal Justice Training is funded by the Kentucky Law Enforcement Foundation Program Fund (KLEFPF).

(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 administrative regulation does not establish 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 15.530 through KRS 15.590.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Justice and Public Safety Cabinet, Department of Criminal Justice Training is promulgating this regulation.

(a) Estimate the following for the first year:

Expenditures: No additional expenditures are anticipated as a result of this regulation.

Revenues: Revenue is not generated by this administrative regulation.

Cost Savings: The administrative regulation is expected to result in cost savings to the Justice and Public Safety Cabinet, Department of Criminal Justice Training due to the decreased number of trainees required to stay on campus during the academies.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Revenue is not expected to increase in subsequent years as a result of this regulation. However, expenditures are expected to decrease, and costs savings increase as a result of the decreased number of trainees required to stay on campus during the academies.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Cities and counties that employ dispatch employees required to attend the Public Safety Dispatch Academy will be affected by this administrative regulation.

(a) Estimate the following for the first year:

Expenditures: No additional expenditures are anticipated as a result of this regulation. However, if a department decides to allow a trainee to commute to the academy, they potentially may be out the costs associated with their trainee's travel depending upon their department policy.

Revenues: Revenue is not generated by this administrative regulation.

Cost Savings: The administrative regulation is expected to result in cost savings due to the decreased number of trainees required to stay on campus during the academies.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Revenue is not expected to increase in subsequent years as a result of this regulation. However, expenditures are expected to decrease, and costs savings increase as a result of the decreased number of trainees required to stay on campus during the academies.

(4) Identify additional regulated entities not listed in questions (2) or (3): County and city dispatch recruits that are required to attend the Public Safety Dispatch Academy will be affected by this regulation.

(a) Estimate the following for the first year:

Expenditures: No additional expenditures are anticipated as a result of this regulation. However, if a department decides to allow a trainee to commute to the academy, they potentially may be out the costs associated with their trainee's travel depending upon their department policy.

Revenues: Revenue is not generated by this administrative regulation.

Cost Savings: The administrative regulation is expected to result in cost savings due to the decreased number of trainees required to stay on campus during the academies.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Revenue is not expected to increase in subsequent years as a result of this regulation. However, expenditures are expected to decrease, and costs savings increase as a result of the decreased number of trainees required to stay on campus during the academies.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The administrative regulation impacts how the Department of Criminal Justice Training operates as well as conduct requirements, procedures for disciplinary action, and penalties for violations of conduct requirements of trainees attending the Public Safety Dispatch Academy conducted by the Department of Criminal Justice Training but is not expected to have a fiscal impact beyond the cost of administering the program.

(b) Methodology and resources used to determine the fiscal impact: No additional expenditures are anticipated as a result of this regulation. However, as mentioned, we anticipate expenditures to decrease as a result of the decreased number of trainees required to stay on campus during the academies. Trainees who stay on campus are provided with a daily meal allowance of \$34. Trainees who opt to not stay on campus will be provided \$15/day for lunch only generating a savings to the department of \$19/day for each trainee who opts to not stay on campus. This will generate an approximate savings of \$380 per trainee for the duration of the 4-week academy. The option to not stay on campus is up to the trainee and their agency. At this time, we have no way to determine the number of trainees who will take advantage of this offering.

(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) A major economic impact is not anticipated.

(b) The methodology and resources used to reach this conclusion: A major economic impact is not anticipated based on consideration of the possible expenses, the number academy classes offered, and the number of recruits attending each academy.

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing
(New Administrative Regulation)**

601 KAR 23:050. Examination of Certificate of Title Applications by the Department of Vehicle Regulation utilizing available technologies or human persons to implement the directives set forth in KRS 186A.060 and 186A.170(4).

RELATES TO: KRS 186A.072(2)(a), 186A.120, 186A.125, 186A.170

STATUTORY AUTHORITY: KRS 186A.020, 186A.170

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186A.170(4) establishes the requirements and procedures to examine title applications received from the Kentucky County Clerks. KRS 186A.020 authorizes the Transportation Cabinet to promulgate administrative regulations and institute programs as are reasonably necessary to carry out the provisions of KRS Chapter 186A.

Section 1. Definitions.

(1) "Cabinet" means the Kentucky Transportation Cabinet.

(2) "Department" means the Department of Vehicle Regulation, Division of Motor Vehicle Licensing.

(3) "Examination" means a review or audit of a completed title application with its supporting documents received from an applicant through a county clerk.

(4) "KAVIS" means Kentucky Automated Vehicle Information System, also known as the Kentucky Motor Vehicle Title and Registration System.

(5) "Supporting documents" means acceptable documents that support ownership to a vehicle, including court documents, power of attorney, towing and storage, and the documents listed in KRS 186.020(1) and 186A.060.

(6) "Title Application" means Transportation Cabinet's Form TC 96-182, an application for a Kentucky Certificate of Title and Registration.

Section 2. Documents or Items to be examined by the department, either by a human person or by an available technology

to detect fraudulent documents, may include:

- (1) Applicant's unique personal identifiable number;
- (2) Branded Certificate of Titles;
- (3) Court documents and power of attorney;
- (4) Law Information Network Kentucky (LINK) verified;
- (5) Mechanic liens and towing and storage;
- (6) Mileage verification;
- (7) National Crime Information Center (NCIC) verified;
- (8) Signatures and notarizations;
- (9) Vehicle chain of ownership; and
- (10) Vehicle identification number, make, model, and year.

Section 3. Incorporation by Reference.

(1) Form TC 96-182, "Application for Kentucky Certificate of Title or Registration", January 2024, is incorporated by reference.

(2) A complete application for a certificate of title with its supporting documents 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.

JIM GRAY, Secretary

MATTHEW COLE, Commissioner

APPROVED BY AGENCY: October 9, 2024

FILED WITH LRC: October 15, 2024 at 11:42 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2024, at 10:00 a.m. EST, at the Kentucky Transportation Cabinet, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 p.m. on December 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 authorizes the Cabinet to utilize both human persons and any available technology to review and approve certificate of title applications.

(b) The necessity of this administrative regulation: This regulation is required by KRS 186A.020.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administration regulation conforms by providing the use of emerging technology in the review of title applications as set forth in KRS 186A.170.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides a legal electronic verification system, when possible, otherwise, the use of human persons is required. (2) If this is an amendment to an existing administrative regulation, provide a summary of: N/A.

(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 and not an amendment.

(b) The necessity of the amendment to this administrative regulation: This is a new regulation and not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation and not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This is a new regulation and not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation only affects the Department in fulfilling the requirements as set forth in KRS 186A.170.

(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):

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This new administrative regulation should enhance the speed of approving certificate of title applications by the Department.

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

(a) Initially: There is no cost associated with implementing this administrative regulation.

(b) On a continuing basis: There is no cost associated with implementing this administrative regulation. Paper reduction may reduce costs over time.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no cost associated with implementing this administrative regulation, therefore there is no source of the funding to be used for the implementation and enforcement of this administrative regulation.

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

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

(9) TIERING: Is tiering applied? No tiering is required under any law nor is it necessary for proper application of the law.

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 186A.020 and KRS 186A.170

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Division of Motor Vehicle Licensing is the promulgating agency, Kentucky Transportation Cabinet and Department of Vehicle Regulation will also be affected.

(a) Estimate the following for the first year:

Expenditures: This administrative regulation should cause no effect on expenditures of the agency.

Revenues: This administrative regulation should cause no effect on revenues of the agency.

Cost Savings: This administrative regulation should cause no cost savings to the agency.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? This administrative regulation should cause no effect on the expenditures, revenues, or cost savings to the agency.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): N/A?

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

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

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

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

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

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This regulation shall not have any fiscal impact.

(b) Methodology and resources used to determine the fiscal impact: The review of the statutory authority shows no new fees are established. In addition, no existing fees have been increased. Implementation costs should be minimal. Therefore, the fiscal impact should be negligible.

(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)

(b) The methodology and resources used to reach this conclusion: Based upon the above suppositions and statutory framework, no additional fees or costs should be generated. The overall economic affect should be neutral.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. N/A.

(2) State compliance standards. KRS 186A.170.

(3) Minimum or uniform standards contained in the federal mandate. N/A.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? N/A.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

EDUCATION AND LABOR CABINET
Office of Unemployment Insurance
(New Administrative Regulation)

787 KAR 1:370. Professional Employer Organizations.

RELATES TO: Professional Employer Organizations reporting and contribution obligations.

STATUTORY AUTHORITY: KRS 341.115, 336.248, 336.232

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.115(1) authorizes the secretary to promulgate administrative regulations for the proper administration of KRS Chapter 341. KRS 336.248 requires professional employer organizations to make certain reports and contributions to the unemployment insurance fund. This administrative regulation provides the procedures to file client unemployment insurance wage and premium reports; the procedures to complete the "Professional Employer Organization Application for Unemployment Insurance Employer Reserve Account" form; the procedures to add or delete clients; the effect of successorship; and the procedures to change the professional employer organization's contribution election.

Section 1. Definitions

(1) The term "client" is defined by KRS 336.232(1).

(2) The term "covered employee" is defined by KRS 336.232(4).

(3) The term "professional employer organization" is defined by KRS 336.232(8).

Section 2. Professional Employer Organization reporting requirements

(1) A professional employer organization (hereafter "PEO") shall keep separate records and submit separate state unemployment insurance wage and premium reports to the Office of Unemployment

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Insurance (OUI) using the Unemployment Insurance Self-Service Web Portal located at <https://kewes.ky.gov>, with payments to report the covered employees of each client by using the client's state employer account number as provided for in subsection (2) and using the:

- (a) Assigned tax rate of the PEO, per KRS 336.248 (1)(a); or
- (b) Assigned tax rate of the client, as that term is defined in KRS 336.232(1), per KRS 336.248(1)(b).

(2)

(a) For each PEO having one (1) or more covered employees with a client in this state, such PEO shall file an electronic application titled, UI-1P, Professional Employer Organization Application for Unemployment Insurance Employer Reserve Account, using the Unemployment Insurance Self-Service Web Portal located at <https://kewes.ky.gov> to apply for an account number; the application shall include:

1. The federal identification number of the professional employer organization, along with the name, address and phone number of the professional employer organization;
2. The name, physical address and phone number of each client in a format as prescribed by the Office of Unemployment Insurance;
3. The name of the client's owner, partners, corporate officers, limited liability company members and managers, if board managed, or general partners;
4. The federal identification number of the client;
5. A brief description of the client's major business activity; and
6. Any other information which may be required by the Office of Unemployment Insurance.

(b) The PEO shall notify the Office of Unemployment Insurance (OUI) in writing of any additions or deletions of clients during the quarter in which such changes occur. Written notifications shall be submitted to the OUI via the methods listed at <https://kewes.ky.gov>.

(c) In cases where the PEO has not been subject to the provisions set forth in KRS 336.248, the professional employer organization shall be assigned the new employer premium rate based upon the reserve ratio of the PEO's industrial classification.

Section 3. Effect of successorship. A PEO shall not be considered a successor employer to any client and shall not acquire the experience history of any client with whom there is not any common ownership, management or control. The client, upon terminating its relationship with the PEO, shall not be considered a successor employer to the PEO and shall not acquire any portion of the experience history of the aggregate reserve account of the PEO with whom there is not any common ownership, management or control. For purposes of this regulation, the existence of a professional employer agreement, without other evidence of common control, shall not constitute common ownership, management or control.

Section 4. Change of contribution election. KRS 336.248(5) permits a PEO to change its contribution election under KRS 336.248 (1)(a) or KRS 336.248(1)(b) only once. The change of contribution election shall be submitted in writing via the methods listed at <https://kewes.ky.gov>.

GREG HIGGINS, Executive Director

APPROVED BY AGENCY: October 10, 2024

FILED WITH LRC: October 14, 2024 at 10:40 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2024, at 1:00 PM. 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 December 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: Charles Wheatley, Deputy General

Counsel, Education and Labor Cabinet, 500 Mero St., 3rd Floor, Frankfort, Kentucky, 502-782-0555, Charles.wheatley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Charles Wheatley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation provides the procedures for professional employer organizations (PEO) for the following: how to file client unemployment insurance wage and premium reports; how to complete the "Professional Employer Organization Application for Unemployment Insurance Employer Reserve Account" form; how to add or delete clients; effect of successorship; and how to change the PEO's contribution election.

(b) The necessity of this administrative regulation: This new administrative regulation is necessary to carry out KRS 336.248.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115(1) authorizes the secretary promulgate administrative regulations necessary or suitable for the proper administration of KRS Chapter 341.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation provides application procedures for a professional employer organization to establish an employer account with unemployment insurance; provides instruction on how to file client unemployment insurance wage and premium reports; how to add or delete clients; effect of successorship; and how to change the PEOs contribution election consistent with the requirements of KRS 336.248.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation, and therefore, no response is required.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation, and therefore, no response is required.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation, and therefore, no response is required.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation, and therefore, no response is required.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This new administrative regulation affects all professional employer organizations operating in the Commonwealth, and all employers utilizing professional employer organizations.

(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 new administrative regulation provides the procedures for professional employer organizations ("PEO") to: establish an employer reserve account to facilitate the reporting and contribution obligations to the unemployment insurance fund by the PEO on behalf of their clients; provides PEOs instruction on how to file client unemployment insurance wage and premium reports for their clients; procedures for PEOs to add or delete clients in relation to their unemployment insurance obligations; effect of successorship; and how to change the PEOs contribution election consistent with the requirements of KRS 336.248.

(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 the professional employer organizations to comply with this new administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation

allows the professional employer organizations to establish an employer reserve accounts to file reports and make contributions required by the Office of Unemployment Insurance on behalf of their clients, thus facilitating the professional employer organizations compliance with their statutory obligations under KRS 336.248.

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

(a) Initially: The new regulation creates no new costs to implement.

(b) On a continuing basis: This new regulation creates no new costs on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state allocations and federal funding will be used for the ongoing implementation and enforcement of this new administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All professional employer organizations are 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 336.248 and KRS 336.232

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: This administrative regulation impacts Office of Unemployment Insurance (OUI) within the Kentucky Education and Labor Cabinet.

(a) Estimate the following for the first year:

Expenditures: This new administrative regulation will create no new expenditures for the first year.

Revenues: This new administrative regulation will create no new revenues.

Cost Savings: This new administrative regulation will create no cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The OUI anticipates no new expenditures, revenues, or cost savings in subsequent years as a result of this new administrative regulation.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None

(a) Estimate the following for the first year:

Expenditures: None

Revenues: None

Cost Savings: None

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The OUI anticipates no new expenditures, revenues, or cost savings in subsequent years as a result of this new administrative regulation.

(4) Identify additional regulated entities not listed in questions (2) or (3): No additional regulated entities are affected by this new administrative regulation.

(a) Estimate the following for the first year:

Expenditures: None

Revenues: None

Cost Savings: None

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The OUI anticipates no new expenditures, revenues, or cost savings in subsequent years as a result of this new administrative regulation.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This new administrative regulation has no fiscal impact on the OUI.

(b) Methodology and resources used to determine the fiscal

impact: Because there is no fiscal impact related to this new administrative regulation, no methodology or resources were necessary to determine 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) The new administrative regulation does not create an overall negative or adverse major impact on OUI.

(b) The methodology and resources used to reach this conclusion: Because there is no fiscal impact related to this new administrative regulation, no methodology or resources were necessary to determine fiscal impact.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Maternal and Child Health

(New Administrative Regulation)

902 KAR 4:105. Kentucky Lifeline for Moms program implementation.

RELATES TO: KRS 211.122, 216.2920

STATUTORY AUTHORITY: KRS 194A.050, 211.123

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.123 establishes the Kentucky Maternal Psychiatric Access Program, also known as the Lifeline for Moms program. This administrative regulation establishes the implementation procedures for the Kentucky Lifeline for Moms program.

Section 1. Definitions.

(1) "Eligible patient" means any individual who is pregnant or up to twelve (12) months post-pregnancy.

(2) "Health-care provider" is defined by KRS 216.2920(5).

(3) "Lifeline for Moms" means the consultation line, as authorized by KRS 211.123, available for health-care providers to build their capacity to address mental health concerns of patients who are pregnant or up to twelve (12) months post-partum.

(4) "Maternal and infant health collaborative" means the collaborative panel of maternal and infant health-care providers as authorized by KRS 211.122.

Section 2. Program implementation.

(1) A health-care provider who, upon examination of an eligible patient, is concerned that the patient may be suffering a perinatal mood disorder may contact the Kentucky Lifeline for Moms program for assistance in determining the most appropriate course of action in accordance with KRS 211.123(4).

(2) Beginning July 1, 2025, and continuing annually thereafter, the Kentucky Lifeline for Moms program shall provide a report to the maternal and infant health collaborative panel on the following:

(a) The total number of calls received per quarter;

(b) The geographic location by area development district of the caller;

(c) The discipline of the health-care provider who contacted the program; and

(d) The total number of patients served.

STEVEN J. STACK, MD, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 26, 2024

FILED WITH LRC: October 9, 2024 at 1:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 23, 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 December 16, 2024, five

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(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 December 31, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Brooks and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures to implement the Kentucky Lifeline for Moms program.

(b) The necessity of this administrative regulation: This administrative regulation ensures health-care providers who, upon examination, are concerned that an eligible patient may have a perinatal mood disorder, are able to consult with a mental health professional who can recommend an appropriate course of action.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.123 requires the department to promulgate an administrative regulation to implement the Kentucky Lifeline for Moms program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation will aid in the implementation of the Kentucky Lifeline for Moms program.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts all health-care providers who provide care to eligible patients.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Health-care providers will need to be aware of the resource available through the Kentucky Lifeline for Moms program.

(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 to the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Health-care providers will have access to mental health supports when there is a concern that an eligible patient is suffering a perinatal mood disorder.

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

(a) Initially: It will cost approximately \$825,000 in the first year.

(b) On a continuing basis: It will cost approximately \$825,000 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 current source of funding to implement the Kentucky Lifeline for Moms program is a grant from the United States Health Resources and Services 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: An increase in fees or funding is not needed to implement this administrative regulation at this time.

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

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this administrative regulation are equally applicable to all regulated entities.

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 and 211.123.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Department for Public Health is the promulgating agency.

(a) Estimate the following for the first year:

Expenditures: Approximately \$825,000.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: This administrative regulation does not result in cost savings.

(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.

(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 all health-care providers who provide care to eligible patients.

(a) Estimate the following for the first year:

Expenditures: This administrative regulation does not impact the expenditures for the additional regulated entities.

Revenues: This administrative regulation does not generate revenue for the additional regulated entities.

Cost Savings: This administrative regulation will not result in a cost savings for the additional regulated entities.

(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 will have no fiscal impact at this time.

(b) Methodology and resources used to determine the fiscal impact: The Department for Public Health has received a grant from the United States Health Resources and Services Administration to establish a Lifeline for Moms program. The grant is for five years and will be used to support the functions established in this administrative regulation.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation has the potential to have an adverse major economic impact for the cabinet. The Department for Public Health currently has grant funding available to support the program. A loss of grant funding would result in this becoming an unfunded mandate.

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The department would need an additional \$825,000 per year to support the program if grant funding is not available.

(b) The methodology and resources used to reach this conclusion: The grant amount is \$750,000 for five years. The cabinet is required to provide ten (10) percent matching funds. \$750,000 + \$75,000 = \$825,000.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(New Administrative Regulation)**

902 KAR 95:041. Repeal of 902 KAR 95:040.

RELATES TO: KRS 13A.310

STATUTORY AUTHORITY: KRS 194A.050(1), 309.432

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 309.432 created the Kentucky Board of Radon Safety and moved the administrative oversight of the radon professional registration program from the Cabinet for Health and Family Services to the Public Protection Cabinet. This administrative regulation is necessary to repeal the current radon contractor registration program regulation.

Section 1. 902 KAR 95:040, Radon contractor registration program, is hereby repealed.

STEVEN J. STACK, MD, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 23, 2024

FILED WITH LRC: October 9, 2024 at 1:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 23, 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 December 16, 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 December 31, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Brooks and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 902 KAR 95:040, Radon contractor registration program.

(b) The necessity of this administrative regulation: 2022 Ky. Acts ch. 73 repealed and reenacted KRS 211.9101 to 211.9135 and moved the administrative oversight of the radon contractor registration program from the Cabinet for Health and Family Services to the Public Protection Cabinet.

(c) How this administrative regulation conforms to the content of

the authorizing statutes: KRS 13A.310 authorizes an administrative body to repeal an administrative regulation when it desires that it no longer be effective.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will repeal the current radon contractor registration program as that program is no longer under the Cabinet for Health and Family Services.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact 152 certified radon professionals.

(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 seeking state registration will need to be aware of the program change from the Cabinet for Health and Family Services to the Public Protection Cabinet.

(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 will not result in a cost to the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will be registered with the newly formed Kentucky Board of Radon Safety.

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

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

(b) On a continuing basis: There will be no cost to the cabinet 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: This administrative regulation does not require 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: Not applicable.

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

(9) TIERING: Is tiering applied? Tiering is not applied. This is a repealer administrative regulation and it will impact all parties 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 13A.310, 194A.050, and KRS 309.432.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Department for Public Health, Division of Public Health Protection and Safety is the promulgating agency. The Kentucky Board of Radon Safety in the Public Protection Cabinet will also be affected by this administrative regulation.

(a) Estimate the following for the first year:

Expenditures: This administrative regulation will not impact expenditures for the Kentucky Department for Public Health.

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Revenues: This administrative regulation will not generate revenue for the Kentucky Department for Public Health.

Cost Savings: This administrative regulation will not result in cost savings for the Kentucky Department for Public Health.

(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.

(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): The additional regulated entities are the 152 certified radon professionals.

(a) Estimate the following for the first year:

Expenditures: This administrative regulation will not impact the expenditures of the certified radon professionals.

Revenues: This administrative regulation will not impact the revenues of the certified radon professionals.

Cost Savings: This administrative regulation will not result in cost savings for the certified radon professionals.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no change in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation will have no fiscal impact.

(b) Methodology and resources used to determine the fiscal impact: House Bill 77 from the 2022 regular legislative session repealed KRS 211.9101 to 211.9135 and reenacted them in KRS Chapter 309. This moved the radon professional's certification program from the Kentucky Department for Public Health to the Public Protection Cabinet. This administrative regulation repeals the existing radon professional's certification administrative regulation as the department no longer has statutory authority for this administrative regulation.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have an overall negative or adverse economic impact.

(b) The methodology and resources used to reach this conclusion: Not applicable.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Operations and Support
(New Administrative Regulation)**

910 KAR 1:241. Repeal of 910 KAR 1:240.

RELATES TO: KRS Chapter 13B, 17.165(1), (2), 194A.060(1), 194A.700-729, 209.030, 216.300(1), 216.595, 216.789, 216.793

STATUTORY AUTHORITY: KRS Chapter 13B, 194A.050(1) and (9), 194A.707(1)

NECESSITY, FUNCTION, AND CONFORMITY: NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth. KRS 194A.707(1) requires the cabinet to promulgate an administrative regulation establishing an initial and annual certification review process for assisted-living communities that shall include an on-site visit and procedures related to applying for, reviewing, and approving, denying, or revoking certification, as well as the conduct of hearings upon appeals as governed by KRS Chapter 13B. This administrative regulation repeals 910 KAR 1:240 which is no longer

needed due to the establishment of 902 KAR 20:480 which establishes the licensure requirements for assisted living communities under the Office of the Inspector General.

Section 1. 910 KAR 1:240, Certification of assisted living communities, is hereby repealed.

VICTORIA ELRIDGE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 18, 2024

FILED WITH LRC: October 9, 2024 at 1:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 23, 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 December 16, 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 December 31, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Phyllis Sosa and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This repealer administrative regulation repeals 910 KAR 1:240.

(b) The necessity of this administrative regulation: This repealer administrative regulation repeals 910 KAR 1:240. The requirements contained in 910 KAR 1:240 are no longer needed due to assisted living communities being established as licensed long-term care facilities under 902 KAR 20:480 Assisted living communities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This repealer regulation conforms to the content of the authorizing statutes by repealing the obsolete administrative regulation since the establishment of assisted living facilities as licensed health care facilities under KRS 194A.707(1).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by removing current administrative regulations that are no longer viable due to the establishment of assisted living communities as licensed health care under KAR 194A.707(1).

(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 repealer administrative regulation repeals 910 KAR 1:240.

(b) The necessity of the amendment to this administrative regulation: This is a repealer administrative regulation to repeal 910 KAR 1:240 due to the amendment of 194A.707(1) making assisted living communities licensed health care facilities and the regulatory authority for licensure is under 902 KAR 20.480.

(c) How the amendment conforms to the content of the authorizing statutes: This is a repealer regulation conforms to the content of the authorizing statutes by repealing the obsolete administrative regulation since the establishment of assisted living facilities as licensed health care facilities under KRS 194A.707(1).

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(d) How the amendment will assist in the effective administration of the statutes: The repealer will assist in the effective administration of the statutes through repealing administrative regulations that are no longer necessary or authorized due to 194A.707(1) authorization of assisted living communities as licensed health care facilities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This repealer administrative regulation does not affect any individuals, businesses, organizations, or state and local governments. All assisted living communities have already transitioned to the regulatory authority under 902 KAR 20:480.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no new action required on the part of regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The repeal of this administrative regulation will create no new or additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The repeal of this administrative regulation eliminates the obsolete certification requirements for assisted living communities which are not licensed health care facilities.

(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 repealer administrative regulation.

(b) On a continuing basis: There will be no continual cost to implement this repealer administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no source of funding for this repealer 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 are no fees in the administration of this repealer administrative regulation. No funding increase is necessary to implement this repealer administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this repealer administrative regulation will be implemented in a like manner statewide.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There is no change in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): There are no additional regulated entities affected by this amended regulation.

(a) Estimate the following for the first year:

Expenditures: None

Revenues: None

Cost Savings: None

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There are no changes expected in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no fiscal impact.

(b) Methodology and resources used to determine the fiscal impact: There are no entities operating under the authority of 910 KAR 1:240.

(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 repealer administrative regulation will not have an overall negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion: There are no entities operating under the authority of 910 KAR 1:240.

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), 194A.707(1), (9).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Department for Aging and Independent Living

(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 change is expected

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): There are no local entities effected

(a) Estimate the following for the first year:

Expenditures: None

Revenues: None

Cost Savings: None

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of October 15, 2024

Call to Order and Roll Call

The October meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, October 15, 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, Deanna Frazier Gordon, and Keturah Herron.

LRC Staff: Stacy Auterson, Laura Begin, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Anna Latek, and Carrie Nichols.

Guests: Cassie Trueblood, Education Professional Standards Board; Beau Barnes, Teachers' Retirement System; Carrie Bass, Jessica Beaubien, D'Juan Suratt, Kentucky Public Pensions Authority; Kelly Jenkins, Jeffrey Prather, Board of Nursing; Sam Thorner, Kentucky Housing Corporation; Tony Hatton, Michael Kennedy, Division for Air Quality; Allison Brown, Nathan Goens, Dr. Russell Williams, Department of Corrections; Andy Casebier, Katie George, Kentucky Community and Technical College System; Shaun Orme, Beth Taylor, Department of Insurance; Daniel Bell, Kristin Breeden, Julie Brooks, Andrea Day, Sam Flynn, Shelby Lewis, Scotty McFarlan, Rachel Ratliff, Jonathan Scott, Cabinet for Health and Family Services; Adam Goebel, Stoll Keenon Ogden, PLLC, on behalf of Kentucky Distillers' Association; Eric Gregory, Kentucky Distillers' Association; Rachel Nally, Jessica Pendergrass, Heaven Hill Brands; Jeff Edwards, Kevin Sharkey, Kentucky Division of Protection and Advocacy; James Higdon, Cornbread Hemp; Shannon Stiglitz, Kentucky Retail Federation; Marc Wilson, Top Shelf Lobby on behalf of Mountain Comprehensive Care; and Steve Shannon, Association of Community Mental Health Centers.

The subcommittee determined that the following administrative regulations were deficient pursuant to KRS 13A.030(2)(a):

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. Jonathan Scott, chief legislative and regulatory officer, represented the department. Steve Shannon, Association of Community Mental Health Centers, appeared in support of these administrative regulations. Marc Wilson, Top Shelf Lobby on behalf of Mountain Comprehensive Care, appeared in opposition to these administrative regulations.

In response to a question by Co-Chair Lewis, Mr. Wilson stated that these administrative regulations, if implemented, could cause a twenty-five (25) percent contraction of Mountain Comprehensive Care's workforce. Many employees would not have the funds necessary to pay for these increased college coursework requirements, resulting in less access to mental health care, especially in rural areas. Mr. Wilson requested that these administrative regulations be found deficient.

In response to a question by Co-Chair Lewis, Mr. Scott stated that the department was willing to defer consideration of these administrative regulations to the November subcommittee meeting in order to meet with stakeholders about concerns and potentially make further amendments. Behavioral health associates were currently required to have a bachelor's degree; however, it was important to consider that non-Medicaid health care consumers received care from providers with more advanced degrees and who were under the additional jurisdiction of applicable licensure boards. Medicaid recipients deserved the same level of care as other Kentuckians.

In response to a question by Co-Chair West, Mr. Scott stated

that there were varied levels of services different types of providers could provide, including for example, services delivered by paraprofessionals and practitioners-under-supervision. It would be possible for those practitioners with bachelor's degrees, but without the new college coursework requirements, to continue as providers within a different category of care. Allowing noncredentialed providers to behave as licensed professionals was a serious concern.

Senator Yates stated that these programs and providers were vital to communities. It was important to work together to find a solution for access to quality care with appropriate oversight and without losing a provider workforce. Kentucky needed a well-trained provider workforce, but not at the expense of having no care at all. The department should be able to develop a balance.

In response to questions by Representative Bridges, Mr. Scott stated that the department was in the process of aligning behavioral health services provider requirements with those of community mental health center providers. Mr. Shannon stated that, in the mid-1980s to mid-1990s with a lack of graduate programs, there were not enough providers; therefore, the behavioral health associate category was created. Over time, a rigorous framework of provider criteria was established for this category. Mr. Scott stated that some practitioners had been pressed into service immediately, treating patients with severe mental illnesses, which led to negative outcomes. The department believed that these administrative regulations would not lead to a provider shortage. Mr. Wilson stated that the risk of losing providers seemed to exceed the possible benefits.

In response to a question by Senator Raque Adams, Mr. Scott stated that this situation was somewhat different than the social workers' circumstances, whose standards reverted to bachelor's degrees after more rigorous requirements resulted in shortages, because those social work providers were also under board jurisdiction to ensure standards. Behavioral health associates were typically not under the jurisdiction of licensure boards. A related concern was that some boards might seek action against these providers for violations, such as practicing without a license or not meeting educational criteria.

In response to a question by Co-Chair Lewis, Mr. Scott agreed to defer consideration of these administrative regulations to the November meeting of this subcommittee.

Co-Chair Lewis made a motion, seconded by Senator Thayer, to find these administrative regulations deficient. A roll call vote was conducted, and with five (5) votes to find these administrative regulations deficient, two (2) votes against deficiency, and one (1) abstention, these administrative regulations were found deficient.

Co-Chair West explained that his pass vote was out of an abundance of caution related to a possible conflict of interest.

A motion was made and seconded to defer consideration of these administrative regulations to the November meeting of this subcommittee. Without objection, and with agreement of the agency, these administrative regulations were deferred.

Compiler's Note: Pursuant to KRS 13A.335(3)(a), a new Section 14 was added to this administrative regulation to reflect the finding of deficiency.

Behavioral Health

[907 KAR 015:005](#). Definitions for 907 KAR Chapter 015.

Compiler's Note: Pursuant to KRS 13A.335(3)(a), a new Section 2 was added to this administrative regulation to reflect the finding of deficiency.

Administrative Regulations Reviewed by this subcommittee:

EDUCATION AND LABOR CABINET: Education Professional Standards Board: General Administration

[016 KAR 001:030](#). Procedures for educator certificate surrender, revocation, suspension, reinstatement, and reissuance, and for application denial. Cassie Trueblood, counsel, represented the board.

Teaching Certificates

[016 KAR 002:030](#). Substitute teachers.

Alternative Routes to Certification

[016 KAR 009:010](#). Provisional and professional certificate for exceptional work experience.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[016 KAR 009:080](#). University-based alternative certification program.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 3 and 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[016 KAR 009:100](#). Alternative Route to Certification Institute.

A motion was made and seconded to approve the following amendments: to amend Sections 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.

TEACHERS' RETIREMENT SYSTEM: General Rules

[102 KAR 001:138](#). Crediting of interest for TRS 4 members. Beau Barnes, deputy secretary and general counsel, represented the system.

[102 KAR 001:350](#). Full actuarial cost purchase.

A motion was made and seconded to approve the following amendment: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with approval of the agency, the amendment was approved.

[102 KAR 001:370](#). Annuitization and disbursement from supplemental benefit.

A motion was made and seconded to approve the following amendment: to amend Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with approval of the agency, the amendment was approved.

KENTUCKY PUBLIC PENSIONS AUTHORITY: General Rules

[105 KAR 001:140](#). Employer's administrative duties. Carrie Bass, staff attorney supervisor; Jessica Beaubien, policy specialist; and D'Juan Surrat, division director, represented the authority.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 3, 4, 8 through 10, 14, and 15 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Sections 10 and 15 for clarity. Without objection, and with agreement of the agency, the amendments were approved.

[105 KAR 001:142](#). Limitations and exclusions on creditable compensation in the last five fiscal years of service.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Sections 3 and 4 to comply with the drafting requirements of KRS Chapter 13A; (2) to amend Sections 3 for clarity; and (3) to amend Section 7 to update incorporated material. Without objection, and with agreement of the agency, the amendments were approved.

BOARDS AND COMMISSIONS: Board of Nursing

[201 KAR 020:056](#). Advanced practice registered nurse licensure and certification requirements. Kelly Jenkins, executive director, and Jeffrey Prather, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 5, 8, and 13 to comply

with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[201 KAR 020:215](#). Continuing competency requirements.

A motion was made and seconded to approve the following amendments: to amend Sections 3 and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[201 KAR 020:230](#). Renewal of licenses.

[201 KAR 020:390](#). Nursing Incentive Scholarship Fund.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 7, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

KENTUCKY HOUSING CORPORATION

[202 KAR 002:020E](#). Rural Housing Trust Fund. Sam Thorner, general counsel, represented the corporation.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

[501 KAR 006:021](#). Repeal of 501 KAR 006:020. Allison Brown, assistant general counsel; Nathan Goens, staff attorney; and Dr. Russell Williams, director of mental health, represented the department. Jeff Edwards, division director, and Kevin Sharkey, staff attorney, Kentucky Division of Protection and Advocacy, appeared in opposition to 501 KAR 6:340, 6:380, and 6:400.

[501 KAR 006:280](#). Risk and needs assessment.

[501 KAR 006:300](#). News media.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 2, 6, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:310](#). Monitoring and operation of private prisons.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph 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.

[501 KAR 006:320](#). Corrections policies and procedures: inmate funds.

A motion was made and seconded to approve the following amendments: to amend Section 1 and incorporated material to: (1) comply with the drafting requirements of KRS Chapter 13A; (2) update edition dates; and (3) add fields for the previous effective dates. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:340](#). Corrections policies and procedures: research and information.

In response to a question by Co-Chair Lewis, Mr. Sharkey stated that Corrections Policies and Procedures (CPP) 5.1 was previously amended to allow inmate medical research. At that time, Kentucky Division of Protection and Advocacy submitted concerns that the inherently coercive environment of incarceration, in concert with mental illness, intellectual disabilities, and traumatic brain injury, made it difficult to ensure that participation in medical research was truly voluntary. As a result of these concerns, the department added a requirement that, prior to inclusion in a medical research study, a person suspected of having diminished capacity shall be screened to ensure informed, voluntary consent. The proposed amendment to this CPP removes that requirement; therefore, this administrative regulation should be found deficient.

In response to questions by Co-Chair West, Mr. Sharkey stated

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that the Kentucky Division of Protection and Advocacy was concerned about the removal of screening to ensure that individuals with diminished capacity were not coerced into participating in medical research studies. That requirement should be added back into CPP 5.1.

In response to questions by Co-Chair West, Mr. Goens stated that CPP 5.1. required approval by a review board and compliance with federal standards for effective informed consent, which included considerations for diminished capacity. It was rare that the department received medical research study requests, including three (3) since 2019, with those studies being more sociological than medical. While there were redundant protections in place, the previous language failed to provide opportunities for those in jails or community placement. Dr. Williams stated that there were layers of evaluation in place in order to receive approval for participation in medical research studies.

A motion was made and seconded to approve the following amendments: to amend Section 1 and incorporated material to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:350](#). Inmate or offender or supervision record request.

[501 KAR 006:360](#). Corrections policies and procedures: safety and critical incident notification.

A motion was made and seconded to approve the following amendments: to amend Section 1 and incorporated material to: (1) comply with the drafting requirements of KRS Chapter 13A; (2) update an edition date; (3) correct a statutory cross-reference citation; and (4) add a field for the previous effective date. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:370](#). Corrections policies and procedures: security and control.

A motion was made and seconded to approve the following amendments: to amend Section 1 and incorporated material to: (1) comply with the drafting requirements of KRS Chapter 13A; (2) update edition dates; and (3) add fields for the previous effective dates. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:380](#). Corrections policies and procedures: special management and restrictive housing inmates, safekeepers, and contract prisoners.

In response to a question by Co-Chair Lewis, Mr. Sharkey stated that CPP 10.2 should be amended to exclude inmates with serious mental illness from being placed in extended restricted housing. Decades of research demonstrated that prolonged isolation for individuals with serious mental illness could cause serious detrimental mental health outcomes, including hallucination, psychosis, psychological trauma, anxiety, paranoia, depression, self-harm, and increased risk of suicide. Forty-two (42) states had established laws restricting prolonged isolation for individuals with serious mental illness. Several court cases had issued decisions that the prolonged isolation of individuals with mental illness violated the Eighth Amendment to the United States Constitution.

In response to a question by Co-Chair Lewis, Mr. Goens stated that CPP 10.2 required that inmates with a "serious mental illness", as defined by CPP 13.13, were not to be placed in extended restrictive housing unless a multidisciplinary service team determined it to be necessary due to an immediate and present danger to others in the institution. Dr. Williams stated that, based on staff notification of concerns, any inmate could be evaluated related to problems resulting from extended restrictive housing. Mental health staff were required to assess extended restrictive housing at least every seven (7) days, including observing inmates. The least restrictive environment necessary was selected for those with serious mental illness.

A motion was made and seconded to approve the following amendments: to amend Section 1 and incorporated material to: (1)

comply with the drafting requirements of KRS Chapter 13A; (2) update edition dates; and (3) add fields for the previous effective dates. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:390](#). Corrections policies and procedures: inmate diet.

A motion was made and seconded to approve the following amendments: to amend Section 1 and incorporated material to: (1) comply with the drafting requirements of KRS Chapter 13A; (2) update the edition date; and (3) add a field for the previous effective date. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:400](#). Corrections policies and procedures: inmate health care.

In response to a question by Co-Chair Lewis, Mr. Sharkey stated that this administrative regulation should be deferred to the November meeting of this subcommittee in order for the Kentucky Division of Protection and Advocacy to meet further with the department regarding CPP 13.13, which defines "serious mental illness." The definition established in CPP 13.13 is too narrow and fails to include some individuals with serious mental illness. Department statistics reporting serious mental illness did not align with national averages. Consequences of this incomplete definition for "serious mental illness" could result in a lack of appropriate treatment and resulting outcomes such as exacerbation of symptoms, self-harm, suicide, and difficulty integrating into society after release. The department could face avoidable disciplinary problems, resulting in solitary confinement and recidivism. The Kentucky Division of Protection and Advocacy prefers the American Correctional Association's definition for "serious mental illness."

A motion was made and seconded to approve the following amendments: to amend Section 1 and incorporated material to: (1) comply with the drafting requirements of KRS Chapter 13A; (2) update edition dates; (3) correct a statutory cross-reference citation; and (4) add fields for the previous effective dates. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:420](#). Corrections policies and procedures: inmate rules and discipline.

A motion was made and seconded to approve the following amendments: to amend Section 1 and incorporated material to: (1) comply with the drafting requirements of KRS Chapter 13A; (2) update edition dates; and (3) add fields for the previous effective dates. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:430](#). Corrections policies and procedures: communication, mail, and visiting.

A motion was made and seconded to approve the following amendments: to amend Section 1 and incorporated material to: (1) comply with the drafting requirements of KRS Chapter 13A; (2) update edition dates; and (3) add fields for the previous effective dates. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:440](#). Corrections policies and procedures: inmate reception, orientation, and personal property.

A motion was made and seconded to approve the following amendments: to amend Section 1 and incorporated material to: (1) comply with the drafting requirements of KRS Chapter 13A; (2) update edition dates; and (3) add fields for the previous effective dates. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:450](#). Corrections policies and procedures: classification.

A motion was made and seconded to approve the following amendments: to amend Section 1 and incorporated material to: (1) comply with the drafting requirements of KRS Chapter 13A; (2) update edition dates; (3) correct a statutory cross-reference citation; and (4) add fields for the previous effective dates. Without objection,

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and with agreement of the agency, the amendments were approved.

[501 KAR 006:460](#). Corrections policies and procedures: inmate work programs.

A motion was made and seconded to approve the following amendments: to amend Section 1 and incorporated material to: (1) comply with the drafting requirements of KRS Chapter 13A; (2) update edition dates; and (3) add fields for the previous effective dates. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:470](#). Corrections policies and procedures: inmate education and training.

A motion was made and seconded to approve the following amendments: to amend Section 1 and incorporated material to: (1) comply with the drafting requirements of KRS Chapter 13A; (2) update the edition date; and (3) add a field for the previous effective date. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:480](#). Library services.

[501 KAR 006:490](#). Corrections policies and procedures: inmate recreation and activities.

A motion was made and seconded to approve the following amendments: to amend Section 1 and incorporated material to: (1) comply with the drafting requirements of KRS Chapter 13A; (2) update edition dates; and (3) add fields for the previous effective dates. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:500](#). Religious programs.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:510](#). Corrections policies and procedures: release preparation and temporary release.

A motion was made and seconded to approve the following amendments: to amend Section 1 and incorporated material to: (1) comply with the drafting requirements of KRS Chapter 13A; (2) update edition dates; and (3) add fields for the previous effective dates. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:520](#). Citizen involvement, volunteer, and reentry mentor service programs.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Section 14 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:530](#). Corrections policies and procedures: programs and sentence credits.

A motion was made and seconded to approve the following amendments: to amend Section 1 and incorporated material to: (1) comply with the drafting requirements of KRS Chapter 13A; (2) update edition dates; and (3) add fields for the previous effective dates. Without objection, and with agreement of the agency, the amendments were approved.

[501 KAR 006:540](#). Inmate record.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Board of Regents

[739 KAR 001:060](#). Management of capital construction projects. Andy Casebier, assistant vice president, Facilities and Support Services, and Katie George, staff attorney, represented the board.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND

CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[739 KAR 001:070](#). Contracting for capital construction projects.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 for consistency with 739 KAR 1:060; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Insurance: Health Insurance Contracts

[806 KAR 017:570](#). Minimum standards for Medicare supplement insurance policies and certificates. Shaun Orme, executive advisor, and Beth Taylor, staff attorney, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 4 through 17, 19 through 22, 26, and 27 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 13 to clarify: (a) that insurers shall comply with health status discrimination protections for non-age eligible persons; and (b) criteria for initial open enrollment applicants. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Food and Cosmetics

[902 KAR 045:001E](#). Definitions for hemp-derived cannabinoid products. Daniel Bell, assistant division director, represented the department. James Higdon, co-founder, Cornbread Hemp, and Shannon Stiglitz, senior vice-president of government affairs, Kentucky Retail Federation, appeared in opposition to these administrative regulations.

In response to a question by Co-Chair Lewis, Mr. Higdon stated that this industry was being double regulated at the processing level of the supply chain. Recently, the industry was prohibited from shipping extract between and among licensees, which was burdensome. Background check requirements were outdated and more rigorous than for the Kentucky Medical Cannabis Program.

In response to a question by Co-Chair Lewis, Ms. Brooks stated that the department did not require background checks for this program; that was probably an agriculture-related requirement, as was the issue of shipping of extracts between or among licensees.

[902 KAR 045:001](#). Definitions for hemp-derived cannabinoid products.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[902 KAR 045:012E](#). Hemp-derived cannabinoid product retail and food service establishment requirements.

[902 KAR 045:021E](#). Hemp-derived cannabinoid products registration, processing, manufacturing, storage and distribution requirements.

[902 KAR 045:021](#). Hemp-derived cannabinoid products registration, processing, manufacturing, storage and distribution requirements.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[902 KAR 045:031E](#). Hemp-derived cannabinoid product

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sampling and testing requirements.

[902 KAR 045:031](#). Hemp-derived cannabinoid product sampling and tasting requirements.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of the Secretary: Medicinal Cannabis Program

[915 KAR 001:010](#). Initial and renewal application for cannabis business licenses. Sam Flynn, executive director; Shelby Lewis, executive policy advisor; and Oran McFarlan, deputy executive director, represented the office.

In response to questions by Co-Chair West, Mr. Flynn stated that there were two (2) types of fees for cannabis businesses in Kentucky, including a nonrefundable application fee and a license fee. A license holder would apply for renewal yearly to retain a license. The renewal fee was also nonrefundable. Because initial applications were more numerous than what would be expected for future renewals, it was possible that additional funds would eventually be necessary in order to continue implementation of the program.

In response to questions by Senator Yates, Mr. Flynn stated that the office had received 4,998 applications. Of those, 4,075 were applications for dispensaries, and 923 were applications for cultivators, processors, or safety compliance facilities. Receipts for nonrefundable applications totaled \$27.7 million, which was sufficient to offset program costs.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

[915 KAR 001:020](#). Cannabis business licenses.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 through 10, 12, and 14 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Child Welfare

[922 KAR 001:350](#). Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers. Kristin Breeden, branch manager; Andrea Day, division director; and Rachel Ratliff, staff assistant, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 11 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Daycare

[922 KAR 002:160](#). Child Care Assistance Program.

The following administrative regulations were deferred or removed from the October 15, 2024, subcommittee agenda:

COUNCIL ON POSTSECONDARY EDUCATION: Public Educational Institutions

[013 KAR 002:120](#). Comprehensive funding model for the allocation of state general fund appropriations to public universities.

[013 KAR 002:130](#). Comprehensive funding model for the allocation of state general fund appropriations to the Kentucky Community and Technical College System institutions.

Kentucky Public Pensions Authority: General Rules

[105 KAR 001:451](#). Quasi-governmental employer reports on independent contractors and leased employees.

BOARDS AND COMMISSIONS: Board of Pharmacy

[201 KAR 002:030](#). License transfer and Non-resident

Pharmacist License.

[201 KAR 002:050](#). License and permits; fees.

[201 KAR 002:210](#). Patient records, drug regimen review, patient counseling, and final product verification.

[201 KAR 002:370](#). Pharmacy services in a long-term care facility (LTCF).

[201 KAR 002:465](#). Non-Resident Pharmacy Applications and Waivers.

[201 KAR 002:480](#). Telework and electronic supervision for remote prescription processing.

Board of Licensure for Professional Engineers and Land Surveyors

[201 KAR 018:010](#). Classes of applicants.

[201 KAR 018:030](#). In training certificates.

[201 KAR 018:192](#). Continuing professional development for professional land surveyors.

[201 KAR 018:196](#). Continuing professional development for professional engineers.

Board of Interpreters for the Deaf and Hard of Hearing

[201 KAR 039:001](#). Definitions for 201 KAR Chapter 39.

[201 KAR 039:030](#). Application; qualifications for full licensure; and certification levels.

[201 KAR 039:040](#). Fees.

[201 KAR 039:050](#). Renewal and reinstatement of full licenses.

[201 KAR 039:060](#). Reinstatement of full license subject to disciplinary action.

[201 KAR 039:070](#). Application and qualifications for temporary licensure and extensions.

[201 KAR 039:075](#). Supervision.

[201 KAR 039:090](#). Continuing education unit requirements.

[201 KAR 039:100](#). Complaint procedure.

[201 KAR 039:120](#). Code of ethics.

[201 KAR 039:130](#). Registration for nonresident interpreters.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division for Air Quality - General Administrative Procedures

[401 KAR 050:038](#). Air emissions fee. Tony Hatton, commissioner, and Michael Kennedy, division director, represented the division. Adam Goebel, attorney (including representation for Heaven Hill Brands), Stoll Keenon Ogden, PLLC, on behalf of Kentucky Distillers' Association; Eric Gregory, president, Kentucky Distillers' Association; Rachel Nally, director of environment sustainability, and Jessica Pendergrass, counsel and chief compliance officer (and chair of Kentucky Distillers' Association Board), Heaven Hill Brands, appeared in opposition to this administrative regulation.

In response to a question by Co-Chair Lewis, Mr. Gregory stated that Kentucky Distillers' Association (KDA) represented over seventy (70) distillers, employing more than 23,000 employees throughout the state. Some distillers began receiving excessive and unexpected air emissions invoices from the division. A stand-alone barrel warehouse without a generator was exempt from air

emissions requirements; however, the same warehouse with an emergency generator for fire prevention and safety would incur fees for all emissions, including those unrelated to the generator itself. For example, ethanol emissions (angel's share emissions) from the barrels would be included in the fee calculation. While the division's efforts to address this issue have been appreciated, this administrative regulation does not go far enough and makes arbitrary distinctions between generators for fire suppression and other emergency generators for fire prevention and safety. This administrative regulation is not compliant with federal standards, is more stringent than federal standards, authorizes exorbitant and inequitable fees, puts Kentucky distillers at a competitive disadvantage, and should be found deficient.

In response to a question by Co-Chair Lewis, Mr. Goebel stated that emergency generators for fire protection and safety were required for fire code compliance and to protect distillers from liability, as well as to protect employees and the public. In its Statement of Consideration, the division seemed to disregard KDA's concerns pertaining to the arbitrariness of this administrative regulation's distinction between an emergency fire-suppression generator, which was exempted, and an emergency generator for fire prevention and safety. Emergency generators, as established by U.S. EPA, operated for less than 100 hours per year, regardless of the purpose of the generator's function for fire suppression or fire prevention and safety. Emissions fees were assessed based solely on the presence of an emergency generator for fire prevention and safety, not on matters related to the operation of the generator. This administrative regulation should be found deficient because it imposes an undue burden on small businesses in the form of a penalty for installing an emergency generator for fire prevention and safety.

In response to a question by Co-Chair Lewis, Ms. Pendergrass introduced Ms. Nally, who stated that, after a 2020 permit modification, Heaven Hill Brands received an invoice for \$525,000 in air emissions fees from the division. The following year, Heaven Hill Brands received a similar invoice for \$569,000 and anticipated an upcoming invoice for \$783,000 due to increased production. Heaven Hill Brands' emergency generators for fire prevention and safety operated less than one (1) hour per month, and the generator at the bottling facility protected the facility from dangerous accumulation of flammable vapors and provided safety measures for employees. The presence of the emergency generator for fire prevention and safety at the bottling facility resulted in Heaven Hill Brands' barrel warehouse sites being assessed for angel's share emissions fees. On average, exempted emergency fire-suppression generators at Heaven Hill Brands operated twice as long as emergency generators for fire prevention and safety. This administrative regulation should be found deficient.

In response to a question by Co-Chair Lewis, Mr. Hatton stated that the division was striving to lower per-ton air emissions fees from \$142 per ton to approximately \$116 per ton. Many other states assessed a combination of permit and emissions fees. Kentucky considered that model but realized that doing so would impact small businesses that lacked association representation. Instead, the division opted to remove the 4,000-ton cap, exempt emergency fire-suppression generators, and provide for disaggregation of permits for noncontiguous areas. If Heaven Hill Brands modified its permit through disaggregation, it would significantly reduce its assessed emissions fees. Exempting all emergency generators would create a budget shortfall, resulting in an increased proposed per-ton emissions fees from approximately \$116 per ton to \$121 per ton. There might be confusion, and the issue of the distinction between the two (2) different types of emergency generators was currently the topic of an ongoing administrative hearing.

In response to questions by Senator Thayer, Mr. Hatton stated that the division respectfully declined to defer consideration of this administrative regulation to the November meeting of this subcommittee. This administrative regulation would significantly reduce fees for most permit holders, including distillers. Senator Thayer stated that this administrative regulation seemed to penalize permit holders, which represented a growing Kentucky industry, for taking appropriate safety precautions. This administrative regulation violated Kentucky statute because it was more stringent than federal

requirements. Senator Thayer made a motion that this administrative regulation be found deficient.

In response to questions by Co-Chair Lewis, Mr. Hatton stated that, if the proposed amendment to this administrative regulation was removed as part of a deficiency, the per-ton emissions fee would continue at the current, higher rate of \$142 per-ton, resulting in continued high fees for many distillers.

In response to questions by Co-Chair West, Mr. Hatton stated that the division anticipated this program costing approximately \$19 million for the upcoming year. The budgetary need remained the same, regardless of changes to the fee structure. Because of the removal of the 4,000-ton cap, many utilities would be impacted by this proposed administrative regulation, including significant increases for some utilities. Those increases were grounds for increased rates for the utility customers. A smaller number of utilities would see a decrease in emissions fees after transitioning from coal-fired electric generation to natural gas because natural gas power generation resulted in reduced air emissions in comparison to coal-fired electric generation. Emissions rates were based on the volume of emissions, not necessarily implementation costs for the division. The primary air emissions from distillers consisted of volatile organic compounds, typically ethanol. Emissions from distillers were under federal Clean Air Act requirements.

In response to questions by Co-Chair Lewis, Ms. Pendergrass stated that many distillers, not just Heaven Hill Brands, were incurring high air emissions fees for emergency generators for fire prevention and safety. Kentucky distillers were paying approximately twenty-four (24) percent, \$5 million, of the division's yearly operating budget. Mr. Goebel stated that there might be a compromise in which all emergency generators were consistently exempted, which would change the proposed per-ton fee from \$116 to \$121, which was only a five (5) dollar difference; therefore, the division could still significantly lower the \$142 per-ton fee and remove the arbitrary distinction between emergency generators for fire prevention and safety and emergency fire-suppression generators, which were exempted in this proposed administrative regulation.

Senator Yates stated that deferral would provide an opportunity for possible compromise, in lieu of a possible finding of deficiency.

In response to questions by Co-Chair West, Mr. Hatton stated that the proposed compromise would seem to remedy the contention. Senator Thayer agreed to withdraw his motion to find this administrative regulation deficient if the division agreed to defer. Mr. Hatton agreed to defer consideration of this administrative regulation to the November meeting of this subcommittee in order to meet further with stakeholders to consider a compromise with the understanding that the proposed compromise would affect other permit holders in the form of higher air emissions rates than the proposed \$116 per ton. Senator Thayer withdrew the motion to find this administrative regulation deficient.

Without objection, and with agreement of the agency, this administrative regulation was deferred.

JUSTICE AND PUBLIC SAFETY CABINET: Parole Board
[501 KAR 001:080](#). Parole board policies and procedures.

Office of the Secretary
[501 KAR 006:410](#). Corrections policies and procedures: inmate life and issues.

PUBLIC PROTECTION CABINET: Department of Financial Institutions: Division of Depository Institutions: Credit Unions
[808 KAR 003:050](#). Conduct of credit unions.

General
[808 KAR 015:050](#). Out-of-state trust companies operating in Kentucky.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Sanitation
[902 KAR 010:120](#). Kentucky public swimming and bathing facility operations.

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[902 KAR 010:122](#). Repeal of 902 KAR 010:121 and 902 KAR 010:190.

[902 KAR 010:123](#). Kentucky public swimming and bathing facilities construction requirements.

[902 KAR 010:125](#). Kentucky public swimming and bathing facility safety requirements.

[902 KAR 010:127](#). Kentucky public beach requirements.

Division of Maternal and Child Health: Kentucky Early Intervention System

[902 KAR 030:200](#). Coverage and payment for services.

Food and Cosmetics

[902 KAR 045:012](#). Hemp-derived cannabinoid product retail and food service establishment requirements. Daniel Bell, assistant division director, represented the department. James Higdon, co-founder, Cornbread Hemp, and Shannon Stiglitz, Kentucky Retail Federation, appeared in opposition to these administrative regulations.

In response to a question by Co-Chair Lewis, Mr. Higdon stated that 902 KAR 45:012 changed “adult-use cannabinoid products” to “all cannabinoid products”, which seemed to exceed the department’s statutory scope.

In response to a question by Co-Chair Lewis, Ms. Stiglitz stated that Kentucky Retail Federation was also concerned about the change from “adult-use cannabinoid products” to “all cannabinoid products.” Additionally, the \$2,000 per-location fee was overburdensome. There were concerns about retailers registering products, which might be a conflict with 902 KAR 45:021. Kentucky Retail Federation requested that the department defer consideration of this administrative regulation to the November meeting of this subcommittee.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A.

Without objection, and with agreement of the agency, the amendments were approved.

In response to a question by Co-Chair Lewis, Ms. Brooks stated that the department agreed to defer this administrative regulation. A motion was made and seconded to defer consideration of this administrative regulation to the November meeting of this subcommittee. Without objection, and with agreement of the agency, this administrative regulation was deferred.

Department for Medicaid Services

[907 KAR 001:044](#). Coverage provisions and requirements regarding community mental health center behavioral health services. *For a summary of the discussion on this administrative regulation, please see the deficiency portion of these minutes.*

Behavioral Health

[907 KAR 015:005](#). Definitions for 907 KAR Chapter 015. *For a summary of the discussion on this administrative regulation, please see the deficiency portion of these minutes.*

Department for Community Based Services: Child Welfare

[922 KAR 001:050](#). State funded adoption assistance.

[922 KAR 001:060](#). Federal Title IV-E adoption assistance.

[922 KAR 001:490](#). Background checks for foster and adoptive parents and relative and fictive kin caregivers.

Daycare

[922 KAR 002:090](#). Child-care center licensure.

[922 KAR 002:120](#). Child-care center health safety standards.

The subcommittee adjourned at 3:20 p.m. The next meeting of this subcommittee was tentatively scheduled for November 13, 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 EDUCATION
Meeting of October 15, 2024**

105 KAR 1:411

The Interim Joint Committee on Education met on October 15, 2024 and a quorum was present. The following administrative regulations were available for consideration having been referred to the Committee on October 2, 2024, pursuant to KRS 13A.290(6):

704 KAR 008:130
704 KAR 003:313
702 KAR 003:320
016 KAR 009:100
016 KAR 009:080
016 KAR 009:030
016 KAR 009:010
016 KAR 007:011
016 KAR 002:030
016 KAR 001:030

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 October 15, 2024 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON STATE GOVERNMENT
Meeting of October 22, 2024**

The Interim Joint Committee on State Government met on October 22, 2024, and a quorum was present. The following administrative regulation was available for consideration, having been referred to the Committee on August 7, 2024, pursuant to KRS 13A.290(6):

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:

105 KAR 1:411

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 regulation is reflected in the minutes of the October 22, 2024 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON HEALTH SERVICES
Meeting of October 23, 2024**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health Services for its meeting of October 23, 2024 having been referred to the Committee on September 4, 2024 and October 2, 2024, pursuant to KRS 13A.290(6):

September 4, 2024

201 KAR 002:220 Proposed

October 2, 2024

201 KAR 002:015 Proposed

201 KAR 002:470 Proposed

902 KAR 004:030 Proposed

Committee activity in regards to review of the above-referenced administrative regulations is reflected in the minutes of the October 23, 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, this year's of the *Administrative Register of Kentucky*.

Locator Index - Effective Dates

E - 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 last year's issues of the *Administrative Register of Kentucky*, but had not yet gone into effect when the last *Register* year ended.

KRS Index

E - 10

A cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each regulation submitted for publication during this *Register* year.

Certifications Index

E - 17

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year.

Technical Amendment Index

E - 18

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

E - 19

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.

As Amended	646	9-10-2024
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
Am Comments	51 Ky.R. 226	7-15-2024
915 KAR 001:020E	50 Ky.R. 2383	4-18-2024
Am Comments	51 Ky.R. 230	7-15-2024
922 KAR 001:350E	51 Ky.R. 207	7-1-2024
922 KAR 002:090E	51 Ky.R. 22	5-20-2024

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. Any expiration dates listed in 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
016 KAR 001:030E	51 Ky.R. 191	7-15-24
016 KAR 002:030E	51 Ky.R. 195	7-15-24
016 KAR 009:010E	51 Ky.R. 197	7-8-2024
As Amended	645	9-10-2024
016 KAR 009:030E	51 Ky.R. 10	5-31-2024
016 KAR 009:080E	51 Ky.R. 200	7-8-2024
016 KAR 009:100E	51 Ky.R. 204	7-8-2024
031 KAR 002:010E	50 Ky.R. 2147	4-15-2024
As Amended	51 Ky.R. 218	7-9-2024
031 KAR 003:041E	50 Ky.R. 2150	4-15-2024
As Amended	51 Ky.R. 219	7-9-2024
031 KAR 004:031E	50 Ky.R. 2152	4-15-2024
Am Comments	51 Ky.R. 220	7-9-2024
As Amended	645	9-10-2024
031 KAR 004:220E	50 Ky.R. 2154	4-15-2024
As Amended	51 Ky.R. 221	7-9-2024
031 KAR 005:026E	50 Ky.R. 2158	4-15-2024
As Amended	51 Ky.R. 223	7-9-2024
Replaced	492	8-22-2024
031 KAR 005:040E	50 Ky.R. 2161	4-15-2024
As Amended	51 Ky.R. 224	7-9-2024
101 KAR 002:210E	51 Ky.R. 620	9-13-2024
200 KAR 005:021E	51 Ky.R. 12	5-16-2024
As Amended	474	8-13-2024
201 KAR 028:240E	50 Ky.R. 2354	5-14-2024
As Amended	51 Ky.R. 225	7-9-2024
Replaced	499	9-25-2024
201 KAR 036:100E	50 Ky.R. 1649	9-14-2024
Am Comments	2002	3-5-2024
Replaced	51 Ky.R. 105	6-18-2024
202 KAR 002:020E	51 Ky.R. 471	8-6-2024
202 KAR 007:201E	51 Ky.R. 622	9-3-2024
202 KAR 007:301E	51 Ky.R. 626	9-3-2024
202 KAR 007:330E	51 Ky.R. 630	9-3-2024
202 KAR 007:401E	51 Ky.R. 634	9-3-2024
202 KAR 007:560E	51 Ky.R. 640	9-3-2024
501 KAR 006:330E	50 Ky.R. 2356	5-15-2024
Expired; Ordinary SOC not filed by deadline		9-13-2024
501 KAR 006:430E	50 Ky.R. 2358	5-15-2024
803 KAR 002:110E	51 Ky.R. 847	9-30-2024
803 KAR 025:089E	50 Ky.R. 2360	5-14-2024
807 KAR 005:015E	51 Ky.R. 14	5-31-2024
Am Comments	474	8-15-2024

ORDINARY ADMINISTRATIVE REGULATIONS

011 KAR 004:080		
Amended	50 Ky.R. 2238	
As Amended	51 Ky.R. 483	9-17-2024
011 KAR 015:090		
Amended	50 Ky.R. 2240	
As Amended	51 Ky.R. 483	9-17-2024
011 KAR 015:110		
Amended	50 Ky.R. 2245	
As Amended	51 Ky.R. 488	9-17-2024
013 KAR 002:120	50 Ky.R. 2459	
013 KAR 002:130	50 Ky.R. 2461	
013 KAR 006:010	51 Ky.R. 596	
013 KAR 006:020	51 Ky.R. 598	
016 KAR 001:030		
Amended	51 Ky.R. 329	
016 KAR 002:030		
Amended	51 Ky.R. 333	
016 KAR 002:110	50 Ky.R. 2464	
As Amended	51 Ky.R. 489	9-17-2024
016 KAR 002:140	50 Ky.R. 2466	
As Amended	51 Ky.R. 490	
016 KAR 002:160		
Amended	50 Ky.R. 1934	
Withdrawn by agency		9-23-2024
Expired, w/d after certified To-Be-Amended		9-23-2024
016 KAR 002:170	50 Ky.R. 2469	
As Amended	51 Ky.R. 491	9-17-2024
016 KAR 002:200	50 Ky.R. 2471	
As Amended	51 Ky.R. 492	9-17-2024
016 KAR 004:020		
Amended	50 Ky.R. 1557	
As Amended	2004	7-2-2024
016 KAR 004:030		
Amended	50 Ky.R. 1937	7-16-2024
016 KAR 007:010		
Repealed	51 Ky.R. 170	10-15-2024
016 KAR 007:011(r)	51 Ky.R. 170	10-15-2024
016 KAR 009:010		
Amended	51 Ky.R. 335	
As Amended	851	
016 KAR 009:030		
Amended	51 Ky.R. 77	
As Amended	654	10-15-2024
016 KAR 009:080		
Amended	51 Ky.R. 337	
As Amended	851	
016 KAR 009:100		
Amended	51 Ky.R. 341	
As Amended	853	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
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SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- *** Withdrawn before being printed in Register
- IJC Interim Joint Committee
- (r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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224.70-110	401 KAR 048:320	309.301	201 KAR 039:001
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227A.010	815 KAR 035:060		201 KAR 039:090
227A.060	815 KAR 035:060		201 KAR 039:100
227A.100	815 KAR 035:060	309.306	201 KAR 039:120
229.011	201 KAR 027:006	309.312	201 KAR 039:040
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229.025	201 KAR 027:006		201 KAR 039:040
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229.031	201 KAR 027:106	309.314	201 KAR 039:075
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229.035	201 KAR 027:106	309.316	201 KAR 039:050
229.061	201 KAR 027:006	309.318	201 KAR 039:100
229.091	201 KAR 027:006		201 KAR 039:060
229.155	201 KAR 027:106		201 KAR 039:100
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229.171	201 KAR 027:106	309.462	201 KAR 008:610
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229.190	201 KAR 027:006	311.720	922 KAR 002:120
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229.200	201 KAR 027:006	311-314	922 KAR 001:350
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857.160	201 KAR 016:562		202 KAR 007:330
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258.035	922 KAR 001:350		202 KAR 007:330
258.043	201 KAR 016:762	311A.025	202 KAR 007:596
258.065	301 KAR 002:081		202 KAR 007:201
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258.085	301 KAR 002:081		202 KAR 007:401
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258.990	902 KAR 002:020		202 KAR 007:201
278.030	807 KAR 005:015E		202 KAR 007:401
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278.5464	807 KAR 005:015E		202 KAR 007:560
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286.9-010	808 KAR 009:010		202 KAR 007:201
286.9-075	808 KAR 009:010	311A.100	202 KAR 007:301
286.9-100	808 KAR 009:010		202 KAR 007:330
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304.12-020	806 KAR 017:570		202 KAR 007:330
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311A.145	202 KAR 007:201	315.340	201 KAR 002:470
	202 KAR 007:301	315.350	201 KAR 002:470
	202 KAR 007:330	315.405	201 KAR 002:470
311A.150	202 KAR 007:330	315.4104	201 KAR 002:470
311A.160	202 KAR 007:201	316.010	201 KAR 015:110
311A.165	202 KAR 007:301	316.030	201 KAR 015:050
311A.170	202 KAR 007:401		201 KAR 015:110
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311A.190	202 KAR 007:401		201 KAR 015:110
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	202 KAR 007:560	316.130	201 KAR 015:030
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311A.195	202 KAR 007:330	316.132	201 KAR 015:030
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311B.050	201 KAR 046:040		201 KAR 015:120
	201 KAR 046:060	316.165	201 KAR 015:125
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311B.110	201 KAR 046:040		201 KAR 005:010
	201 KAR 046:060	320.250	201 KAR 005:005
311B.120	201 KAR 046:040		201 KAR 005:010
311B.130	201 KAR 046:060	320.270	201 KAR 005:005
311B.180	201 KAR 046:040		201 KAR 005:010
311B.190	201 KAR 046:040	320.280	201 KAR 005:090
313.021	201 KAR 007:610	320.310	201 KAR 005:005
313.030	201 KAR 008:563	321.175	201 KAR 016:513
313.040	201 KAR 008:563		201 KAR 016:730
313.060	201 KAR 008:563		201 KAR 016:731
313.080	201 KAR 008:563		201 KAR 016:732
313.130	201 KAR 008:563		201 KAR 016:735
313.254	201 KAR 008:563		201 KAR 016:737
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314.026	201 KAR 020:390		201 KAR 016:772
314.027	201 KAR 020:390		201 KAR 016:775
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314.193	201 KAR 020:057		201 KAR 016:765
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315.010	201 KAR 002:210	321.205	201 KAR 016:517
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315.020	201 KAR 002:210		201 KAR 016:765
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315.030	201 KAR 002:370		201 KAR 016:775
315.035	201 KAR 002:470		201 KAR 016:777
315.036	201 KAR 002:470	321.207	201 KAR 016:562

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	201 KAR 016:590	341.115	787 KAR 001:370
	201 KAR 016:612	341.190	787 KAR 001:010
321.221	201 KAR 016:510	341.243	787 KAR 001:010
	201 KAR 016:590	341.250	787 KAR 001:010
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	201 KAR 016:517	350.060	405 KAR 010:015
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	201 KAR 016:590	350.064	405 KAR 010:015
	201 KAR 016:612	350.093	405 KAR 010:015
	201 KAR 016:730	350.095	405 KAR 010:015
	201 KAR 016:731	350.100	405 KAR 010:015
	201 KAR 016:732	350.151	405 KAR 010:015
	201 KAR 016:735	350.465	405 KAR 010:015
	201 KAR 016:737	350.503	405 KAR 010:015
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	201 KAR 016:762	446.010	500 KAR 001:021
	201 KAR 016:767	446.400	202 KAR 007:401
	201 KAR 016:777	527.070	922 KAR 002:120
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321.356	201 KAR 016:612	600.020	922 KAR 001:350
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	201 KAR 016:612	605.090	922 KAR 001:350
321.442	201 KAR 016:590		922 KAR 001:490
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321.443	201 KAR 016:612	605.120	922 KAR 001:490
321.351	201 KAR 016:562		922 KAR 002:160
321.990	201 KAR 016:612	605.130	922 KAR 001:490
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322.010	201 KAR 018:010		922 KAR 002:090
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322.045	201 KAR 018:010	620.050	922 KAR 001:350
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322.120	201 KAR 018:010		922 KAR 001:490
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322.160	201 KAR 018:115	620.051	922 KAR 001:470
322.180	201 KAR 018:115	620.140	922 KAR 001:350
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322.190	201 KAR 018:192	625	922 KAR 001:050
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333.130	902 KAR 002:020		922 KAR 002:160
335.540	201 KAR 036:050	12 C.F.R.	808 KAR 003:050
335.545	201 KAR 036:050	16 C.F.R.	201 KAR 015:110
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335B.020	900 KAR 001:009		922 KAR 001:350
336.242	787 KAR 001:370		922 KAR 002:120
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337.275	922 KAR 002:160		603 KAR 005:066

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26 C.F.R.	900 KAR 001:090	52 U.S.C. 20506	921 KAR 003:030
29 C.F.R.	202 KAR 007:596	EO 2016-270	201 KAR 027:006
	780 KAR 003:072	Ky. Acts 2022 Ch. 199	787 KAR 001:360
	815 KAR 035:060	Ky. Const. 172, 174	103 KAR 005:200
	902 KAR 010:123	Pub. L. 108-173	806 KAR 017:570
30 C.F.R.	405 KAR 010:001	Pub. L. 111-5	200 KAR 015:010
30 C.F.R.	405 KAR 010:015	Pub. L. 114-10	806 KAR 017:570
34 C.F.R.	016 KAR 009:080	Pub. L. 114-94	600 KAR 004:010
	016 KAR 009:100	Pub. L. 116-127	806 KAR 017:570
	902 KAR 030:200	Pub. L. 117-328	806 KAR 017:570
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40 C.F.R.	405 KAR 010:001		
41 C.F.R.	105 KAR 001:140		
42 C.F.R.	105 KAR 001:140		
	201 KAR 002:210		
	806 KAR 017:570		
	907 KAR 001:082		
	907 KAR 010:015		
	922 KAR 001:350		
45 C.F.R.	105 KAR 001:140		
	806 KAR 017:570		
	902 KAR 028:010		
	910 KAR 001:210		
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8 U.S.C.	922 KAR 001:350		
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15 U.S.C.	200 KAR 014:011		
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20 U.S.C.	704 KAR 003:365		
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23 U.S.C.	600 KAR 004:010		
25 U.S.C.	922 KAR 002:160		
26 U.S.C.	102 KAR 001:320		
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29 U.S.C.	201 KAR 015:110		
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34 U.S.C.	922 KAR 002:160		
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	907 KAR 001:028		
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49 U.S.C.	600 KAR 004:010		

CERTIFICATION LETTER SUMMARIES

The certification process is established in KRS 13A.3104. If the certification letter states the regulation shall be amended, the administrative body shall file an amendment to the regulation within 18 months of the date the certification letter was filed. If the certification letter states that the regulation shall remain in effect without amendment, the last effective date of the regulation is changed to the date the regulations compiler received the letter.

* KRS 13A.010(6) - "Effective" or "eff." means that an administrative regulation has completed the legislative review process established by KRS 13A.290, 13A.330, and 13A.331.

Regulation Number	Letter filed date	Action
004 KAR 001:010	08-12-2024	Remain in Effect without Amendment
004 KAR 001:040	08-12-2024	Remain in Effect without Amendment
004 KAR 001:050	08-12-2024	Remain in Effect without Amendment
11 KAR 017:010	10-01-2024	Remain in Effect without Amendment
12 KAR 017:040	10-01-2024	Remain in Effect without Amendment
011 KAR 017:050	10-01-2024	Remain in Effect without Amendment
12 KAR 017:060	10-01-2024	Remain in Effect without Amendment
011 KAR 017:070	10-01-2024	Remain in Effect without Amendment
011 KAR 017:080	10-01-2024	Remain in Effect without Amendment
011 KAR 017:090	10-01-2024	Remain in Effect without Amendment
011 KAR 017:100	10-01-2024	Remain in Effect without Amendment
12 KAR 017:110	10-01-2024	Remain in Effect without Amendment
016 KAR 002:020	10-02-2024	Remain in Effect without Amendment
016 KAR 002:090	06-25-2024	Remain in Effect without Amendment
016 KAR 008:040	10-02-2024	Remain in Effect without Amendment
031 KAR 006:020	10-04-2024	To be amended; filing deadline 4-4-2026
040 KAR 002:145	07-23-2024	Remain in Effect without Amendment
201 KAR 032:050	07-17-2024	Remain in Effect without Amendment
201 KAR 034:020	08-02-2024	Remain in Effect without Amendment
201 KAR 034:030	08-02-2024	Remain in Effect without Amendment
201 KAR 034:050	08-02-2024	Remain in Effect without Amendment

201 KAR 044:090	08-02-2024	Remain in Effect without Amendment
201 KAR 046:095	08-21-2024	Remain in Effect without Amendment
301 KAR 006:005	07-29-2024	To be amended, filing deadline 01-29-2026
501 KAR 001:030	08-30-2024	To be amended, filing deadline 02-28-2026
501 KAR 006:230	10-29-2024	To be amended, filing deadline 04-29-2026
704 KAR 003:540	08-08-2024	Remain in Effect without Amendment
804 KAR 003:100	05-13-2024	Remain in Effect without Amendment
804 KAR 004:230	09-25-2024	Remain in Effect without Amendment
804 KAR 010:010	09-25-2024	Remain in Effect without Amendment
900 KAR 006:125	07-18-2024	Remain in Effect without Amendment
902 KAR 020:360	07-18-2024	Remain in Effect without Amendment
902 KAR 055:040	07-18-2024	Remain in Effect without Amendment
902 KAR 055:095	07-23-2024	To be amended; filing deadline 1-23-2026
902 KAR 100:180	10-09-2024	Remain in Effect without Amendment
907 KAR 001:045	10-21-2024	Remain in Effect without Amendment
907 KAR 001:047	10-21-2024	Remain in Effect without Amendment
907 KAR 001:102	10-21-2024	Remain in Effect without Amendment
907 KAR 023:001	07-22-2024	Remain in Effect without Amendment
907 KAR 023:010	07-22-2024	Remain in Effect without Amendment
910 KAR 001:210	06-17-2024	To be Amended; filing deadline 12-17-2025
911 KAR 003:020	10-08-2024	Remain in Effect without Amendment

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
201 KAR 020:506	6-24-2024	810 KAR 008:050	7-1-2024
809 KAR 001:002	7-1-2024	810 KAR 009:010	7-1-2024
809 KAR 001:003	7-1-2024	921 KAR 1:400	8-1-2024
809 KAR 010:001	7-1-2024	921 KAR 1:410	8-1-2024
809 KAR 010:002	7-1-2024		
809 KAR 010:003	7-1-2024		
809 KAR 010:004	7-1-2024		
809 KAR 010:005	7-1-2024		
809 KAR 010:006	7-1-2024		
809 KAR 010:007	7-1-2024		
809 KAR 010:008	7-1-2024		
810 KAR 002:001	7-1-2024		
810 KAR 002:010	7-1-2024		
810 KAR 002:020	7-1-2024		
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