



ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, January 15, 2025

MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is tentatively scheduled to meet on February 10, 2025 at 1:00 p.m. in room 149 Capitol Annex.

ARRS Tentative Agenda – 1355 [Online agenda updated as needed](#)

INDEXES & OTHER INFORMATION

Regulation Review Procedure	1358	KRS Index	H - 11
ARRS Report.....	1623	Certifications	H - 20
Other Committee Reports	1628	Technical Amendments	H - 22
Locator Index - Effective Dates.....	H - 2	Subject Index.....	H - 23

EMERGENCIES

Board of Pharmacy

201 KAR 002:416E. Pharmacy annual reporting of cost of dispensing data..... 1359

Department for Medicaid Services

- 907 KAR 001:595E. Model Waiver II service coverage and reimbursement policies and requirements..... 1361
- 907 KAR 001:835E. Michelle P 1365
- 907 KAR 003:100E. Reimbursement for acquired brain injury waiver services..... 1379
- 907 KAR 003:210E. Acquired brain injury long-term care waiver services and reimbursement..... 1382
- 907 KAR 007:015E. Reimbursement for home and community based waiver services version 2..... 1401
- 907 KAR 012:020E. Reimbursement for New Supports for Community Living Waiver Services..... 1405
- 907 KAR 020:005E. Medicaid technical eligibility requirements not related to a modified adjusted gross income standard or former foster care individuals..... 1409

AMENDED IN-PROCESS EMERGENCIES

None

AS AMENDED

Council on Postsecondary Education

- 013 KAR 002:120. Comprehensive funding model for the allocation of state general fund appropriations to public universities . 1416
- 013 KAR 002:130. Comprehensive funding model for the allocation of state general fund appropriations to Kentucky Community and Technical College System institutions..... 1417

Teachers' Retirement System

102 KAR 001:340. Calculation of final average salary.... 1419

Kentucky Public Pension Authority

105 KAR 001:130. Hazardous position coverage..... 1420
 105 KAR 001:445. Trustee elections..... 1422

Board of Veterinary Examiners

- 201 KAR 016:520. Approved veterinary medical programs for veterinarians; approved veterinary technology programs for veterinary technicians..... 1425
- 201 KAR 016:530. Examination requirements for veterinarians and veterinary technicians 1426
- 201 KAR 016:590. Continuing education requirements, veterinarians and veterinary technicians 1427

Board of Nursing

201 KAR 020:057. Scope and standards of practice of advanced practice registered nurses 1429

Board of Emergency Medical Services

202 KAR 007:401. Paramedics..... 1433

Department of Fish and Wildlife Resources

- 301 KAR 002:081. Transportation and holding of live native wildlife..... 1437
- 301 KAR 002:082. Transportation and holding of live exotic wildlife 1442
- 301 KAR 002:225. Dove, wood duck, teal, and other migratory game bird hunting 1445

Department of Corrections

501 KAR 006:410. Corrections policies and procedures: inmate life and issues..... 1447

Department of Criminal Justice Training

503 KAR 003:140. Telecommunications (Public Safety Dispatch) Academy trainee requirements; misconduct; penalties; discipline procedures..... 1448

Department of Education

704 KAR 003:365. Complaint procedures for programs under the Elementary and Secondary Education Act of 1965 1452

Department for Employment Services
787 KAR 001:010. Application for employer account; reports 1453
787 KAR 001:370. Professional Employer Organizations 1454

Department of Workplace Standards
803 KAR 002:110. Employer and employee representatives 1454

Department of Housing, Buildings and Construction
815 KAR 035:060. Licensing of electrical contractors, master electricians, and electricians. 1455

Department for Public Health
902 KAR 010:120. Kentucky public swimming and bathing facility operations..... 1457
902 KAR 010:122. Repeal of 902 KAR 10:121 and 902 KAR 10:190 1468
902 KAR 010:123. Kentucky public swimming and bathing facilities construction requirements..... 1469
902 KAR 010:125. Kentucky public swimming and bathing facility safety requirements .. 1474
902 KAR 010:127. Kentucky public beach requirements 1476
902 KAR 028:030. Kentucky's trauma system level IV criteria..... 1479

AMENDED AFTER COMMENTS

Department for Environmental Protection
401 KAR 047:110. Registered permit-by-rule 1483

Department of Financial Institutions
808 KAR 009:010. Deferred deposit database compliance 1486

Department for Public Health
902 KAR 004:105. Kentucky Lifeline for Moms program implementation 1487

PROPOSED AMENDMENTS

Department of Veterans' Affairs
017 KAR 001:030. Nurse Loan Repayment Program 1490

Personnel
101 KAR 002:034. Classified compensation administrative regulations 1492
101 KAR 002:102. Classified leave general requirements..... 1498
101 KAR 003:015. Leave requirements for unclassified service 1505
101 KAR 003:045. Compensation plan and pay incentives for unclassified service 1511

Board of Medical Licensure
201 KAR 009:270. Professional standards for prescribing, dispensing, or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone..... 1516

Board of Nursing
201 KAR 020:215. Continuing competency requirements..... 1521

Board of Emergency Medical Services
202 KAR 007:410. Advanced Practice Paramedics 1524

Department of Fish and Wildlife Resources
301 KAR 001:201. Taking of fish by traditional fishing methods..... 1528

Board of Tax Appeals
802 KAR 001:010. Tax appeal procedures 1534
802 KAR 002:010. Negligence claims before the Board of Claims..... 1537
802 KAR 003:010. Crime victims compensation 1541
802 KAR 003:020. Payment schedule for sexual assault examinations 1544

Department of Alcoholic Beverage Control
804 KAR 004:212. In-State Distilled Spirits Supplier License 1547
804 KAR 004:251. Special temporary licenses 1549
804 KAR 004:400. Applications incorporated by reference 1550

804 KAR 004:410. Product registration and forms 1552
804 KAR 004:415. Direct shipper license 1554

Department for Medicaid Services
907 KAR 001:039. Hearing Program reimbursement provisions and requirements..... 1555
907 KAR 001:595. Model Waiver II service coverage and reimbursement policies and requirements 1558
907 KAR 001:835. Michelle P waiver services and reimbursement 1562
907 KAR 003:100. Reimbursement for acquired brain injury waiver services 1576
907 KAR 003:210. Acquired brain injury long-term care waiver services and reimbursement.. 1579
907 KAR 007:015. Reimbursement for home and community based waiver services version 2 1597
907 KAR 012:020. Reimbursement for New Supports for Community Living Waiver Services 1601
907 KAR 020:005. Medicaid technical eligibility requirements not related to a modified adjusted gross income standard or former foster care individuals 1605

NEW ADMINISTRATIVE REGULATIONS

Board of Pharmacy
201 KAR 002:416. Pharmacy annual reporting of cost of dispensing data 1611

Board of Tax Appeals
802 KAR 003:030. Crime victims compensation awards 1613
802 KAR 003:040. Additional Award Requests 1616
802 KAR 003:050. Emergency Awards 1618
802 KAR 003:060. Crime Victim Compensation Offender Debt Collections..... 1620

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2016 Edition of the **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

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

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

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

ADMINISTRATIVE REGISTER OF KENTUCKY

(ISSN 0096-1493)

© 2025 Legislative Research Commission, All Rights Reserved

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

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

KENTUCKY LEGISLATIVE RESEARCH COMMISSION

Chairmen

Senator Robert Stivers
Senate President

Representative David W. Osborne
Speaker of the House

Senate and House Members

Senator David Givens
President Pro Tempore

Representative David Meade
Speaker Pro Tempore

Senator Max Wise
Majority Floor Leader

Representative Steven Rudy
Majority Floor Leader

Senator Gerald A. Neal
Minority Floor Leader

Representative Pamela Stevenson
Minority Floor Leader

Senator Robby Mills
Majority Caucus Chair

Representative Suzanne Miles
Majority Caucus Chair

Senator Reginald Thomas
Minority Caucus Chair

Representative Al Gentry
Minority Caucus Chair

Senator Mike Wilson
Majority Whip

Representative Jason Nemes
Majority Whip

Senator David Yates
Minority Whip

Representative Lindsey Burke
Minority Whip

Jay D. Hartz, Director
Joe Cox, Printing and Publications Officer

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Members

Senator Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
Senator Julie Raque Adams
Senator Mike Wilson
Senator David Yates
Representative Randy Bridges
Representative Deanna Frazier Gordon
Representative Mary Lou Marzian

Staff

Sarah Amburgey
Stacy Auterson
Laura Begin
Emily Caudill
Ange Darnell
Emily Harkenrider
Karen Howard
Anna Latek
Callie Lewis
Carrie Nichols

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



Administrative Regulation Review Subcommittee
TENTATIVE Meeting Agenda
Monday, February 10, 2025 at 1:00 p.m.
Annex Room 149



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

GENERAL GOVERNMENT CABINET

Secretary of State
Certifications

030 KAR 002:011. Repeal of 030 KAR 002:010.

OFFICE OF ATTORNEY GENERAL

Department of Law
Administrative Hearings

040 KAR 005:010. Hearing officer required training.

BOARDS AND COMMISSIONS

Board of Speech-Language Pathology Interstate Compact

201 KAR 017:120E. Audiology and Speech-Language Pathology Interstate Compact. (Filed with Ordinary) ("E" expires 08-23-2025)

TOURISM, ARTS AND HERITAGE CABINET

Department of Fish and Wildlife Resources
Game

301 KAR 002:041. Shooting areas, dog training areas, commercial and noncommercial foxhound training enclosures, and bobwhite shoot-to-train season.

ENERGY AND ENVIRONMENT CABINET

Department of Environmental Protection
Solid Waste Facilities

401 KAR 047:110. Registered permit-by-rule. (Amended After Comments)

Standards for Solid Waste Facilities

401 KAR 048:320. Operating requirements for less than one (1) acre or expanded less than two (2) acre construction or demolition debris landfills. (Not Amended After Comments)

JUSTICE AND PUBLIC SAFETY CABINET

Department of Kentucky State Police
Driver Training

502 KAR 010:120. Hazardous materials endorsement requirements. (Filed with Emergency; "E" expires 07-27-2025)

Medical Examiner Protocols

502 KAR 012:010. Sexual assault forensic-material examination protocol.

TRANSPORTATION CABINET

Department of Vehicle Regulation
Driver's License

601 KAR 012:120E. Testing applicants for initial or renewal instruction permit, initial or renewal operator's license, or reinstatement. (Filed with Ordinary) ("E" expires 09-02-2025)

EDUCATION AND LABOR CABINET

Board of Education
Office of Instruction

704 KAR 003:535. Full-time enrolled online, virtual, and remote learning programs. (Deferred from November)

Department of Workplace Standards
Occupational Safety and Health

803 KAR 002:320E. Toxic and hazardous substances. (Filed with Ordinary) ("E" expires 08-16-2025)

PUBLIC PROTECTION CABINET

Department of Insurance
Agents, Consultants, Solicitors and Adjusters

806 KAR 009:360. Pharmacy Benefit Manager License.

VOLUME 51, NUMBER 8 – FEBRUARY 1, 2025

Department of Financial Institutions

Credit Unions

808 KAR 003:050. Conduct of credit unions. (Amended After Comments) (Deferred from November)

Check Cashing

808 KAR 009:010. Deferred deposit database compliance. (Amended After Comments)

KENTUCKY HORSE RACING AND GAMING CORPORATION

General

810 KAR 002:070. Thoroughbred and other flat racing associations.

Flat and Steeplechase Racing

810 KAR 004:030. Entries, subscriptions, and declarations.

CABINET FOR HEALTH AND FAMILY SERVICES

Department of Public Health

Maternal and Child Health

902 KAR 004:105. Kentucky Lifeline for Moms program implementation. (Amended After Comments)

Hospital Service Coverage and Reimbursement

907 KAR 010:015. Payments for outpatient hospital services. (Deferred from November)

Department for Community Based Services

Child Support

921 KAR 001:400. Establishment, review, and modification of child support and medical support orders.

3. REGULATIONS REMOVED FROM FEBRUARY'S AGENDA

FINANCE AND ADMINISTRATION CABINET

Kentucky Public Pension Authority (KPPA)

General Rules

105 KAR 001:451. Quasi-governmental employer reports on independent contractors and leased employees. (Comments Received; SOC due 02-14-2025)

BOARDS AND COMMISSIONS

Board of Optometric Examiners

201 KAR 005:010. Application for licensure; endorsement. (Not Amended After Comments) (Deferred from February)

Board of Veterinary Examiners

201 KAR 016:510. Fees for veterinarians. (Comments Received; SOC ext., due 02-14-2025)

201 KAR 016:513. Fees for Allied Animal Health Professional (AAHP) Permits. (Comments Received; SOC ext., due 02-14-2025)

201 KAR 016:515. Fees for veterinary facility registrations. (Comments Received; SOC ext., due 02-14-2025)

201 KAR 016:517. Fees for AAHP facility registrations. (Comments Received; SOC ext., due 02-14-2025)

201 KAR 016:730. Approved Allied Animal Health Professional (AAHP) Programs; education requirements. (Comments Received; SOC ext., due 02-14-2025)

201 KAR 016:731. Examination requirements for AAHP providers. (Comments Received; SOC ext., due 02-14-2025)

201 KAR 016:732. Application requirements for AAHP permits - reinstatement. (Comments Received; SOC ext., due 02-14-2025)

201 KAR 016:735. Renewal requirements for AAHP permits – renewal notice – expiration. (Comments Received; SOC ext., due 02-14-2025)

201 KAR 016:737. Responsibilities for AAHP providers; limitations on practice. (Comments Received; SOC ext., due 02-14-2025)

201 KAR 016:762. Application requirements for Veterinary facility registration; veterinarian managers; registered responsible parties. (Comments Received; SOC ext., due 02-14-2025)

201 KAR 016:765. Veterinary facilities – renewal notice – requirements for renewal and reinstatement. (Comments Received; SOC ext., due 02-14-2025)

201 KAR 016:767. Registered veterinary facilities – duties of registered responsible parties and veterinarian managers. (Comments Received; SOC ext., due 02-14-2025)

201 KAR 016:772. Application requirements for AAHP facility registration; AAHP managers; registered responsible parties. (Comments Received; SOC ext., due 02-14-2025)

201 KAR 016:775. AAHP facilities – renewal notice – requirements for renewal and reinstatement. (Comments Received; SOC ext., due 02-14-2025)

201 KAR 016:777. Registered AAHP facilities - duties of registered responsible parties and AAHP managers. (Comments Received; SOC ext., due 02-14-2025)

Board of Licensed Professional Counselors

201 KAR 036:050. Complaint management process. (Comments Received; SOC ext., due 02-14-2025)

201 KAR 036:100E. Counseling compact. (Filed with Ordinary) ("E" expires 08-23-2025) (Deferred from February)

VOLUME 51, NUMBER 8 – FEBRUARY 1, 2025

ENERGY AND ENVIRONMENT CABINET

Department for Natural Resources

Division of Mine Permits

Bond and Insurance Requirements

405 KAR 010:001. Definitions. (Amended After Comments) (Deferred from January)

405 KAR 010:015. General bonding provisions. (Not Amended After Comments) (Deferred from January)

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

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

(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
201 KAR 2:416E.

Senate Bill 188 from the 2024 legislative session, as partially codified in KRS 315.038, requires the Board of Pharmacy to promulgate an administrative regulation on or before January 1, 2025 to collect data from each ambulatory pharmacy permitted with the Board relating to the pharmacy's dispensing costs for the previous calendar year. This emergency administrative regulation is being filed simultaneously with an ordinary administrative regulation. The ordinary administrative regulation will replace the emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
CHRISTOPHER HARLOW, Executive Director

BOARD AND COMMISSIONS
Kentucky Board of Pharmacy
(New Emergency Administrative Regulation)

201 KAR 2:416E. Pharmacy annual reporting of cost of dispensing data.

EFFECTIVE: December 17, 2024

RELATES TO: KRS 18A.2254, 304.9-053, 304.9-054, 304.9-055, 304.14-120, 304.14-120, 304.17A-595, 304.17A-712, 304.17C-125, 304.38A-115, 367.828

STATUTORY AUTHORITY: KRS 315.038, 315.191(1)

NECESSITY, FUNCTION, AND CONFORMITY: 315.191(1) authorizes the board to promulgate administrative regulations to regulate pharmacists, pharmacies, wholesalers and manufacturers. Senate Bill 188 from the 2024 legislative session codified in KRS 315.038 requires the Board of Pharmacy to promulgate regulations to require all ambulatory pharmacies permitted by the Board of Pharmacy to report annually beginning March 1, 2026 cost of dispensing data to the Board of Pharmacy. The Board of Pharmacy shall then submit that data to the Department of Insurance within thirty days.

Section 1. Mandatory Submission of Data.

(1) On an annual basis, beginning March 1, 2026, and by March 1 every year thereafter, every ambulatory pharmacy permitted by the Board of Pharmacy shall submit to the Board, the following data relating to the dispensing costs for the previous year:

- (a) NCPDP number;
- (b) Labor costs, including:
 - 1. Pharmacist salaries, including benefits and taxes;
 - 2. Pharmacy technician salaries, including benefits and taxes;
 - 3. Salaries of other support staff involved in the dispensing of prescriptions; and
 - 4. Other employee benefits.
- (c) Cost to acquire the medications dispensed;
- (d) Cost of materials, including:
 - 1. Cost of prescription labels and paper;
 - 2. Cost of bottles, vials and packaging;
 - 3. Prescription delivery costs;
 - 4. Inventory services costs;
 - 5. Lost inventory costs; and
 - 6. Warehouse expenses.
- (e) Facility costs, including:
 - 1. Rent or mortgage payments for the pharmacy space;
 - 2. Mortgage interest;
 - 3. Utilities, including electricity, water, heating and communications costs;

- 4. Facility taxes, including personal property, real estate and payroll as well as insurance
- 5. Maintenance, cleaning and repair costs; and
- 6. Security and alarm fees.
- (f) Operational costs, including:
 - 1. Insurance, including liability and property;
 - 2. Software and IT systems;
 - 3. Switch or e-prescribing fees;
 - 4. Office supplies and equipment;
 - 5. Professional liability insurance for pharmacists;
 - 6. Credit card processing fees;
 - 7. Prescription department licenses, permits, accreditation and fees;
 - 8. Cost of continuing education and certification for pharmacists and technicians;
 - 9. Dues and subscriptions for pharmacy department;
 - 10. Delivery and mailing expenses for the prescription department;
 - 11. Transaction fees;
 - 12. Charitable contributions;
 - 13. Employee training;
 - 14. Bad debts for prescriptions, including uncollected copays;
- and
- 15. Third party prescriptions audit adjustments.
- (g) Store costs, including:
 - 1. Marketing and advertising;
 - 2. Professional accounting and legal services;
 - 3. Franchise fees, if applicable; and
 - 4. Other costs not included elsewhere.
- (h) Depreciation and amortization costs, including:
 - 1. Depreciation of building, equipment and fixtures; and
 - 2. Amortization of software and intangible assets.
- (i) Total number of prescriptions dispensed each month of the prior year; and
- (j) Total number of prescriptions prepared via a central fill pharmacy each month of the prior year; and
- (k) Percent of revenue coming directly from the pharmacy department.
- (2) All data shall be reported to the Board electronically through the Board's licensing gateway on Reporting Form A, Pharmacy Cost of Dispensing Data, 12/2024.

Section 2. Optional Submission of Data.

(1) On an annual basis, beginning March 1, 2026 and by March 1 every year thereafter, any ambulatory pharmacy permitted by the Board of Pharmacy may submit to the Board, the following data for each prescription dispensed:

- (a) The date the claim was submitted to the pharmacy benefit manager;
- (b) The date the prescription was written;
- (c) The NCPDP transaction type;
- (d) The prescription insurance member identification number;
- (e) The prescription number assigned by the pharmacy;
- (f) The number of the refill;
- (g) The NDC number of the product dispensed;
- (h) The name of the product dispensed;
- (i) The strength of the medication dispensed;
- (j) The quantity of the medication dispensed;
- (k) The days supply of medication dispensed;
- (l) Whether the medication dispensed was generic;
- (m) Whether the medication dispensed was a specialty drug;
- (n) The NABP identification number of the pharmacy where the medication was dispensed;
- (o) The NPI identification number of the pharmacy where the medication was dispensed;

(p) The name of the pharmacy where the medication was dispensed;

(q) The amount, in dollars, paid to the pharmacy by the prescription benefit plan;

(r) The amount, in dollars, paid to the pharmacy by the health plan member;

(s) The total amount, in dollars, paid to the pharmacy for the prescription dispensed, including what the patient paid and what the health plan paid;

(t) The amount, in dollars, paid to the pharmacy for dispensing the medication; and

(u) The amount (in dollars) of retroactive fees that were assessed to the pharmacy by the pharmacy benefit manager for the medication dispensed at any time after the medication was dispensed, including, but not limited to:

1. Direct remuneration fees;
2. Indirect remuneration fees;
3. Generic effective rats;
4. In-network fees;
5. Performance fees;
6. Point-of-sale fees; and
7. Pre and post adjudication fees.

(2) If the pharmacy chooses to submit this data, the data shall be reported to the Board electronically through the Board's licensing gateway on Reporting Form B, Pharmacy Claims Data, 12/2024.

Section 3. All information and data submitted to the Board shall be deemed confidential and proprietary and shall not be subject to disclosure pursuant to KRS 61.870 to 61.884.

Section 4. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Reporting Form A, Pharmacy Cost of Dispensing Data, 12/2024; and

(b) Reporting Form B, Pharmacy Claims Data, 12/2024.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or on the Web site at <https://pharmacy.ky.gov/Businesses/Pages/Pharmacy.aspx>.

CHRISTOPHER HARLOW, Executive Director

APPROVED BY AGENCY: December 12, 2024

FILED WITH LRC: December 17, 2024 at 4:18 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2025, at 10:00 a.m. Eastern Time via zoom teleconference and at 125 Holmes Street in the first-floor conference room. 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 January 31, 2025. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Christopher Harlow, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Christopher.harlow@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christopher Harlow

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is required pursuant to KRS 315.038. This regulation establishes procedures for pharmacies to report data to the Department of Insurance per Senate Bill 188 during the 2024 legislative session.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 315.038.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation, authorized by KRS 315.191(1)(a), establishes data reporting procedures required by KRS 315.038.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure that pharmacies know how to report data that is required to be reported by KRS 315.038 and as established by the Commissioner of Insurance at the Public Protection Cabinet.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: n/a

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will impact all ambulatory pharmacies that are permitted by the Commonwealth of 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: All ambulatory pharmacies permitted by the Board will have to review these data elements and collect data during the 2025 calendar year and then report the data by March 2026.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It will not cost anything to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Commissioner of Insurance will be able to review data submitted by pharmacies and compare it with data submitted by the pharmacy benefit managers. (5) Provide an estimate of how much it will cost to implement this administrative Regulation:

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

(a) Initially: The implementation of this administrative regulation will not cost anything. We have a licensing software already developed that will allow for receipt of data and transmission of data to the Department of Insurance.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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: There is no fee being amended here directly or indirectly.

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

(9) TIERING: Is tiering applied? Tiering is not applied here beyond what the General Assembly has established as an ambulatory pharmacy and only applying the contents of this regulation to such.

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 315.038 requires the Board promulgate this regulation by January 1, 2025.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The promulgating agency, the Board of Pharmacy, is the only affected state unit impacted.

(a) Estimate the following for the first year:

Expenditures: This amendment does not create further expenditures outside of what is already allocated for licensing.

Revenues: This amendment does not create any additional revenue. Cost Savings: none.

Cost Savings: n/a

(b) How will expenditures, revenues, or cost savings differ in subsequent years? These things are not expected to change as there is no fee increase or change per this amendment.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): There are no local affected entities with the exception of the Board.

(a) Estimate the following for the first year:

Expenditures: n/a

Revenues: n/a

Cost Savings: n/a

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

(4) Identify additional regulated entities not listed in questions (2) or (3): All ambulatory pharmacies permitted by the Board.

(a) Estimate the following for the first year:

Expenditures: There are no expenditures.

Revenues: There are no expected revenues.

Cost Savings: n/a

(b) How will expenditures, revenues, or cost savings differ in subsequent years? It will not change unless there is a statutory change.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no expected fiscal impact of this amended regulation.

(b) Methodology and resources used to determine the fiscal impact: The estimated revenues generated for the budget are obtained from current and historical data.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have an overall negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion: Agency data.

STATEMENT OF EMERGENCY
907 KAR 1:595E.

This emergency amendment to an existing administrative regulation is being promulgated to implement reimbursement methodology that reflects the approval by the U.S. Centers for Medicare and Medicaid Services of new federal waivers issued pursuant to 42 U.S.C. Ch. 7, Sec. 1396n(c), also called "1915(c) waivers", effective January 1, 2025. The approval allows for higher reimbursement for providers and this administrative regulation is being updated to reflect the higher reimbursement. This emergency amendment to an existing administrative regulation is being filed pursuant to KRS 13A.190(1)(a)2., to preserve state and federal funding and ensure the most efficient use of funds, and also pursuant to KRS 13A.190(1)(a)1. to preserve the welfare of

Medicaid recipients who qualify for a federal waiver issued pursuant to 42 U.S.C. Ch. 7, Sec. 1396n(c). This emergency amendment will be filed with an ordinary amendment that is identical to this emergency amendment.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Fiscal Management
(Emergency Amendment)

907 KAR 1:595E. Model Waiver II service coverage and reimbursement policies and requirements.

EFFECTIVE: December 23, 2024

RELATES TO: KRS 205.8451(9), 314.011, 314A.010(3)(a), 42 C.F.R. 400.203, 42 C.F.R. 440.70, 440.185, 42 U.S.C. 1396, 42 U.S.C. 1396n(c)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1315

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, to qualify for federal Medicaid funds. This administrative regulation establishes the service coverage and reimbursement policies and requirements relating to Model Waiver II services provided to a Medicaid-eligible recipient. These services are provided pursuant to a 1915(c) home and community based waiver granted by the U. S. Department for Health and Human Services in accordance with 42 U.S.C. 1396n(c).

Section 1. Definitions.

(1) "1915(c) home and community based waiver program" means a Kentucky Medicaid program established pursuant to and in accordance with 42 U.S.C. 1396n(c).

(2) "Department" means the Department for Medicaid Services or its designee.

(3) "Federal financial participation" is defined in 42 C.F.R. 400.203.

(4) "Home health agency" means an agency that is:

(a) Licensed in accordance with 902 KAR 20:081;

(b) Medicare certified; and

(c) Medicaid certified.

(5) "Licensed practical nurse (LPN)" is defined by KRS 314.011(9).

(6) "Model Waiver II services" means 1915(c) home and community based waiver program in-home ventilator services provided to a Medicaid-eligible recipient who:

(a) Is dependent on a ventilator; and

(b) Would otherwise require a nursing facility level of care in a hospital based nursing facility that will accept a recipient who is dependent on a ventilator.

(7) "MWMA" means the Kentucky Medicaid Waiver Management Application internet portal located at <https://www.chfs.ky.gov/agencies/dms/dca/Pages/mwma.aspx> [<http://chfs.ky.gov/dms/mwma.htm>].

(8) "Participant" means a recipient who qualifies for and is receiving Model Waiver II services in accordance with Section 2 of this administrative regulation.

(9) "Person-centered service plan" means a written individualized plan of services.

(10) "Private duty nursing agency" means a facility licensed to provide private duty nursing services:

(a) By the Cabinet for Health and Family Services, Office of Inspector General; and

(b) Pursuant to 902 KAR 20:370.

(11) "Recipient" is defined by KRS 205.8451(9).

(12) "Registered nurse (RN)" is defined by KRS 314.011(5).

VOLUME 51, NUMBER 8– February 1, 2025

(13) "Registered respiratory therapist (RT)" is defined by KRS 314A.010(3)(a).

(14) "Ventilator" means a respiration stimulating mechanism.

(15) "Ventilator dependent" means the condition or state of an individual who:

- (a) Requires the aid of a ventilator for respiratory function; and
- (b) Meets the high intensity nursing facility patient status criteria established in 907 KAR 1:022.

Section 2. Participant Eligibility and Related Policies.

(1)

(a) To be eligible to receive Model Waiver II services, an individual shall:

- 1. Be eligible for Medicaid pursuant to 907 KAR 20:010;
- 2. Require ventilator support for at least twelve (12) hours per day; and
- 3. Meet ventilator dependent patient status requirements established in 907 KAR 1:022.

(b) In addition to the individual meeting the requirements established in paragraph (a) of this subsection:

1. The individual or a representative on behalf of the individual shall:

- a. Apply for 1915(c) home and community based waiver services via the MWMA;
- b. Complete and upload into the MWMA a MAP - 115 Application Intake - Participant Authorization; and
- c. Complete and upload into the MWMA a MAP - 116 Service Plan – Participant Authorization prior to or at the time the person-centered service plan is uploaded into the MWMA; and

2. A registered nurse on behalf of the individual applying for services shall:

- a. Complete and upload into the MWMA:
 - (i) A MAP 350, Long Term Care Facilities and Home and Community Based Program Certification Form;
 - (ii) A person-centered service plan; and
 - (iii) A MAP-351A, Medicaid Waiver Assessment; and
- b. Upload a MAP-10, Waiver Services – Physician's Recommendation, which shall be signed and dated by a physician.

(c) An individual's eligibility for Model Waiver II services shall begin upon receiving notification of approval from the department.

(2) For an individual to remain eligible for Model Waiver II services:

- (a) The individual shall:
 - 1. Maintain Medicaid eligibility requirements established in 907 KAR 20:010; and
 - 2. Remain ventilator dependent pursuant to 907 KAR 1:022;

(b) A Model Waiver II level of care determination confirming that the individual qualifies shall be performed and submitted to the department every six (6) months; and

(c) A MAP-10[,] Waiver Services – Physician's Recommendation shall be:

- 1. Signed and dated by a physician every sixty (60) days on behalf of the individual; and
- 2. Uploaded into the MWMA after being signed and dated in accordance with subparagraph 1 of this paragraph, every sixty (60) days.

(3) A Model Waiver II service shall not be provided to a recipient who is:

- (a) Receiving a service in another 1915(c) home and community based waiver program; or
- (b) An inpatient of:
 - 1. A nursing facility;
 - 2. An intermediate care facility for individuals with an intellectual disability; or
 - 3. Another facility.

(4) The department shall not authorize a Model Waiver II service unless it has ensured that:

- (a) Ventilator dependent status has been met; and
- (b) The service:
 - 1. Is available to the recipient;
 - 2. Will meet the need of the recipient; and
 - 3. Does not exceed the cost of traditional institutional ventilator care.

Section 3. Provider Participation Requirements. To participate in the Model Waiver II program, a:

(1) Home health agency shall:

- (a) Be a currently participating Medicaid provider in accordance with 907 KAR 1:671;
- (b) Be currently enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and
- (c) Meet the home and community based waiver service provider requirements established in:
 - 1. 907 KAR 1:160; or
 - 2. 907 KAR 7:010; or

(2) Private duty nursing agency shall:

- (a) Be a currently participating Medicaid provider in accordance with 907 KAR 1:671;
- (b) Be currently enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and
- (c) Be a licensed private duty nursing agency in accordance with 902 KAR 20:370.

Section 4. Covered Services.

(1) The following shall be covered Model Waiver II services:

(a) Skilled nursing provided by:

- 1. A registered nurse; or
 - 2. A licensed practical nurse; or
- (b) Respiratory therapy.

(2) Model Waiver II services shall be provided by an individual employed by or under contract through a private duty nursing agency or home health agency as a:

- (a) Registered nurse;
- (b) Licensed practical nurse; or
- (c) Registered respiratory therapist.

Section 5. Payment for Services. The department shall reimburse a participating home health agency or private duty nursing agency for the provision of covered Model Waiver II services as established in this section.

(1) Reimbursement shall be as established by the following table:

<u>Service</u>	<u>Unit</u>	<u>Base Rate Effective January 1, 2025</u>
<u>Skilled Services by an LPN</u>	<u>15-minutes</u>	<u>\$11.58</u>
<u>Skilled Services by an RN</u>	<u>15-minutes</u>	<u>\$15.99</u>
<u>Skilled Services by an RN or LPN</u>	<u>15-minutes</u>	<u>\$15.99</u>
<u>Skilled Services by an RT</u>	<u>15-minutes</u>	<u>\$13.36</u>

~~[(2) based on a fixed fee for a unit of service provided for each covered service referenced in Section 4 of this administrative regulation with one (1) hour equal to one (1) unit of service.]~~

~~[(2)] [The fixed fee for skilled nursing services provided by:]~~

~~[(a)] [A registered nurse shall be thirty-one (31) dollars and ninety-eight (98) cents for each unit of service;]~~

~~[(b)] [A licensed practical nurse shall be twenty-nine (29) dollars and ten (10) cents for each unit of service; and]~~

~~[(c)] [A registered respiratory therapist shall be twenty-seven (27) dollars and forty-two (42) cents for each unit of service.]~~

~~[(3)] [Reimbursement shall not exceed sixteen (16) units of service per day.]~~

~~[(4)] Payment shall not be made for a service to an individual for whom it can reasonably be expected that the cost of the 1915(c) home and community based waiver program service furnished under this administrative regulation would exceed the cost of the service if provided in a hospital-based nursing facility.~~

Section 6. Maintenance of Records.

(1) A Model Waiver II service provider shall maintain:

(a) A clinical record for each participant, which shall contain:

- 1. Pertinent medical, nursing, and social history;
- 2. A person-centered service plan;
- 3. A copy of the MAP 350, Long Term Care Facilities and Home and Community Based Program Certification Form, signed by the

participant or the participant's legal representative at the time of application or reapplication and each recertification thereafter;

4. Documentation of all level of care determinations;
 5. All documentation related to prior authorizations including requests, approvals, and denials;
 6. Documentation that the participant or legal representative was informed of the procedure for reporting complaints; and
 7. Documentation of each service provided that shall include:
 - a. The date the service was provided;
 - b. The duration of the service;
 - c. The arrival and departure time of the provider, excluding travel time, if the service was provided at the participant's home;
 - d. Progress notes, which shall include documentation of changes, responses, and treatments utilized to evaluate the participant's needs; and
 - e. The signature of the service provider;
- (b) Each MAP-10[?] Waiver Services – Physician's Recommendation submitted regarding the participant in accordance with Section 2 of this administrative regulation; and
- (c) Incident reports as required by Section 7 of this administrative regulation if an incident with the participant occurs.
- (2)
- (a) Except as provided in paragraph (b) of this subsection, a clinical record or incident report shall be retained for at least six (6) years from the date that a covered service is provided.
- (b) If the participant is a minor, a clinical record or incident report shall be retained for three (3) years after the participant reaches the age of majority under state law, if that is a longer time period than the time period required by paragraph (a) of this subsection.
- (3) Upon request, a provider shall make information regarding service and financial records available to the:
- (a) Department;
 - (b) Cabinet for Health and Family Services, Office of Inspector General or its designee;
 - (c) United States Department for Health and Human Services or its designee;
 - (d) General Accounting Office or its designee;
 - (e) Office of the Auditor of Public Accounts or its designee; or
 - (f) Office of the Attorney General or its designee.

Section 7. Incident Reporting.

- (1)
- (a) There shall be two (2) classes of incidents.
- (b) The following shall be the two (2) classes of incidents:
1. An incident; or
 2. A critical incident.
- (2) An incident shall be any occurrence that impacts the health, safety, welfare, or lifestyle choice of a participant and includes:
- (a) A minor injury;
 - (b) A medication error without a serious outcome; or
 - (c) A behavior or situation that is not a critical incident.
- (3) A critical incident shall be an alleged, suspected, or actual occurrence of an incident that:
- (a) Can reasonably be expected to result in harm to a participant; and
 - (b) Shall include:
 1. Abuse, neglect, or exploitation;
 2. A serious medication error;
 3. Death;
 4. A homicidal or suicidal ideation;
 5. A missing person; or
 6. Other action or event that the provider determines may result in harm to the participant.
- (4)
- (a) If an incident occurs, the Model Waiver II provider shall:
1. Report the incident by making an entry into the MWMA that includes details regarding the incident; and
 2. Be immediately assessed for potential abuse, neglect, or exploitation.
- (b) If an assessment of an incident indicates that the potential for abuse, neglect, or exploitation exists:
1. The incident shall immediately be considered a critical incident;

2. The critical incident procedures established in subsection (5) of this section shall be followed; and

3. The Model Waiver II provider shall report the incident to the participant's registered nurse and participant's guardian, if the participant has a guardian, within twenty-four (24) hours of discovery of the incident.

- (5) If a critical incident occurs, the:
- (a) Individual who witnessed the critical incident or discovered the critical incident shall immediately:
 1. Act to ensure the health, safety, and welfare of the at-risk participant; and
 2. Report the critical incident by making an entry in the MWMA portal including details of the incident; and
 - (b) Model Waiver II provider shall:
 1. Conduct an immediate investigation and involve the participant's registered nurse in the investigation; and
 2. Prepare a report of the investigation, which shall be recorded in the MWMA portal and shall include:
 - a. Identifying information of the participant involved in the critical incident and the person reporting the critical incident;
 - b. Details of the critical incident; and
 - c. Relevant participant information including:
 - (i) A listing of recent medical concerns;
 - (ii) An analysis of causal factors; and
 - (iii) Recommendations for preventing future occurrences.
- (6) If a critical incident does not require reporting of abuse, neglect, or exploitation, the critical incident shall be reported via the MWMA within eight (8) hours of discovery.
- (7) If a death of a participant occurs, a Model Waiver II provider shall submit to the MWMA mortality data documentation within fourteen (14) days of the death including:
- (a) The participant's person-centered service plan at the time of death;
 - (b) Any current assessment forms regarding the participant;
 - (c) The participant's medication administration records from all service sites for the past three (3) months along with a copy of each prescription;
 - (d) Progress notes regarding the participant from all service elements for the past thirty (30) days;
 - (e) The results of the participant's most recent physical exam;
 - (f) All incident reports, if any exist, regarding the participant for the past six (6) months;
 - (g) Any medication error report, if any exists, related to the participant for the past six (6) months;
 - (h) A full life history of the participant including any update from the last version of the life history;
 - (i) Names and contact information for all staff members who provided direct care to the participant during the last thirty (30) days of the participant's life;
 - (j) Emergency medical services notes regarding the participant if available;
 - (k) The police report if available;
 - (l) A copy of:
 1. The participant's advance directive, medical order for scope of treatment, living will, or health care directive if applicable; and
 2. The cardiopulmonary resuscitation and first aid card for any provider's staff member who was present at the time of the incident that resulted in the participant's death;
 - (m) A record of all medical appointments or emergency room visits by the participant within the past twelve (12) months; and
 - (n) A record of any crisis training for any staff member present at the time of the incident that resulted in the participant's death.
- (8) A Model Waiver II provider shall report a medication error by making an entry into the MWMA.

Section 8. Use of Electronic Signatures. The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

Section 9. Federal Financial Participation. The department's coverage of and reimbursement for Model Waiver II services pursuant to this administrative regulation shall be contingent upon:

(1) Federal financial participation for the coverage and reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage and reimbursement.

Section 10. Appeal Rights.

(1) An appeal of a negative action regarding a Medicaid recipient shall be appealed in accordance with 907 KAR 1:563.

(2) An appeal of a negative action regarding a Medicaid beneficiary's eligibility shall be appealed in accordance with 907 KAR 1:560.

(3) An appeal of a negative action regarding a Medicaid provider shall be appealed in accordance with 907 KAR 1:671.

Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "MAP - 115 Application Intake - Participant Authorization", June 2015;

(b) "MAP 350, Long Term Care Facilities and Home and Community Based Program Certification Form", June 2015;

(c) "MAP-10 Waiver Services – Physician's Recommendation", June 2015;

(d) "MAP - 116 Service Plan – Participant Authorization", June 2015; and

(e) "MAP-351A, Medicaid Waiver Assessment", July 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:

(a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at <https://www.chfs.ky.gov/agencies/dms/dca/Pages/mlws.aspx> [<http://www.chfs.ky.gov/dms/incorporated.htm>].

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 20, 2024

FILED WITH LRC: December 23, 2024 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 24, 2025, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by February 17, 2025, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until February 28, 2025. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan Scott or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the service coverage and reimbursement policies for the Medicaid Model Waiver II services. This program enables individuals who have nursing facility level of care needs primarily due to needing to be on a ventilator for at least twelve (12) hours per day to be able to receive services in the home rather than being admitted to a nursing facility.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the service coverage and reimbursement policies for the Medicaid Model Waiver II 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 service coverage and reimbursement policies for the Medicaid Model Waiver II services.

(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 service coverage and reimbursement policies for the Medicaid Model Waiver II 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 delete and update the reimbursement methodology to reflect the approval of new federal 1915(c) waivers. The approvals allow for higher reimbursement for providers, and this administrative regulation is being updated to reflect the higher reimbursement. Other amendments were made to conform to KRS 13A drafting requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update reimbursement methodology to new, higher rates approved by the federal government.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by implementing a federally approved rate increase.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists with the effective administration of the statutes by establishing a process to update increased federal reimbursement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: DMS anticipates that up to 100 recipients will utilize the services available under this waiver.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required, regulated entities will be able to bill and receive a higher reimbursement.

(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 in the expanded reimbursement available for this waiver.

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

(a) Initially: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(b) On a continuing basis: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Cabinet for Health and Family Services, Department for Medicaid Services

(a) Estimate the following for the first year:

Expenditures: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 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 anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): N/A

(a) Estimate the following for the first year:

Expenditures: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 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 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): Enrolled providers providing Model Waiver II services.

(a) Estimate the following for the first year:

Expenditures: DMS does not anticipate additional expenditures for regulated entities.

Revenues: Participating providers will benefit from increased reimbursement.

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 anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6. Future slots and increases will be dependent on the state budgeting process and federal reimbursement requirements.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6. Future slots and increases will be dependent on the state budgeting process and federal reimbursement requirements.

(b) Methodology and resources used to determine the fiscal impact: The department worked with interested parties to gain input and perspectives as well as completed a multiyear process working with a contracted third party to re-design the 1915(c) waivers and reimbursement.

(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: This administrative regulation will provide additional reimbursement for all 1915(c) providers.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. 441.305(b).

(2) State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

(3) Minimum or uniform standards contained in the federal mandate. Federal approval is for a limited number of waiver slots.

(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.

STATEMENT OF EMERGENCY
907 KAR 1:835E.

This emergency amendment to an existing administrative regulation is being promulgated to implement reimbursement methodology that reflects the approval by the U.S. Centers for Medicare and Medicaid Services of new federal waivers issued pursuant to 42 U.S.C. Ch. 7, Sec. 1396n(c), also called "1915(c) waivers", effective January 1, 2025. The approval allows for higher reimbursement for providers and this administrative regulation is being updated to reflect the higher reimbursement. This emergency amendment to an existing administrative regulation is being filed pursuant to KRS 13A.190(1)(a)2., to preserve state and federal funding and ensure the most efficient use of funds, and also pursuant to KRS 13A.190(1)(a)1. to preserve the welfare of Medicaid recipients who qualify for a federal waiver issued pursuant to 42 U.S.C. Ch. 7, Sec. 1396n(c).

This emergency amendment will be filed with an ordinary amendment that is identical to this emergency amendment.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Long Term Services and Supports
(Emergency Amendment)

907 KAR 1:835E. Michelle P. waiver services and reimbursement.

EFFECTIVE: December 23, 2024

RELATES TO: KRS 17.165(1), (3), 202B.010(12)[205.520(3)], 205.5605, [205.5606], 205.5607, 205.635, 205.8451(9), 209.030, 311.840(3), 314.011(5), (9), 314.042, 319.010(6), 319.046, 319.053, 319.056, 319.064, 319A.010(3), (4), 327.010(2), 334A.020(9), 335.100, 335.300(2), 335.500(3), 369.101 to 369.120, 620.030, 34 C.F.R. Parts 300 to 399, 42 C.F.R. 400.203, 435.905(b), 483.430, 45 C.F.R. Parts 160, 162, 164, 440.180, 29 U.S.C. Chapter 16, 42 U.S.C. 1320d to 1320d-8

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606, 42 C.F.R. 440.180, 42 U.S.C. 1396a, 1396b, 1396d, 1396n

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 to comply with any requirement

VOLUME 51, NUMBER 8– February 1, 2025

that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage and reimbursement provisions for Michelle P. waiver services.

Section 1. Definitions.

(1) "1915(c) home and community based waiver services program" means a Kentucky Medicaid program established pursuant to and in accordance with 42 U.S.C. 1396n(c).

(2) "ADHC" means adult day health care.

(3) "ADHC center" means an adult day health care center licensed in accordance with 902 KAR 20:066.

(4) "ADHC services" means health-related services provided on a regularly-scheduled basis that ensure optimal functioning of a participant who does not require twenty-four (24) hour care in an institutional setting.

(5) "Advanced practice registered nurse" or "APRN" means a person who acts within his or her scope of practice and is licensed in accordance with KRS 314.042.

(6) "Assessment team" means a team which:

(a) Conducts assessment or reassessment services; and

(b) Consists of:

1. Two (2) registered nurses; or

2. One (1) registered nurse and one (1) of the following:

a. A social worker;

b. A certified psychologist with autonomous functioning;

c. A licensed psychological practitioner;

d. A licensed marriage and family therapist; or

e. A licensed professional clinical counselor.

(7) "Behavior support specialist" means an individual who has:

(a) A master's degree from an accredited institution with formal graduate course work in a behavioral science; and

(b) At least one (1) year of experience in behavioral programming.

(8) "Blended services" means a nonduplicative combination of Michelle P. waiver services identified in Section 6 of this administrative regulation and participant-directed services identified in Section 7 of this administrative regulation provided pursuant to a participant's approved person-centered service plan.

(9) "Budget allowance" is defined by KRS 205.5605(1).

(10) "Certified psychologist" means an individual who is a certified psychologist in accordance with KRS 319.056.

(11) "Covered services and supports" is defined by KRS 205.5605(3).

(12) "DCBS" means the Department for Community Based Services.

(13) "Department" means the Department for Medicaid Services or its designee.

(14) "Developmental disability" means a severe, chronic disability that:

(a) Is attributable to:

1. Cerebral palsy or epilepsy; or

2. Any other condition, excluding mental illness, closely related to an intellectual disability resulting in impairment of general intellectual functioning or adaptive behavior similar to that of an individual with an intellectual disability and which requires treatment or services similar to those required by persons with an intellectual disability;

(b) Is manifested prior to the individual's 22nd birthday;

(c) Is likely to continue indefinitely; and

(d) Results in substantial functional limitations in three (3) or more of the following areas of major life activity:

1. Self-care;

2. Understanding and use of language;

3. Learning;

4. Mobility;

5. Self-direction; or

6. Capacity for independent living.

(15) "Direct care staff" means an individual hired by a Michelle P. waiver provider to provide services to the participant and who:

(a)

1.

a. Is eighteen (18) years of age or older; and

b. Has a high school diploma or GED; or

2.

a. Is twenty-one (21) years of age or older; and

b. Is able to communicate with a participant in a manner that the participant or participant's legal representative or family member can understand;

(b) Has a valid Social Security number or valid work permit if not a U.S. citizen;

(c) Can understand and carry out simple instructions;

(d) Has the ability to keep simple records; and

(e) Is managed by the provider's supervisory staff.

(16) "Electronic signature" is defined by KRS 369.102(8).

(17) "Federal financial participation" is defined in 42 C.F.R. 400.203.

(18) "Home health agency" means an agency that is:

(a) Licensed in accordance with 902 KAR 20:081; and

(b) Medicare and Medicaid certified.

(19) "ICF-IID" means an intermediate care facility for individuals with an intellectual disability.

(20) "Intellectual disability" means an individual has:

(a) Significantly sub-average intellectual functioning;

(b) An intelligence quotient of seventy (70) or below;

(c) Concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:

1. Communication;

2. Self-care;

3. Home living;

4. Social or interpersonal skills;

5. Use of community resources;

6. Self-direction;

7. Functional academic skills;

8. Work;

9. Leisure; or

10. Health and safety; and

(d) Had an onset prior to eighteen (18) years of age.

(21) "Intellectual disability professional" means an individual who:

(a) Has at least one (1) year of experience working with individuals with an intellectual or developmental disability;

(b) Meets the personnel and training requirements established in Section 2 of this administrative regulation; and

(c)

1. Is a doctor of medicine or osteopathy;

2. Is a registered nurse; or

3. Holds a bachelor's degree from an accredited institution in a human services field.

(22) "Level of care determination" means a determination that an individual meets the Michelle P. waiver service level of care criteria established in Section 5 of this administrative regulation.

(23) "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(24) "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

(25) "Licensed practical nurse" or "LPN" means a person who:

(a) Meets the definition of KRS 314.011(9); and

(b) Works under the supervision of a registered nurse.

(26) "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3).

(27) "Licensed psychological associate" means an individual who meets the requirements established in KRS 319.064.

(28) "Licensed psychological practitioner" means an individual who:

(a) Meets the requirements established in KRS 319.053; or

(b) Is a certified psychologist with autonomous functioning.

(29) "Licensed psychologist" means an individual who:

(a) Currently possesses a licensed psychologist license in

VOLUME 51, NUMBER 8– February 1, 2025

accordance with KRS 319.010(6); and

(b) Meets the licensed psychologist requirements established in 201 KAR Chapter 26.

(30) "MWMA" means the Kentucky Medicaid Waiver Management Application internet portal located at <https://www.chfs.ky.gov/agencies/dms/dca/Pages/mwma.aspx> [<http://chfs.ky.gov/dms/mwma.htm>].

(31) "Normal babysitting" means general care provided to a child which includes custody, control, and supervision.

(32) "Occupational therapist" is defined by KRS 319A.010(3).

(33) "Occupational therapy assistant" is defined by KRS 319A.010(4).

(34) "Participant" means an individual who:

(a) Is a recipient as defined by KRS 205.8451(9);

(b) Meets the Michelle P. waiver service level of care criteria established in Section 5 of this administrative regulation; and

(c) Meets the eligibility criteria for Michelle P. waiver services established in Section 4 of this administrative regulation.

(35) "Participant-directed services" or "PDS" means an option established by KRS 205.5606 within the 1915(c) home and community based waiver services programs that allows participants to receive non-medical services in which the individual:

(a) Assists with the design of the program;

(b) Chooses the providers of services; and

(c) Directs the delivery of services to meet his or her needs.

(36) "Patient liability" means the financial amount an individual is required to contribute toward cost of care in order to maintain Medicaid eligibility.

(37) "Person-centered service plan" means a written individualized plan of services for a participant that meets the requirements established in Section 8 of this administrative regulation.

(38) "Physical therapist" is defined by KRS 327.010(2).

(39) "Physical therapist assistant" means a skilled health care worker who:

(a) Is certified by the Kentucky Board of Physical Therapy; and

(b) Performs physical therapy and related duties as assigned by the supervising physical therapist.

(40) "Physician assistant" or "PA" is defined by KRS 311.840(3).

(41) "Plan of treatment" means a care plan used by an ADHC center.

(42) "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

(43) "Qualified professional in the area of intellectual disabilities" is defined by KRS 202B.010(12).

(44) "Registered nurse" or "RN" means a person who:

(a) Meets the definition established in KRS 314.011(5); and

(b) Has at least one (1) year of experience as a licensed practical nurse or a registered nurse.

(45) "Representative" is defined by KRS 205.5605(6).

(46) "Sex crime" is defined by KRS 17.165(1).

(47) "Social worker" means a person with a bachelor's degree in social work, sociology, or a related field.

(48) "Speech-language pathologist" is defined by KRS 334A.020(3).

(49) "State plan" is defined by 42 C.F.R. 400.203.

(50) "Supervisory staff" means an individual employed by the Michelle P. waiver provider who shall manage direct care staff and who:

(a)

1.

a. Is eighteen (18) years of age or older; and

b. Has a high school diploma or GED; or

2. Is twenty-one (21) years of age or older;

(b) Has a minimum of one (1) year experience in providing services to individuals with an intellectual or developmental disability;

(c) Is able to adequately communicate with the participants, staff, and family members;

(d) Has a valid Social Security number or valid work permit if not a U.S. citizen; and

(e) Has the ability to perform required record keeping.

(51) "Support broker" means an individual chosen by a participant from an agency designated by the department to:

(a) Provide training, technical assistance, and support to the participant; and

(b) Assist the participant in any other aspects of PDS.

(52) "Support spending plan" means a plan for a participant that identifies the:

(a) PDS requested;

(b) Employee name;

(c) Hourly wage;

(d) Hours per month;

(e) Monthly pay;

(f) Taxes;

(g) Budget allowance; and

(h) Twelve (12) month budget.

(53) "Violent crime" is defined by KRS 17.165(3).

Section 2. Non-PDS Provider Participation Requirements.

(1) In order to provide Michelle P. waiver services, excluding participant-directed services, a provider shall be:

(a) Licensed in accordance with:

1. 902 KAR 20:066 if an adult day health care provider;

2. 902 KAR 20:078 if a group home;

3. 902 KAR 20:081 if a home health agency; or

4. 902 KAR 20:091 if a community mental health center; or

(b) Certified by the department in accordance with 907 KAR 12:010 if the provider's type is not listed in paragraph (a) of this subsection.

(2) A Michelle P. waiver provider shall:

(a) Comply with:

1. 907 KAR 1:671;

2. 907 KAR 1:672;

3. 907 KAR 1:673;

4. This administrative regulation;

5. The Health Insurance Portability and Accountability Act, 42 U.S.C. 1320d-2, and 45 C.F.R. Parts 160, 162, and 164;

6. 42 U.S.C. 1320d to 1320d-8; and

7. The provider participation requirements for Supports for Community Living (SCL)[SCL] providers established in 907 KAR 12:010, Section 3;

(b) Not enroll a participant for whom the provider is unequipped or unable to provide Michelle P. waiver services; and

(c) Be permitted to accept or not accept a participant.

(3) In order to provide a Michelle P. waiver service in accordance with Section 4 of this administrative regulation, a Michelle P. waiver service provider:

(a) Shall, for a potential employee or volunteer, obtain the results of a Vulnerable Adult Maltreatment[~~Caregiver Misconduct~~] Registry check as described in 922 KAR 5:120 or an equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to employment or volunteerism; and

(b) May use Kentucky's national background check program established by 906 KAR 1:190 to satisfy the background check requirements of paragraph (a) of this subsection.

Section 3. Maintenance of Records.

(1) A Michelle P. waiver provider shall maintain:

(a) A clinical record in the MWMA for each participant that shall contain the following:

1. Pertinent medical, nursing, and social history;

2. A comprehensive assessment entered on form MAP 351, Medicaid Waiver Assessment, and signed by the:

a. Assessment team; and

b. Department;

3. A person-centered service plan completed in accordance with Section 8 of this administrative regulation;

4. A copy of the MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form, signed by the participant or his or her legal representative at the time of application or reapplication and each recertification thereafter;

5. The name of the case manager;

6. Documentation of all level of care determinations;

VOLUME 51, NUMBER 8– February 1, 2025

7. All documentation related to prior authorizations, including requests, approvals, and denials;

8. Documentation of each contact with, or on behalf of, a participant;

9. Documentation that the participant receiving ADHC services or legal representative was provided a copy of the ADHC center's posted hours of operation;

10. Documentation that the participant or legal representative was informed of the procedure for reporting complaints; and

11. Documentation of each service provided. The documentation shall include:

- a. The date the service was provided;
 - b. The duration of the service;
 - c. The arrival and departure time of the provider, excluding travel time, if the service was provided at the participant's home;
 - d. Itemization of each service delivered;
 - e. The participant's arrival and departure time, excluding travel time, if the service was provided outside the participant's home;
 - f. Progress notes, which shall include documentation of changes, responses, and treatments utilized to meet the participant's needs; and
 - g. The signature of the service provider; and
- (b) Fiscal reports, service records, and incident reports regarding services provided. The reports and records shall be retained for the longer of:

1. At least six (6) years from the date that a covered service is provided; or

2. For a minor, three (3) years after the participant reaches the age of majority under state law.

(2) Upon request, a Michelle P. waiver provider shall make information regarding service and financial records available to the:

- (a) Department;
- (b) Kentucky Cabinet for Health and Family Services, Office of Inspector General or its designee;
- (c) United States Department for Health and Human Services or its designee;
- (d) United States Government Accountability Office or its designee;
- (e) Kentucky Office of the Auditor of Public Accounts or its designee; or
- (f) Kentucky Office of the Attorney General or its designee.

Section 4. Participant Eligibility Determinations and Redeterminations.

(1) A Michelle P. waiver service shall be provided to a Medicaid-eligible participant who:

(a) Is determined by the department to meet the Michelle P. waiver service level of care criteria in accordance with Section 5 of this administrative regulation; and

(b) Would, without waiver services, be admitted to an ICF-IID or a nursing facility.

(2) To apply for participation in the program, an individual or individual's representative shall:

(a) Apply for 1915(c) home and community based waiver services via the MWMA; and

(b) Complete and upload into the MWMA a MAP – 115 Application Intake – Participant Authorization.

(3) The department shall perform a Michelle P. waiver service level of care determination for each participant at least once every twelve (12) months or more often if necessary.

(4) A Michelle P. waiver service shall not be provided to an individual who:

- (a) Does not require a service other than:
 1. An environmental and minor home adaptation;
 2. Case management; or
 3. An environmental and minor home adaptation and case management;
- (b) Is an inpatient of:
 1. A hospital;
 2. A nursing facility; or
 3. An ICF-IID;

(c) Is a resident of a licensed personal care home; or
(d) Is receiving services from another 1915(c) home and community based waiver services program.

(5) A Michelle P. waiver provider shall inform a participant or the participant's legal representative of the choice to receive:

- (a) Michelle P. waiver services; or
- (b) Institutional services.

(6) An eligible participant or the participant's legal representative shall select a participating Michelle P. waiver provider from which the participant wishes to receive Michelle P. waiver services.

(7) A Michelle P. waiver provider shall notify the department in writing electronically or in print of a participant's:

- (a) Termination from the Michelle P. waiver program;
- (b) Admission to an ICF-IID or nursing facility for less than sixty (60) consecutive days;
- (c) Return to the Michelle P. waiver program from an ICF-IID or nursing facility within sixty (60) consecutive days;
- (d) Admission to a hospital; or
- (e) Transfer to another waiver program within the department.

(8) Involuntary termination of a service to a participant by a Michelle P. waiver provider shall require:

(a) Simultaneous notice in writing electronically or in print to the participant or legal representative, the case manager or support broker, and the department at least thirty (30) days prior to the effective date of the action, which shall include:

1. A statement of the intended action;
 2. The basis for the intended action;
 3. The authority by which the action is taken; and
 4. The participant's right to appeal the intended action through the provider's appeal or grievance process; and
- (b) The case manager or support broker in conjunction with the provider to:

1. Provide the participant with the name, address, and telephone number of each current provider in the state;
2. Provide assistance to the participant in making contact with another provider;
3. Arrange transportation for a requested visit to a provider site;
4. Provide a copy of pertinent information to the participant or legal representative;
5. Ensure the health, safety, and welfare of the participant until an appropriate placement is secured;
6. Continue to provide supports until alternative services are secured; and
7. Provide assistance to ensure a safe and effective service transition.

Section 5. Michelle P. Waiver Service Level of Care Criteria.

(1) An individual shall be determined to have met the Michelle P. waiver service level of care criteria if the individual:

(a) Requires physical or environmental management or rehabilitation, and:

1. Has a developmental disability or significantly sub-average intellectual functioning;
2. Requires a protected environment while overcoming the effects of a developmental disability or sub-average intellectual functioning while:

- a. Learning fundamental living skills;
 - b. Obtaining educational experiences which will be useful in self-supporting activities; or
 - c. Increasing awareness of his or her environment; or
3. Has a primary psychiatric diagnosis if:
- a. The individual possesses care needs listed in subparagraph 1 or 2 of this paragraph;
 - b. The individual's mental care needs are adequately handled in an ICF-IID; and
 - c. The individual does not require psychiatric inpatient treatment; or

- (b) Has a developmental disability and meets the:
 1. High-intensity nursing care patient status criteria pursuant to 907 KAR 1:022, Section 4(2); or
 2. Low-intensity nursing care patient status criteria pursuant to 907 KAR 1:022, Section 4(3).

(2) An individual who does not require a planned program of active treatment to attain or maintain an optimal level of functioning shall not meet the Michelle P. waiver service level of care criteria.

(3) The department shall not determine that an individual fails to meet the Michelle P. waiver service level of care criteria solely due to the individual's age, length of stay in an institution, or history of previous institutionalization if the individual meets the criteria established in subsection (1) of this section.

Section 6. Covered Services.

(1) A Michelle P. waiver service shall:

(a) Be prior authorized by the department to ensure that the service or modification of the service meets the needs of the participant;

(b) Be provided pursuant to a person-centered service plan or, for a PDS, pursuant to a person-centered service plan and support spending plan;

(c) Except for a PDS, not be provided by a member of the participant's family. A PDS may be provided by a participant's family member; and

(d) Be accessed within sixty (60) days of the date of prior authorization.

(2) To request prior authorization, a provider shall submit to the department a:

(a) Completed MAP 10, Waiver Services Physician's Recommendation, that has been signed and dated by:

1. A physician;
2. An advanced practice registered nurse;
3. A physician assistant; or
4. An intellectual disability professional; and

(b) Person-centered service plan and MAP 351, Medicaid Waiver Assessment.

(3) Covered Michelle P. waiver services shall include:

(a) A comprehensive assessment, which shall:

1. Be completed by the department;

2. Identify a participant's needs and the services the participant or the participant's family cannot manage or arrange for on the participant's behalf;

3. Evaluate a participant's physical health, mental health, social supports, and environment;

4. Be requested by an individual seeking Michelle P. waiver services or the individual's family, legal representative, physician, physician assistant, APRN, or intellectual disability professional;

5. Be conducted by an assessment team; and

6. Include at least one (1) face-to-face home visit by a member of the assessment team with the participant and, if appropriate, the participant's family;

(b) A reassessment service, which shall:

1. Be completed by the department;

2. Determine the continuing need for Michelle P. waiver services and, if appropriate, PDS;

3. Be performed at least every twelve (12) months;

4. Be conducted using the same procedures used in an assessment service; and

5. Not be retroactive;

(c) Case management, which shall meet the requirements established in Section 9 of this administrative regulation, and which shall:

1. Consist of coordinating the delivery of direct and indirect services to a participant;

2. Be provided by a case manager who shall:

a. Arrange for a service but not provide a service directly;

b. Contact the participant monthly through a face-to-face visit at the participant's home, in the ADHC center, or the adult day training provider's location; and

c. Assure that service delivery is in accordance with a participant's person-centered service plan;

3. Not include a group conference;

4. Include documentation with a detailed monthly summary note in the MWMA, which includes:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the person-centered service plan;

c. The signature, date of signature, and title of the individual preparing the note; and

d. Documentation of at least one (1) face-to-face meeting between the case manager and participant, family member, or legal representative;

5. Include requiring a participant or legal representative to sign a MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form, at the time of application or reapplication and at each recertification to document that the individual was informed of the choice to receive Michelle P. waiver services or institutional services; and

6. Not be provided to a participant by an agency if the agency provides any other Michelle P. waiver service to the participant;

(d) A homemaker service, which shall consist of general household activities and shall:

1. Be provided by direct care staff;

2. Be provided to a participant:

a. Who is functionally unable, but would normally perform age-appropriate homemaker tasks; and

b. If the caregiver regularly responsible for homemaker activities is temporarily absent or functionally unable to manage the homemaking activities; and

3. Include documentation with a detailed note in the MWMA, which shall include:

a. The month, day, and year for the time period each note covers; and

b. The signature, date of signature, and title of the individual preparing the note;

(e) A personal care service, which shall:

1. Be age appropriate;

2. Consist of assisting a participant with eating, bathing, dressing, personal hygiene, or other activities of daily living;

3. Be provided by direct care staff;

4. Be provided to a participant:

a. Who does not need highly skilled or technical care;

b. For whom services are essential to the participant's health and welfare and not for the participant's family; and

c. Who needs assistance with age-appropriate activities of daily living; and

5. Include documentation with a detailed note in the MWMA, which shall include:

a. The month, day, and year for the time period each note covers;

b. The signature, date of signature, and title of the individual preparing the note; and

c. The beginning and ending time of service;

(f) An attendant care service, which shall consist of hands-on care that is:

1. Provided by direct care staff to a participant who:

a. Is medically stable but functionally dependent and requires care or supervision twenty-four (24) hours per day; and

b. Has a family member or other primary caretaker who is employed or attending school and is not able to provide care during working hours;

2. Not of a general housekeeping nature;

3. Not provided to a participant who is receiving any of the following Michelle P. waiver services:

a. Personal care;

b. Homemaker;

c. ADHC;

d. Adult day training;

e. Community living supports; or

f. Supported employment; and

4. Include documentation with a detailed note in the MWMA, which shall include:

a. The month, day, and year for the time period each note covers;

b. The signature, date of signature, and title of the individual preparing the note; and

c. Beginning and ending time of service;

(g) A respite care service, which shall be short term care based on the absence or need for relief of the primary caretaker and:

1. Be provided by direct care staff who provide services at a level that appropriately and safely meets the medical needs of the participant;

2. Be provided to a participant who has care needs beyond normal babysitting;

3. Be used no less than every six (6) months; and

4. Include documentation with a detailed note in the MWMA, which shall include:

a. The month, day, and year for the time period each note covers;

b. The signature, date of signature, and title of the individual preparing the note; and

c. The beginning and ending time of service;

(h) An environmental and minor home adaptation service, which shall be a physical adaptation to a home that is necessary to ensure the health, welfare, and safety of a participant and which shall:

1. Meet all applicable safety and local building codes;

2. Relate strictly to the participant's disability and needs;

3. Exclude an adaptation or improvement to a home that has no direct medical or remedial benefit to the participant;

4. Be submitted on a MAP 95 Request for Equipment Form that is uploaded into the MWMA for prior authorization; and

5. Include documentation with a detailed note in the MWMA, which shall include:

a. The month, day, and year for the time period each note covers; and

b. The signature, date of signature, and title of the individual preparing the note;

(i) Occupational therapy, which shall be:

1. A physician ordered evaluation of a participant's level of functioning by applying diagnostic and prognostic tests;

2. Physician-ordered services in a specified amount and duration to guide a participant in the use of therapeutic, creative, and self-care activities to assist the participant in obtaining the highest possible level of functioning;

3. Training of other Michelle P. waiver providers on improving the level of functioning;

4. Exclusive of maintenance or the prevention of regression;

5. Provided by an occupational therapist or an occupational therapy assistant supervised by an occupational therapist in accordance with 201 KAR 28:130; and

6. Documented with a detailed staff note in the MWMA, which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the person-centered service plan; and

c. The signature, date of signature, and title of the individual preparing the note;

(j) Physical therapy, which shall:

1. Be a physician-ordered evaluation of a participant by applying muscle, joint, and functional ability tests;

2. Be physician-ordered treatment in a specified amount and duration to assist a participant in obtaining the highest possible level of functioning;

3. Include training of other Michelle P. waiver providers on improving the level of functioning;

4. Be exclusive of maintenance or the prevention of regression;

5. Be provided by a physical therapist or a physical therapist assistant supervised by a physical therapist in accordance with 201 KAR 22:001 and 201 KAR 22:053; and

6. Be documented with a detailed monthly summary note in the MWMA, which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression or lack of progression toward outcomes identified in the person-centered service plan; and

c. The signature, date of signature, and title of the individual preparing the note;

(k) Speech language pathology services, which shall:

1. Be a physician-ordered evaluation of a participant with a speech or language disorder;

2. Be a physician-ordered habilitative service in a specified amount and duration to assist a participant with a speech and language disability in obtaining the highest possible level of functioning;

3. Include training of other Michelle P. waiver providers on improving the level of functioning;

4. Be provided by a speech-language pathologist; and

5. Be documented with a detailed monthly summary note in the MWMA, which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the person-centered service plan; and

c. The signature, date of signature, and title of the individual preparing the note;

(l) An adult day training service, which shall:

1. Support the participant in daily, meaningful routines in the community;

2. Stress training in:

a. The activities of daily living;

b. Self-advocacy;

c. Adaptive and social skills; and

d. Vocational skills;

3. Be provided in a community setting that may:

a. Be a fixed location; or

b. Occur in public venues;

4. Not be diversional in nature;

5. If provided on site:

a. Include facility-based services provided on a regularly-scheduled basis;

b. Lead to the acquisition of skills and abilities to prepare the participant for work or community participation; or

c. Prepare the participant for transition from school to work or adult support services;

6. If provided off site:

a. Include services provided in a variety of community settings;

b. Provide access to community-based activities that cannot be provided by natural or other unpaid supports;

c. Be designed to result in increased ability to access community resources without paid supports;

d. Provide the opportunity for the participant to be involved with other members of the general population; and

e. Be provided as:

(i) An enclave or group approach to training in which participants work as a group or are dispersed individually throughout an integrated work setting with people without disabilities;

(ii) A mobile crew performing work in a variety of community businesses or other community settings with supervision by the provider; or

(iii) An entrepreneurial or group approach to training for participants to work in a small business created specifically by or for the participant or participants;

7. Ensure that any participant performing productive work that benefits the organization is paid commensurate with compensation to members of the general work force doing similar work;

8. Require that an adult day training service provider conduct, at least annually, an orientation informing the participant of supported employment and other competitive opportunities in the community;

9. Be provided at a time mutually agreed to by the participant and Michelle P. waiver provider;

10.

a. Be provided to participants of age twenty-two (22) years or older; or

b. Be provided to participants of age sixteen (16) to twenty-one (21) years as a transition process from school to work or adult support services; and

11. Be documented in the MWMA with:

a. A detailed monthly summary note, which shall include:

(i) The month, day, and year for the time period each note covers;

(ii) Progression, regression, and maintenance toward outcomes identified in the person-centered service plan; and

(iii) The signature, date of signature, and title of the individual preparing the note; and

b. A time and attendance record, which shall include:

(i) The date of service;

(ii) The beginning and ending time of the service;

(iii) The location of the service; and

(iv) The signature, date of signature, and title of the individual providing the service;

(m) A supported employment service, which shall:

1. Be intensive, ongoing support for a participant to maintain paid employment in an environment in which an individual without a disability is employed;
2. Include attending to a participant's personal care needs;
3. Be provided in a variety of settings;
4. Be provided on a one-to-one basis;
5. Be unavailable under a program funded by either 29 U.S.C. Chapter 16 or 34 C.F.R. Subtitle B, Chapter III (34 C.F.R. Parts 300 to 399), proof of which shall be documented in the participant's file;
6. Exclude work performed directly for the supported employment provider;
7. Be provided by a staff person who has completed a supported employment training curriculum conducted by staff of the cabinet or its designee;
8. Be documented in the MWMA by:
 - a. A detailed monthly summary note, which shall include:
 - (i) The month, day, and year for the time period each note covers;
 - (ii) Progression, regression, and maintenance toward outcomes identified in the person-centered service plan; and
 - (iii) The signature, date of signature, and title of the individual preparing the note; and
 - b. A time and attendance record, which shall include:
 - (i) The date of service;
 - (ii) The beginning and ending time of the service;
 - (iii) The location of the service; and
 - (iv) The signature, date of signature, and title of the individual providing the service;

(n) A behavioral support service, which shall:

1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;
2. Be provided to assist the participant to learn new behaviors that are directly related to existing challenging behaviors or functionally equivalent replacement behaviors for identified challenging behaviors;
3. Include a functional assessment of the participant's behavior, which shall include:
 - a. An analysis of the potential communicative intent of the behavior;
 - b. The history of reinforcement for the behavior;
 - c. Critical variables that preceded the behavior;
 - d. Effects of different situations on the behavior; and
 - e. A hypothesis regarding the motivation, purpose, and factors that maintain the behavior;
4. Include the development of a behavioral support plan, which shall:
 - a. Be developed by the behavior support specialist;
 - b. Be implemented by Michelle P. waiver provider staff in all relevant environments and activities;
 - c. Be revised as necessary;
 - d. Define the techniques and procedures used;
 - e. Be designed to equip the participant to communicate his or her needs and to participate in age-appropriate activities;
 - f. Include the hierarchy of behavior interventions ranging from the least to the most restrictive;
 - g. Reflect the use of positive approaches; and
 - h. Prohibit the use of restraints, seclusion, corporal punishment, verbal abuse, and any procedure that denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;
5. Include the provision of training to other Michelle P. waiver providers concerning implementation of the behavioral support plan;

6. Include the monitoring of a participant's progress, which shall be accomplished by:

- a. The analysis of data concerning the frequency, intensity, and duration of a behavior; and
- b. The reports of a Michelle P. waiver provider involved in implementing the behavior support plan;

7. Provide for the design, implementation, and evaluation of systematic environmental modifications;

8. Be provided by a behavior support specialist; and

9. Be documented in the MWMA by a detailed staff note, which shall include:

- a. The date of service;
- b. The beginning and ending time; and
- c. The signature, date of signature, and title of the behavior support specialist;

(o) An ADHC service, which shall:

1. Be provided to a participant who is at least twenty-one (21) years of age;
2. Include the following basic services and necessities provided to participants during the posted hours of operation:
 - a. Skilled nursing services provided by an RN or LPN, including ostomy care, urinary catheter care, decubitus care, tube feeding, venipuncture, insulin injections, tracheotomy care, or medical monitoring;
 - b. Meal service corresponding with hours of operation with a minimum of one (1) meal per day and therapeutic diets as required;
 - c. Snacks;
 - d. Supervision by an RN;
 - e. Age and diagnosis appropriate daily activities; and
 - f. Routine services that meet the daily personal and health care needs of a participant, including:
 - (i) Monitoring of vital signs;
 - (ii) Assistance with activities of daily living; and
 - (iii) Monitoring and supervision of self-administered medications, therapeutic programs, and incidental supplies and equipment needed for use by a participant;
3. Include developing, implementing, and maintaining nursing policies for nursing or medical procedures performed in the ADHC center;
4. Include respite care services pursuant to paragraph (g) of this subsection;
5. Be provided to a participant by the health team in an ADHC center, which may include:
 - a. A physician;
 - b. A physician assistant;
 - c. An APRN;
 - d. An RN;
 - e. An LPN;
 - f. An activities director;
 - g. A physical therapist;
 - h. A physical therapist assistant;
 - i. An occupational therapist;
 - j. An occupational therapy assistant;
 - k. A speech-language pathologist;
 - l. A social worker;
 - m. A nutritionist;
 - n. A health aide;
 - o. An LPCC;
 - p. An LMFT;
 - q. A certified psychologist with autonomous functioning; or
 - r. A licensed psychological practitioner; and
6. Be provided pursuant to a plan of treatment that shall:
 - a. Be developed and signed by each member of the plan of treatment team, which shall include the participant or a legal representative of the participant;
 - b. Include pertinent diagnoses, mental status, services required, frequency of visits to the ADHC center, prognosis, rehabilitation potential, functional limitation, activities permitted, nutritional requirements, medication, treatment, safety measures to protect against injury, instructions for timely discharge, and other pertinent information; and
 - c. Be developed annually from information on the MAP 351, Medicaid Waiver Assessment, and revised as needed; and

- (p) Community living supports, which shall:
 - 1. Be provided to facilitate independence and promote integration into the community for a participant residing in his or her own home or in his or her family's home;
 - 2. Be supports and assistance that shall be related to chosen outcomes, not be diversional in nature, and may include:
 - a. Routine household tasks and maintenance;
 - b. Activities of daily living;
 - c. Personal hygiene;
 - d. Shopping;
 - e. Money management;
 - f. Medication management;
 - g. Socialization;
 - h. Relationship building;
 - i. Leisure choices;
 - j. Participation in community activities;
 - k. Therapeutic goals; or
 - 3. Nonmedical care not requiring nurse or physician intervention;
 - 4. Not replace other work or day activities;
 - 5. Be provided on a one-on-one basis;
 - 6. Not be provided at an adult day training or children's day habilitation site;
 - 7. Be documented in the MWMA by:
 - a. A time and attendance record, which shall include:
 - (i) The date of the service;
 - (ii) The beginning and ending time of the service; and
 - (iii) The signature, date of signature, and title of the individual providing the service; and
 - b. A detailed monthly summary note, which shall include:
 - (i) The month, day, and year for the time period each note covers;
 - (ii) Progression, regression, and maintenance toward outcomes identified in the person-centered service plan; and
 - (iii) The signature, date of signature, and title of the individual preparing the summary note; and
 - 7. Be limited to sixteen (16) hours per day alone or in combination with adult day training and supported employment.

Section 7. Participant-Directed Services.

- (1) Covered services and supports provided to a participant receiving PDS shall be nonmedical and include:
 - (a) A home and community support service, which shall:
 - 1. Be available only as participant-directed services;
 - 2. Be provided in the participant's home or in the community;
 - 3. Be based upon therapeutic goals and not be diversional in nature;
 - 4. Not be provided to an individual if the same or similar service is being provided to the individual via non-PDS Michelle P. waiver services; and
 - 5. Include:
 - a. Assistance, support, or training in activities including meal preparation, laundry, or routine household care or maintenance;
 - b. Activities of daily living including bathing, eating, dressing, personal hygiene, shopping, or the use of money;
 - c. Reminding, observing, or monitoring of medications;
 - d. Nonmedical care that does not require a nurse or physician intervention;
 - e. Respite; or
 - f. Socialization, relationship building, leisure choice, or participation in generic community activities;
 - (b) Goods and services, which shall:
 - 1. Be individualized;
 - 2. Be utilized to reduce the need for personal care or to enhance independence within the home or community of the participant;
 - 3. Not include experimental goods or services; and
 - 4. Not include chemical or physical restraints;
 - (c) A community day support service, which shall:
 - 1. Be available only as participant-directed services;
 - 2. Be provided in a community setting;
 - 3. Be tailored to the participant's specific personal outcomes related to the acquisition, improvement, and retention of skills and abilities to prepare and support the participant for work or community

- activities, socialization, leisure, or retirement activities;
- 4. Be based upon therapeutic goals and not be diversional in nature; and
- 5. Not be provided to an individual if the same or similar service is being provided to the individual via non-PDS Michelle P. waiver services; or
- (d) Financial management, which shall:
 - 1. Include managing, directing, or dispersing a participant's funds identified in the participant's approved PDS budget;
 - 2. Include payroll processing associated with the individuals hired by a participant or participant's representative;
 - 3. Include withholding local, state, and federal taxes and making payments to appropriate tax authorities on behalf of a participant;
 - 4. Be performed by an entity:
 - a. Enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and
 - b. With at least two (2) years of experience working with individuals possessing the same or similar level of care needs as those referenced in Section 5 of this administrative regulation;
 - 5. Include preparing fiscal accounting and expenditure reports for:
 - a. A participant or participant's representative; and
 - b. The department.
- (2) To be covered, a PDS shall be specified in a person-centered service plan.
- (3) Reimbursement for a PDS shall not exceed the department's allowed reimbursement for the same or similar service provided in a non-PDS Michelle P. waiver setting except that respite may be provided in excess of the cap established in Section 14(2) of this administrative regulation if:
 - (a) Necessary per the participant's person-centered service plan; and
 - (b) Approved by the department in accordance with subsection (13) of this section.
- (4) A participant, including a married participant, shall choose providers and a participant's choice shall be reflected or documented in the person-centered service plan.
- (5)
 - (a) A participant may designate a representative to act on the participant's behalf.
 - (b) The PDS representative shall:
 - 1. Be twenty-one (21) years of age or older;
 - 2. Not be monetarily compensated for acting as the PDS representative or providing a PDS; and
 - 3. Be appointed by the participant on a MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)/Participant Directed Services (PDS).
 - (6) A participant may voluntarily terminate PDS by completing a MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)/Participant Directed Services (PDS), and submitting it to the support broker.
 - (7) The department shall immediately terminate a participant from PDS if:
 - (a) Imminent danger to the participant's health, safety, or welfare exists;
 - (b) The participant fails to pay patient liability;
 - (c) The participant's person-centered service plan indicates he or she requires more hours of service than the program can provide; thus, jeopardizing the participant's safety and welfare due to being left alone without a caregiver present; or
 - (d) The participant, caregiver, family, or guardian threatens or intimidates a support broker or other PDS staff.
 - (8) The department may terminate a participant from PDS if it determines that the participant's PDS provider has not adhered to the person-centered service plan.
 - (9) Except for a termination required by subsection (7) of this section, prior to a participant's termination from PDS, the support broker shall:
 - (a) Notify the assessment or reassessment service provider of potential termination;
 - (b) Assist the participant in developing a resolution and prevention plan;

VOLUME 51, NUMBER 8— February 1, 2025

(c) Allow at least thirty (30) but no more than ninety (90) days for the participant to resolve the issue, develop and implement a prevention plan, or designate a PDS representative;

(d) Complete, and submit to the department, a MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)/Participant Directed Services (PDS), terminating the participant from PDS if the participant fails to meet the requirements in paragraph (c) of this subsection; and

(e) Assist the participant in transitioning back to traditional Michelle P. waiver services.

(10) Upon an involuntary termination of PDS, the department shall:

(a) Notify a participant in writing of its decision to terminate the participant's PDS participation; and

(b) Inform the participant of the right to appeal the department's decision in accordance with Section 16 of this administrative regulation.

(11) A PDS provider shall:

(a) Be selected by the participant;

(b) Submit a completed Kentucky Consumer Directed Options/Participant Directed Services Employee/Provider Contract to the support broker;

(c) Be eighteen (18) years of age or older;

(d)

1. Be a citizen of the United States with a valid Social Security number; or

2. Possess a valid work permit if not a U.S. citizen;

(e) Be able to communicate effectively with the participant, participant's representative, or family;

(f) Be able to understand and carry out instructions;

(g) Be able to keep records as required by the participant;

(h) Submit to a criminal background check from the Kentucky Administrative Office of the Courts and equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months prior to being a PDS provider;

(i) Submit to a check of the:

1. Nurse Aide Abuse Registry maintained in accordance with 906 KAR 1:100 and not be found on the registry;

2. ~~Vulnerable Adult Maltreatment~~~~Caregiver Misconduct~~ Registry maintained in accordance with 922 KAR 5:120 and not be found on the registry; and

3. Central Registry maintained in accordance with 922 KAR 1:470 and not be found on the registry;

(j) Not have pled guilty or been convicted of committing a sex crime or violent crime;

(k) Complete training on the reporting of abuse, neglect, or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the participant;

(l) Be approved by the department;

(m) Maintain and submit timesheets documenting hours worked; and

(n) Be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the participant.

(12) A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of children who receive waiver services.

(13)

(a) The department shall establish a twelve (12) month budget for a participant based on the participant's person-centered service plan.

(b) A participant's twelve (12) month budget shall not exceed \$40,000 unless:

1. The participant's support broker requests a budget adjustment to a level higher than \$40,000; and

2. The department approves the adjustment.

(c) The department shall consider the following factors in determining whether to grant a twelve (12) month budget adjustment:

1. If the proposed services are necessary to prevent imminent institutionalization;

2. The cost effectiveness of the proposed services;

3. Protection of the participant's health, safety, and welfare; and

4. If a significant change has occurred in the participant's:

a. Physical condition, resulting in additional loss of function or limitations to activities of daily living and instrumental activities of daily living;

b. Natural support system; or

c. Environmental living arrangement, resulting in the participant's relocation.

(d) A participant's twelve (12) month budget may encompass a service or any combination of services listed in subsection (1) of this section, if each service is established in the participant's person-centered service plan and approved by the department.

(14) Unless approved by the department pursuant to subsection (13)(a) through (c) of this section, if a PDS is expanded to a point in which expansion necessitates a twelve (12) month budget increase, the entire service shall only be covered via traditional (non-PDS) waiver services.

(15) A support broker shall:

(a) Provide needed assistance to a participant with any aspect of PDS or blended services;

(b) Be available to a participant twenty-four (24) hours per day, seven (7) days per week;

(c) Comply with all applicable federal and state laws and requirements;

(d) Continually monitor a participant's health, safety, and welfare; and

(e) Complete or revise a person-centered service plan in accordance with Section 8 of this administrative regulation.

(16)

(a) A support broker or case manager may conduct an assessment or reassessment for a PDS participant.

(b) A PDS assessment or reassessment performed by a support broker shall comply with the assessment or reassessment provisions established in this administrative regulation.

(17) Services provided by a support broker shall meet the conflict free requirements established for case management in Section 9(4)(f) and 9(5) of this administrative regulation.

Section 8. Person-centered Service Plan Requirements.

(1) A person-centered service plan shall be established:

(a) For each participant; and

(b) By the participant's person-centered team.

(2) A participant's person-centered service plan shall:

(a) Be developed by:

1. The participant, the participant's guardian, or the participant's representative;

2. The participant's case manager;

3. The participant's person-centered team; and

4. Any other individual chosen by the participant if the participant chooses any other individual to participate in developing the person-centered service plan;

(b) Use a process that:

1. Provides the necessary information and support to empower the participant, the participant's guardian, or participant's legal representative to direct the planning process in a way that empowers the participant to have the freedom and support to control the participant's schedules and activities without coercion or restraint;

2. Is timely and occurs at times and locations convenient for the participant;

3. Reflects cultural considerations of the participant;

4. Provides information:

a. Using plain language in accordance with 42 C.F.R. 435.905(b); and

b. In a way that is accessible to an individual with a disability or who has limited English proficiency;

5. Offers an informed choice defined as a choice from options based on accurate and thorough knowledge and understanding to the participant regarding the services and supports to be received and from whom;

6. Includes a method for the participant to request updates to the person-centered service plan as needed;

7. Enables all parties to understand how the participant:

a. Learns;

- b. Makes decisions; and
- c. Chooses to live and work in the participant's community;
- 8. Discovers the participant's needs, likes, and dislikes;
- 9. Empowers the participant's person-centered team to create a person-centered service plan that:
 - a. Is based on the participant's:
 - (i) Assessed clinical and support needs;
 - (ii) Strengths;
 - (iii) Preferences; and
 - (iv) Ideas;
 - b. Encourages and supports the participant's:
 - (i) Rehabilitative needs;
 - (ii) Habilitative needs; and
 - (iii) Long term satisfaction;
 - c. Is based on reasonable costs given the participant's support needs;
 - d. Includes:
 - (i) The participant's goals;
 - (ii) The participant's desired outcomes; and
 - (iii) Matters important to the participant;
 - e. Includes a range of supports including funded, community, and natural supports that shall assist the participant in achieving identified goals;
 - f. Includes:
 - (i) Information necessary to support the participant during times of crisis; and
 - (ii) Risk factors and measures in place to prevent crises from occurring;
 - g. Assists the participant in making informed choices by facilitating knowledge of and access to services and supports;
 - h. Records the alternative home and community-based settings that were considered by the participant;
 - i. Reflects that the setting in which the participant resides was chosen by the participant;
 - j. Is understandable to the participant and to the individuals who are important in supporting the participant;
 - k. Identifies the individual or entity responsible for monitoring the person-centered service plan;
 - l. Is finalized and agreed to with the informed consent of the participant or participant's legal representative in writing with signatures by each individual who will be involved in implementing the person-centered service plan;
 - m. Shall be distributed to the individual and other people involved in implementing the person-centered service plan;
 - n. Includes those services that the individual elects to self-direct; and
 - o. Prevents the provision of unnecessary or inappropriate services and supports; and
- (c) Include in all settings the ability for the participant to:
 - 1. Have access to make private phone calls, texts, or emails at the participant's preference or convenience;
 - 2.
 - a. Choose when and what to eat;
 - b. Have access to food at any time;
 - c. Choose with whom to eat or whether to eat alone; and
 - d. Choose appropriating clothing according to the:
 - (i) Participant's preference;
 - (ii) Weather; and
 - (iii) Activities to be performed.
- (3) If a participant's person-centered service plan includes ADHC services, the ADHC services plan of treatment shall be addressed in the person-centered service plan.
- (4)
 - (a) A participant's person-centered service plan shall be:
 - 1. Entered into the MWMA by the participant's case manager; and
 - 2. Updated in the MWMA by the participant's case manager.
 - (b) A participant or participant's authorized representative shall complete and upload into the MWMA a MAP - 116 Service Plan – Participant Authorization prior to or at the time the person-centered service plan is uploaded into the MWMA.

- Section 9. Case Management Requirements.
- (1) A case manager shall:
- (a) Have a bachelor's degree from an accredited institution in a human services field and be supervised by:
 - 1. A qualified professional in the area of intellectual disabilities who:
 - a. Has at least one (1) year of experience working directly with individuals with an intellectual disability or a developmental disability;
 - b. Meets the federal educational requirements for a qualified intellectual disability professional established in 42 C.F.R. 483.430; and
 - c. Provides documentation of education and experience;
 - 2. A registered nurse who has at least two (2) years of experience working with individuals with an intellectual or a development disability;
 - 3. An individual with a bachelor's degree in a human service field who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
 - 4. A licensed clinical social worker who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
 - 5. A licensed marriage and family therapist who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
 - 6. A licensed professional clinical counselor who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
 - 7. A certified psychologist or licensed psychological associate who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability; or
 - 8. A licensed psychological practitioner or certified psychologist with autonomous functioning who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
 - (b) Be a registered nurse;
 - (c) Be a licensed practical nurse;
 - (d) Be a licensed clinical social worker;
 - (e) Be a licensed marriage and family therapist;
 - (f) Be a licensed professional clinical counselor;
 - (g) Be a licensed psychologist; or
 - (h) Be a licensed psychological practitioner.
- (2) A case manager shall:
- (a) Communicate in a way that ensures the best interest of the participant;
 - (b) Be able to identify and meet the needs of the participant;
 - (c)
 - 1. Be competent in the participant's language either through personal knowledge of the language or through interpretation; and
 - 2. Demonstrate a heightened awareness of the unique way in which the participant interacts with the world around the participant;
 - (d) Ensure that:
 - 1. The participant is educated in a way that addresses the participant's:
 - a. Need for knowledge of the case management process;
 - b. Personal rights; and
 - c. Risks and responsibilities as well as awareness of available services; and
 - 2. All individuals involved in implementing the participant's person-centered service plan are informed of changes in the scope of work related to the person-centered service plan as applicable;
 - (e) Have a code of ethics to guide the case manager in providing case management, which shall address:
 - 1. Advocating for standards that promote outcomes of quality;
 - 2. Ensuring that no harm is done;
 - 3. Respecting the rights of others to make their own decisions;
 - 4. Treating others fairly; and
 - 5. Being faithful and following through on promises and commitments;
 - (f)
 - 1. Lead the person-centered service planning team; and

2. Take charge of coordinating services through team meetings with representatives of all agencies involved in implementing a participant's person-centered service plan;

(g)

1. Include the participant's participation or legal representative's participation in the case management process; and

2. Make the participant's preferences and participation in decision making a priority;

(h) Document:

1. A participant's interactions and communications with other agencies involved in implementing the participant's person-centered service plan; and

2. Personal observations;

(i) Advocate for a participant with service providers to ensure that services are delivered as established in the participant's person-centered service plan;

(j) Be accountable to:

1. A participant to whom the case manager provides case management in ensuring that the participant's needs are met;

2. A participant's person-centered team and provide leadership to the team and follow through on commitments made; and

3. The case manager's employer by following the employer's policies and procedures;

(k) Stay current regarding the practice of case management and case management research;

(l) Assess the quality of services, safety of services, and cost effectiveness of services being provided to a participant in order to ensure that implementation of the participant's person-centered service plan is successful and done so in a way that is efficient regarding the participant's financial assets and benefits;

(m) Document services provided to a participant by entering the following into the MWMA:

1. A monthly department approved person-centered monitoring tool; and

2. A monthly entry, which shall include:

a. The month and year for the time period the note covers;

b. An analysis of progress toward the participant's outcome or outcomes;

c. Identification of barriers to achievement of outcomes;

d. A projected plan to achieve the next step in achievement of outcomes;

e. The signature and title of the case manager completing the note; and

f. The date the note was generated;

(n) Accurately reflect in the MWMA if a participant is:

1. Terminated from the Michelle P. waiver program;

2. Admitted to an intermediate care facility for individuals with an intellectual disability;

3. Admitted to a hospital;

4. Admitted to a skilled nursing facility;

5. Transferred to another Medicaid 1915(c) home and community based waiver service program; or

6. Relocated to a different address; and

(o) Provide information about participant-directed services to the participant or the participant's guardian:

1. At the time the initial person-centered service plan is developed;

2. At least annually thereafter; and

3. Upon inquiry from the participant or participant's guardian.

(3) If a participant:

(a) Voluntarily terminates participation in the Michelle P. waiver program in order to be admitted to a hospital, to a nursing facility, or to an intermediate care facility for individuals with an intellectual disability, the participant's case manager shall enter the request into the MWMA; or

(b) Is transferred to another 1915(c) home and community based waiver services program, the case manager shall enter the transfer request into the MWMA.

(4) Case management shall:

(a) Consist of coordinating the delivery of direct and indirect services to a participant;

(b) Be provided by a case manager who shall:

1. Arrange for a service but not provide a service directly;

2. Contact the participant monthly through a face-to-face visit at the participant's home, in the ADHC center, or at the adult day training provider's location;

3. Assure that service delivery is in accordance with a participant's person-centered service plan; and

4. Meet the requirements of this section;

(c) Not include a group conference;

(d) Include documenting:

1. The following regarding notes:

a. The signature of the individual preparing the note;

b. The date of the signature; and

c. The title of the individual preparing the note; and

2. At least one (1) face-to-face meeting between the case manager and participant, family member, or legal representative;

(e) Include requiring a participant or legal representative to sign a MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form, at the time of application or reapplication and at each recertification to document that the individual was informed of the choice to receive Michelle P. waiver or institutional services; and

(f) Not be provided to a participant by an agency if the agency provides any other Michelle P. waiver service to the participant.

(5)

(a) Case management for any participant who begins receiving Michelle P. waiver services after the effective date of this administrative regulation shall be conflict free except as allowed in paragraph (b) of this subsection.

(b)

1. Conflict free case management shall be a scenario in which a provider including any subsidiary, partnership, not-for-profit, or for-profit business entity that has a business interest in the provider who renders case management to a participant shall not also provide another 1915(c) home and community based waiver service to that same participant unless the provider is the only willing and qualified Michelle P. waiver provider within thirty (30) miles of the participant's residence.

2. An exemption to the conflict free case management requirement shall be granted if:

a. A participant requests the exemption;

b. The participant's case manager provides documentation of evidence to the department that there is a lack of a qualified case manager within thirty (30) miles of the participant's residence;

c. The participant or participant's representative and case manager signs a completed MAP - 531 Conflict-Free Case Management Exemption; and

d. The participant, participant's representative, or case manager uploads the completed MAP - 531 Conflict-Free Case Management Exemption into the MWMA.

3. If a case management service is approved to be provided despite not being conflict free, the case management provider shall:

a. Document conflict of interest protections, separating case management and service provision functions within the provider entity; and

b. Demonstrate that the participant is provided with a clear and accessible alternative dispute resolution process.

4. An exemption to the conflict free case management requirement shall be requested upon reassessment or at least annually.

(c) A participant who receives Michelle P. waiver services prior to the effective date of this administrative regulation shall transition to conflict free case management when the participant's next level of care determination occurs.

(d) During the transition to conflict free case management, any case manager providing case management to a participant shall educate the participant and members of the participant's person-centered team of the conflict free case management requirement in order to prepare the participant to decide, if necessary, to change the participant's:

1. Case manager; or

2. Provider of non-case management Michelle P. waiver services.

VOLUME 51, NUMBER 8— February 1, 2025

- (6) Case management shall involve:
 - (a) A constant recognition of what is and is not working regarding a participant; and
 - (b) Changing what is not working.

Section 10. Annual Expenditure Limit Per Individual.

- (1) The department shall have an annual expenditure limit per individual receiving services via this administrative regulation.
- (2) The limit referenced in subsection (1) of this section shall:
 - (a) Be an overall limit applied to all services whether PDS, Michelle P. waiver services not provided as PDS, or a combination of PDS and Michelle P. waiver services; and
 - (b) Equal \$63,000 per year.

Section 11. Incident Reporting Process.

- (1)
 - (a) There shall be two (2) classes of incidents.
 - (b) The following shall be the two (2) classes of incidents:
 - 1. An incident; or
 - 2. A critical incident.
 - (2) An incident shall be any occurrence that impacts the health, safety, welfare, or lifestyle choice of a participant and includes:
 - (a) A minor injury;
 - (b) A medication error without a serious outcome; or
 - (c) A behavior or situation that is not a critical incident.
 - (3) A critical incident shall be an alleged, suspected, or actual occurrence of an incident that:
 - (a) Can reasonably be expected to result in harm to a participant; and
 - (b) Shall include:
 - 1. Abuse, neglect, or exploitation;
 - 2. A serious medication error;
 - 3. Death;
 - 4. A homicidal or suicidal ideation;
 - 5. A missing person; or
 - 6. Other action or event that the provider determines may result in harm to the participant.
 - (4)
 - (a) If an incident occurs, the Michelle P. waiver provider shall:
 - 1. Report the incident by making an entry into the MWMA that includes details regarding the incident; and
 - 2. Be immediately assessed for potential abuse, neglect, or exploitation.
 - (b) If an assessment of an incident indicates that the potential for abuse, neglect, or exploitation exists:
 - 1. The incident shall immediately be considered a critical incident;
 - 2. The critical incident procedures established in subsection (5) of this section shall be followed; and
 - 3. The Michelle P. waiver provider shall report the incident to the participant's case manager and participant's guardian, if the participant has a guardian, within twenty-four (24) hours of discovery of the incident.
 - (5)
 - (a) If a critical incident occurs, the individual who witnessed the critical incident or discovered the critical incident shall immediately act to ensure the health, safety, and welfare of the at-risk participant.
 - (b) If the critical incident:
 - 1. Requires reporting of abuse, neglect, or exploitation, the critical incident shall be immediately reported via the MWMA; or
 - 2. Does not require reporting of abuse, neglect, or exploitation, the critical incident shall be reported via the MWMA within eight (8) hours of discovery.
 - (c) The Michelle P. waiver provider shall:
 - 1. Conduct an immediate investigation and involve the participant's case manager in the investigation; and
 - 2. Prepare a report of the investigation, which shall be recorded in the MWMA and shall include:
 - a. Identifying information of the participant involved in the critical incident and the person reporting the critical incident;
 - b. Details of the critical incident; and
 - c. Relevant participant information including:
 - (i) A listing of recent medical concerns;

- (ii) An analysis of causal factors; and
 - (iii) Recommendations for preventing future occurrences.
- (6)
- (a) Following a death of a participant receiving Michelle P. waiver services from a Michelle P. waiver provider, the Michelle P. waiver provider shall enter mortality data documentation into the MWMA within fourteen (14) days of the death.
 - (b) Mortality data documentation shall include:
 - 1. The participant's person-centered service plan at the time of death;
 - 2. Any current assessment forms regarding the participant;
 - 3. The participant's medication administration records from all service sites for the past three (3) months along with a copy of each prescription, if applicable;
 - 4. Progress notes regarding the participant from all service elements for the past thirty (30) days, including case management notes;
 - 5. The results of the participant's most recent physical exam, if available;
 - 6. All incident reports, if any exist, regarding the participant for the past six (6) months;
 - 7. The most recent psychological evaluation of the participant, if applicable and available;
 - 8. A full life history and any updates;
 - 9. Emergency medical services notes regarding the participant if available;
 - 10. The police report if available;
 - 11. A copy of:
 - a. The participant's advance directive, medical order for scope of treatment, living will, or health care directive if applicable; and
 - b. Any functional assessment of behavior or positive behavior support plan regarding the participant that has been in place over any part of the past twelve (12) months; and
 - 12. A record of all medical appointments or emergency room visits by the participant within the past twelve (12) months, if available.
 - (7) A Michelle P. waiver provider shall document all medication error details on a medication error log retained on file at the Michelle P. waiver provider site.

Section 12. Michelle P. Waiver Program Waiting List.

- (1)
 - (a) If a slot is not available for an individual to enroll in the Michelle P. Waiver Program at the time of applying for the program, the individual shall be placed on a statewide Michelle P. Waiver Program waiting list:
 - 1. In accordance with subsection (2) of this section; and
 - 2. Maintained by the department.
 - (b) Each slot for the Michelle P. Waiver Program shall be contingent upon:
 - 1. Biennium budget funding;
 - 2. Federal financial participation; and
 - 3. Centers for Medicare and Medicaid Services approval.
 - (2) For an individual to be placed on the Michelle P. Waiver Program waiting list, the individual or individual's representative shall:
 - (a) Apply for 1915(c) home and community based waiver services via the MWMA; and
 - (b) Complete and upload to the MWMA a MAP – 115 Application Intake – Participant Authorization.
 - (3) Individuals shall be placed on the Michelle P. Waiver Program waiting list in the chronological order that each application is received and validated by the department.
 - (4) The department shall send a written notice of placement on the Michelle P. Waiver Program waiting list to the:
 - (a) Applicant; or
 - (b) Applicant's legal representative.
 - (5) At least annually, the department shall contact each individual, or individual's legal representative, on the Michelle P. Waiver Program waiting list to:
 - (a) Verify the accuracy of the individual's information; and
 - (b) Verify whether the individual wishes to continue to pursue enrollment in the Michelle P. Waiver Program.

VOLUME 51, NUMBER 8– February 1, 2025

(6) The department shall remove an individual from the Michelle P. Waiver Program waiting list if:

(a) The individual is deceased;

(b) The department notifies the individual or the individual's legal representative of potential funding approved to enroll the individual in the Michelle P. Waiver Program and the individual or individual's legal representative:

1. Declines the potential funding for enrollment in the program; and

2. Does not request to remain on the Michelle P. Waiver Program waiting list; or

(c) Pursuant to subsection (5) of this section, the individual elects to not continue to pursue enrollment in the Michelle P. Waiver Program.

(7) If, after being notified by the department of potential funding approved to enroll the individual in the Michelle P. Waiver Program, the individual or individual's legal representative declines the potential funding but requests to remain on the Michelle P. Waiver Program waiting list, the individual shall:

(a) Lose his or her current position on the waiting list; and

(b) Be moved to the bottom of the waiting list.

(8) If the department removes an individual from the Michelle P. Waiver Program waiting list pursuant to this section, the department shall send written notice of the removal to:

(a) The individual or the individual's legal representative; and

(b) The individual's Michelle P. Waiver Program coordination provider if the individual has a Michelle P. Waiver Program coordination provider.

(9) The removal of an individual from the Michelle P. Waiver Program waiting list shall not preclude the individual from applying for Michelle P. Waiver Program participation in the future.

(10)

(a) An individual who is placed on the Michelle P. Waiver Program waiting list shall be informed about and told how to apply for Medicaid state plan services for which the individual might qualify.

(b) An individual who is under twenty-one (21) years of age and who is placed on the Michelle P. Waiver Program waiting list shall also be informed about Early and Periodic Screening, Diagnostic, and Treatment services.

Section 13. Use of Electronic Signatures. The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

Section 14. Reimbursement.

(1) The following Michelle P. waiver services, alone or in any combination, shall be limited to forty (40) hours per calendar week:

- (a) Homemaker;
- (b) Personal care;
- (c) Attendant care;
- (d) Supported employment;
- (e) Adult day health care;
- (f) Adult day training;
- (g) Community living supports;
- (h) Physical therapy;
- (i) Occupational therapy;
- (j) Speech therapy; and
- (k) Behavior supports.

(2) Respite services shall not exceed \$4,000 per member, per calendar year.

(3) Environmental and minor home adaptation services shall not exceed \$500 per member, per calendar year.

(4)

(a) The department shall reimburse for a Michelle P. waiver service at the lesser of billed charges or the ~~base~~fixed upper payment rate for each unit of service.

(b) The unit amounts, ~~base~~fixed upper payment rate [~~limits~~], and other limits established in the following table shall apply:

<u>Service</u>	<u>Unit</u>	<u>Base Rate Effective January 1, 2025</u>
<u>Adult Day Health Care</u>	<u>15-minute</u>	<u>\$3.82</u>
<u>Adult Day Training</u>	<u>15-minute</u>	<u>\$3.62</u>
<u>Attendant Care - Traditional</u>	<u>15-minute</u>	<u>\$6.36</u>
<u>Attendant Care - PDS</u>	<u>15-minute</u>	<u>\$6.36</u>
<u>Behavioral Support Services</u>	<u>15-minute</u>	<u>\$40.23</u>
<u>Case Management</u>	<u>Per month</u>	<u>\$425.92</u>
<u>Community Living Supports - Traditional</u>	<u>15-minute</u>	<u>\$6.70</u>
<u>Community Living Supports - PDS</u>	<u>15-minute</u>	<u>\$6.70</u>
<u>Environmental and Minor Home Adaptation</u>	<u>Per Plan of Care</u>	<u>Up to \$605</u>
<u>Financial Management Services</u>	<u>Per month</u>	<u>\$121.00</u>
<u>Homemaker - Traditional</u>	<u>15-minute</u>	<u>\$7.87</u>
<u>Homemaker - PDS</u>	<u>15-minute</u>	<u>\$7.87</u>
<u>Occupational Therapy</u>	<u>15-minute</u>	<u>\$26.83</u>
<u>Personal Care - Traditional</u>	<u>15-minute</u>	<u>\$9.08</u>
<u>Personal Care - PDS</u>	<u>15-minute</u>	<u>\$9.08</u>
<u>Physical Therapy</u>	<u>15-minute</u>	<u>\$26.83</u>
<u>Respite</u>	<u>15-minutes</u>	<u>\$5.92</u>
<u>Respite - PDS</u>	<u>15-minutes</u>	<u>\$5.92</u>
<u>Speech Therapy</u>	<u>15-minute</u>	<u>\$26.83</u>
<u>Supported Employment - Traditional</u>	<u>15-minute</u>	<u>\$10.54</u>
<u>Supported Employment - PDS</u>	<u>15-minute</u>	<u>\$10.54</u>

Section 15. Federal Financial Participation and Approval. The department's coverage and reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage and reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval of the coverage and reimbursement.

Section 16. Appeal Rights. An appeal of a department determination regarding Michelle P. waiver service level of care or services to a participant shall be in accordance with 907 KAR 1:563.

Section 17. Federal Approval and Federal Financial Participation. The department's coverage of and reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage and reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage and reimbursement.

Section 18. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "MAP – 115 Application Intake – Participant Authorization", May 2015;
- (b) "MAP – 116 Service Plan – Participant Authorization", May 2015;
- (c) "MAP – 531 Conflict-Free Case Management Exemption", October 2015;
- (d) "MAP 95 Request for Equipment Form", June 2007;
- (e) "MAP - 350, Long Term Care Facilities and Home and Community Based Program Certification Form", June 2015;
- (f) "MAP 351, Medicaid Waiver Assessment", July 2015;
- (g) "MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)/Participant Directed Services (PDS)", June 2015;
- (h) "MAP 10, Waiver Services Physician's Recommendation", June 2015; and
- (i) "Kentucky Consumer Directed Options/Participant Directed Services Employee/Provider Contract", June 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:

- (a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or
- (b) Online at the department's Web site at <https://www.chfs.ky.gov/agencies/dms/dca/Pages/mpw.aspx> [<http://www.chfs.ky.gov/dms/incorporated.htm>].

LISA D. LEE, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 20, 2024

FILED WITH LRC: December 23, 2024 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 24, 2025, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by February 17, 2025, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until February 28, 2025. 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 or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services' (DMS's) coverage and reimbursement provisions requirements regarding Michelle P. waiver program services. The Michelle P. waiver program is a program which enables individuals who have care needs that qualify them for receiving services in an intermediate care facility for individuals with an intellectual disability (ICF-IID) to reside in and receive services in a community setting rather than in an institutional setting.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish DMS's coverage and reimbursement provisions and requirements regarding Michelle P. Waiver Program services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing DMS's coverage and reimbursement provisions and requirements regarding Michelle P. Waiver Program services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing DMS's coverage and reimbursement provisions and requirements regarding Michelle P. Waiver Program 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 delete and update the reimbursement methodology to reflect the approval of new federal 1915(c) waivers. A new table has been inserted to reflect the new rates. Other amendments were made to conform to KRS 13A drafting requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update reimbursement methodology to new, higher rates approved by the federal government.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by implementing a federally approved rate increase.

(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 process to update increased federal reimbursement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: DMS anticipates that more than 10,300 recipients will utilize the services available under this waiver.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required, regulated entities will be able to bill and receive a higher reimbursement.

(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 in the expanded reimbursement available for this waiver.

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

(a) Initially: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(b) On a continuing basis: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Cabinet for Health and Family Services, Department for Medicaid Services

(a) Estimate the following for the first year:

Expenditures: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 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 anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): N/A

(a) Estimate the following for the first year:

Expenditures: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 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 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): Enrolled providers providing Michelle P. waiver services.

(a) Estimate the following for the first year:

Expenditures: DMS does not anticipate additional expenditures for regulated entities.

Revenues: Participating providers will benefit from increased reimbursement.

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 anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6. Future slots and increases will be dependent on the state budgeting process and federal reimbursement requirements.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6. Future slots and increases will be dependent on the state budgeting process and federal reimbursement requirements.

(b) Methodology and resources used to determine the fiscal impact: The department worked with interested parties to gain input and perspectives as well as completed a multiyear process working with a contracted third party to redesign the 1915(c) waivers and reimbursement.

(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: This administrative regulation will provide additional reimbursement for all 1915(c) providers.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. 441.305(b).

(2) State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or

opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

(3) Minimum or uniform standards contained in the federal mandate. Federal approval is for a limited number of waiver slots.

(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.

STATEMENT OF EMERGENCY
907 KAR 3:100E.

This emergency amendment to an existing administrative regulation is being promulgated to implement reimbursement methodology that reflects the approval by the U.S. Centers for Medicare and Medicaid Services of new federal waivers issued pursuant to 42 U.S.C. Ch. 7, Sec. 1396n(c), also called "1915(c) waivers", effective January 1, 2025. The approval allows for higher reimbursement for providers and this administrative regulation is being updated to reflect the higher reimbursement. This emergency amendment to an existing administrative regulation is being filed pursuant to KRS 13A.190(1)(a)2., to preserve state and federal funding and ensure the most efficient use of funds, and also pursuant to KRS 13A.190(1)(a)1. to preserve the welfare of Medicaid recipients who qualify for a federal waiver issued pursuant to 42 U.S.C. Ch. 7, Sec. 1396n(c). This emergency amendment will be filed with an ordinary amendment that is identical to this emergency amendment.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Long Term Services and Supports
(Emergency Amendment)

907 KAR 3:100E. Reimbursement for acquired brain injury waiver services.

EFFECTIVE: December 23, 2024

RELATES TO: KRS 205.5605(2), 34 C.F.R. Subtitle B, Chapter III, 42 C.F.R. 441.300 - 310, 29 U.S.C. Chapter 16, 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(3), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the payment provisions relating to home - and community -based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services for the purpose of rehabilitation and retraining for reentry into the community with existing resources.

Section 1. Definitions.

(1) "ABI" means an acquired brain injury.

(2) "ABI provider" means an entity that meets the provider criteria established in 907 KAR 3:090, Section 2.

(3) "ABI recipient" means an individual who meets the ABI recipient criteria established in 907 KAR 3:090, Section 3.

(4) "Acquired brain injury waiver service" or "ABI waiver service" means a home and community based waiver service provided to a Medicaid eligible individual who has acquired a brain injury.

(5) "Consumer" is defined by KRS 205.5605(2).

VOLUME 51, NUMBER 8– February 1, 2025

(6) "Consumer directed option" or "CDO" means an option established by KRS 205.5606 within the home and community based services waiver that allows recipients to:

- (a) Assist with the design of their programs;
- (b) Choose their providers of services; and
- (c) Direct the delivery of services to meet their needs.

(7) "Department" means the Department for Medicaid Services or its designated agent.

(8) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

Section 2. Coverage. The department shall reimburse a participating provider for an ABI waiver service if the service is:

- (1) Provided to an ABI recipient;
- (2) Prior authorized;
- (3) Included in the recipient's plan of care;
- (4) Medically necessary; and
- (5) Essential for the rehabilitation and retraining of the recipient.

Section 3. Exclusions to Acquired Brain Injury Waiver Program. Under the ABI waiver program, the department shall not reimburse a provider for a service provided:

- (1) To an individual who has a condition identified in 907 KAR 3:090, Section 5; or
- (2) Which has not been prior authorized as a part of the recipient's plan of care.

Section 4. Payment Amounts.

(1) A participating ABI waiver service provider shall be reimbursed a fixed rate for reasonable and medically necessary services for a prior-authorized unit of service provided to a recipient.

(2) A participating ABI waiver service provider certified in accordance with 907 KAR 3:090 shall be reimbursed at the lesser of:

- (a) The provider's usual and customary charge; or
- (b) The Medicaid ~~fixed upper payment limit~~ per unit of service as established in Section 5 of this administrative regulation.

Section 5. Base Payment Rate Table and Reimbursement Requirements. ~~[Fixed Upper Payment Limits.]~~

(1) The rates established in the following table shall establish the base payment rate for ABI waiver services:

~~[(1)] [Except as provided by subsection (2) of this section, the following respective rates shall be the fixed upper payment limits for the corresponding respective ABI waiver services in conjunction with the corresponding units of service and unit of service limits:]~~

<u>Service</u>	<u>Unit</u>	<u>Base Rate Effective January 1, 2025</u>
Adult Day Training	15-minute	\$4.88
Assessment & Reassessment	Per assessment	\$121.00
Behavior Programming	15-minute	\$40.67
Case Management	Per month	\$525.14
Companion	15-minute	\$6.73
Companion - PDS	15-minute	\$6.73
Counseling, Individual	15-minute	\$28.85
Counseling, Group	15-minute	\$6.96
Environmental or Minor Home Adaptation	Per year	Up to \$2,420.00
Financial Management Services	Per month	\$121.00
Occupational Therapy	15-minute	\$31.34
Personal Care	15-minute	\$6.73
Personal Care - PDS	15-minute	\$6.73
Respite	15-minute	\$5.92
Respite - PDS	15-minute	\$5.92
Speech Therapy	15-minute	\$34.38

<u>Supervised Residential Care - Level I</u>	<u>Per day</u>	<u>\$300.00</u>
<u>Supervised Residential Care - Level II</u>	<u>Per day</u>	<u>\$225.00</u>
<u>Supervised Residential Care - Level III</u>	<u>Per day</u>	<u>\$112.50</u>
<u>Supported Employment</u>	<u>15-minute</u>	<u>\$10.54</u>
<u>Supported Employment - PDS</u>	<u>15-minute</u>	<u>\$10.54</u>

(2) Specialized medical equipment and supplies shall be reimbursed on a per-item basis based on a reasonable cost as negotiated by the department if the equipment or supply is:

- (a) Not covered through the Medicaid durable medical equipment program established in 907 KAR 1:479; and
- (b) Provided to an individual participating in the ABI waiver program.

(3) Respite care may exceed 336 hours in a twelve (12) month period if an individual's normal caregiver~~[care-giver]~~ is unable to provide care due to a death in the family, serious illness, or hospitalization.

(4) If an ABI recipient is placed in a nursing facility to receive respite care, the department shall pay the nursing facility its per diem rate for that individual.

(5) If supported employment services are provided at a work site in which persons without disabilities are employed, payment shall:

- (a) Be made only for the supervision and training required as the result of the ABI recipient's disabilities; and
- (b) Not include payment for supervisory activities normally rendered.

(6) (a) The department shall only pay for supported employment services for an individual if supported employment services are unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 94-142 (34 C.F.R. Subtitle B, Chapter III).

(b) For an individual receiving supported employment services, documentation shall be maintained in his or her record demonstrating that the services are not otherwise available under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 94-142 (34 C.F.R. Subtitle B, Chapter III).

Section 6. Payment Exclusions. Payment shall not include:

- (1) The cost of room and board, unless provided as part of respite care in a Medicaid certified nursing facility;
- (2) The cost of maintenance, upkeep, an improvement, or an environmental modification to a group home or other licensed facility;
- (3) Excluding an environmental modification, the cost of maintenance, upkeep, or an improvement to a recipient's place of residence;
- (4) The cost of a service that is not listed in the recipient's approved plan of care; or
- (5) A service provided by a family member.

Section 7. Records Maintenance. A participating provider shall:

- (1) Maintain fiscal and service records for at least six (6) years;
- (2) Provide, as requested by the department, a copy of, and access to, each record of the ABI waiver program retained by the provider pursuant to:
 - (a) Subsection (1) of this section; or
 - (b) 907 KAR 1:672; and
 - (3) Upon request, make available service and financial records to a representative or designee of:
 - (a) The Commonwealth of Kentucky, Cabinet for Health and Family Services;
 - (b) The United States Department for Health and Human Services, Comptroller General;
 - (c) The United States Department for Health and Human Services, the Centers for Medicare and Medicaid Services (CMS);
 - (d) The General Accounting Office;
 - (e) The Commonwealth of Kentucky, Office of the Auditor of Public Accounts; or

VOLUME 51, NUMBER 8– February 1, 2025

(f) The Commonwealth of Kentucky, Office of the Attorney General.

Section 8. Appeal Rights. An ABI waiver[wavier] provider may appeal department decisions as to the application of this administrative regulation as it impacts the provider's reimbursement in accordance with 907 KAR 1:671, Sections 8 and 9.

Section 9. Federal Approval and Federal Financial Participation.
The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the coverage;
and
(2) Centers for Medicare and Medicaid Services' approval for the coverage.

LISA D. LEE, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 20, 2024

FILED WITH LRC: December 23, 2024 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 24, 2025, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by February 17, 2025, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until February 28, 2025. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan Scott or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medicaid program coverage provisions and requirements regarding acquired brain injury (ABI) waiver services.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish coverage policies for the Medicaid ABI waiver program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid ABI coverage provisions and requirements for a program that enables individuals who have suffered a brain injury to live, and receive services, in a community setting rather than in an institution.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation will assist in the effective administration of the authorizing statutes by establishing Medicaid coverage provisions and requirements for a program that enables individuals who have suffered a brain injury to live, and receive services, in a community setting rather than in an institution.

(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 delete and update the reimbursement methodology to reflect the approval of new federal 1915(c) waivers. A new table has been inserted to reflect the new rates. In addition, a

federal approval clause and an updated website link are included, as well as amendments to conform to KRS 13A drafting requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update reimbursement methodology to new, higher rates approved by the federal government.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by implementing a federally approved rate increase.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists with the effective administration of the statutes by establishing a process to update increased federal reimbursement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: DMS anticipates that up to 383 recipients will utilize the services available under this waiver.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required, regulated entities will be able to bill and receive a higher reimbursement.

(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 in the expanded reimbursement available for this waiver.

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

(a) Initially: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(b) On a continuing basis: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Cabinet for Health and Family Services, Department for Medicaid Services

(a) Estimate the following for the first year:

Expenditures: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 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 anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): N/A

(a) Estimate the following for the first year:

Expenditures: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 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 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): Enrolled providers providing Michelle P. waiver services.

(a) Estimate the following for the first year:

Expenditures: DMS does not anticipate additional expenditures for regulated entities.

Revenues: Participating providers will benefit from increased reimbursement.

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 anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6. Future slots and increases will be dependent on the state budgeting process and federal reimbursement requirements.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6. Future slots and increases will be dependent on the state budgeting process and federal reimbursement requirements.

(b) Methodology and resources used to determine the fiscal impact: The department worked with interested parties to gain input and perspectives as well as completed a multiyear process working with a contracted third party to re-design the 1915(c) waivers and reimbursement.

(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: This administrative regulation will provide additional reimbursement for all 1915(c) providers.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. 441.305(b).

(2) State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

(3) Minimum or uniform standards contained in the federal mandate. Federal approval is for a limited number of waiver slots.

(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.

STATEMENT OF EMERGENCY 907 KAR 3:210E.

This emergency amendment to an existing administrative regulation is being promulgated to implement reimbursement methodology that reflects the approval by the U.S. Centers for Medicare and Medicaid Services of new federal waivers issued pursuant to 42 U.S.C. Ch. 7, Sec. 1396n(c), also called "1915(c) waivers", effective January 1, 2025. The approval allows for higher reimbursement for providers and this administrative regulation is being updated to reflect the higher reimbursement. This emergency amendment to an existing administrative regulation is being filed pursuant to KRS 13A.190(1)(a)2., to preserve state and federal funding and ensure the most efficient use of funds, and also pursuant to KRS 13A.190(1)(a)1. to preserve the welfare of Medicaid recipients who qualify for a federal waiver issued pursuant to 42 U.S.C. Ch. 7, Sec. 1396n(c).

This emergency amendment will be filed with an ordinary amendment that is identical to this emergency amendment.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Long Term Services and Supports (Emergency Amendment)

907 KAR 3:210E. Acquired brain injury long-term care waiver services and reimbursement.

EFFECTIVE: December 23, 2024

RELATES TO: KRS 17.165, 202A.011, 205.5605, 205.5607, 205.8451, 205.8477, 314.011, 319.010(8), 319A.010, 319.056, 327.010, 334A.020, 335.300(2), 335.500(3), 620.030, 42 C.F.R. 441 Subpart G, 455 Subpart B, 42 U.S.C. 1396a, 1396b, 1396d, 1396n
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606(1)

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. KRS 205.5606(1) requires the cabinet to promulgate administrative regulations to establish a participant-directed services program to provide an option for the home and community-based services waivers. This administrative regulation establishes the coverage provisions relating to home- and community- based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services and including a participant-directed services program pursuant to KRS 205.5606. The purpose of acquired brain injury long term care waiver services is to provide an alternative to institutional care to individuals with an acquired brain injury who require maintenance services.

Section 1. Definitions.

(1) "1915(c) home and community based services waiver program" means a Kentucky Medicaid program established pursuant to and in accordance with 42 U.S.C. 1396n(c).

(2) "ABI" means an acquired brain injury.

(3) "ABI provider" means an entity that meets the criteria established in Section 2 of this administrative regulation.

(4) "ABIB" means the Acquired Brain Injury Branch in the Division of Community Alternatives, in the Cabinet for Health and Family Services.

(5) "Acquired brain injury long term care waiver service" means a home and community based waiver service for an individual who requires long term maintenance and has acquired a brain injury involving the central nervous system that resulted from:

- (a) An injury from a physical trauma;
- (b) Anoxia or a hypoxic episode; or
- (c) Allergic condition, toxic substance, or another acute medical incident.

(6) "ADHC services" means adult day health care services provided on a regularly scheduled basis that ensure optimal functioning of a participant who does not require twenty-four (24) hour care in an institutional setting.

(7) "Assessment" or "reassessment" means a comprehensive evaluation of abilities, needs, and services that:

- (a) Serves as the basis for a level of care determination;
- (b) Is completed on a MAP 351, Medicaid Waiver Assessment that is uploaded into the MWMA; and
- (c) Occurs at least once every twelve (12) months thereafter.

(8) "Axis I diagnosis" means a clinical disorder or other condition which may be a focus of clinical attention.

(9) "Behavior intervention committee" or "BIC" means a group of individuals established to evaluate the technical adequacy of a proposed behavior intervention for a participant.

(10) "Blended services" means a nonduplicative combination of ABI waiver services identified in Section 6 of this administrative regulation and participant-directed services identified in Section 10 of this administrative regulation provided in accordance with the participant's approved person-centered service plan.

(11) "Board certified behavior analyst" means an independent practitioner who is certified by the Behavior Analyst Certification Board, Inc.

(12) "Case manager" means an individual who manages the overall development and monitoring of a participant's person-centered service plan.

(13) "Covered services and supports" is defined by KRS 205.5605(3).

(14) "Crisis prevention and response plan" means a plan developed to identify any potential risk to a participant and to detail a strategy to minimize the risk.

(15) "DCBS" means the Department for Community Based Services.

(16) "Department" means the Department for Medicaid Services or its designee.

(17) "Family training" means providing to the family or other responsible person:

- (a) Interpretation or explanation of medical examinations and procedures;
- (b) Treatment regimens;
- (c) Use of equipment specified in the person-centered service plan; or
- (d) Advising the family how to assist the participant.

(18) "Good cause" means a circumstance beyond the control of an individual which affects the individual's ability to access funding or services, including:

- (a) Illness or hospitalization of the individual which is expected to last sixty (60) days or less;
- (b) Death or incapacitation of the primary caregiver;
- (c) Required paperwork and documentation for processing in accordance with Section 3 of this administrative regulation that has not been completed but is expected to be completed in two (2) weeks or less; or

(d) The individual not having been accepted for services or placement by a potential provider despite the individual or individual's legal representative having made diligent contact with the potential provider to secure placement or access services within sixty (60) days.

(19) "Human rights committee" means a group of individuals established to protect the rights and welfare of a participant.

(20) "Human rights restriction" means the denial of a basic right or freedom to which all humans are entitled, including the right to life and physical safety, civil and political rights, freedom of expression, equality before the law, social and cultural justice, the right to

participate in culture, the right to food and water, the right to work, and the right to education.

(21) "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

(22) "Licensed medical professional" means:

- (a) A physician;
- (b) An advanced practice registered nurse;
- (c) A physician assistant;
- (d) A registered nurse;
- (e) A licensed practical nurse; or
- (f) A pharmacist.

(23) "Licensed practical nurse" or "LPN" means a person who:

- (a) Meets the definition of KRS 314.011(9); and
- (b) Works under the supervision of a registered nurse.

(24) "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3).

(25) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(26) "MWMA" means the Kentucky Medicaid Waiver Management Application internet portal located at <https://www.chfs.ky.gov/agencies/dms/dca/Pages/mwma.aspx> (<http://chfs.ky.gov/dms/mwma.htm>).

(27) "Nursing supports" means training and monitoring of services by a registered nurse or a licensed practical nurse.

(28) "Occupational therapist" is defined by KRS 319A.010(3).

(29) "Occupational therapy assistant" is defined by KRS 319A.010(4).

(30) "Participant" means an individual who meets the criteria established in Section 3 of this administrative regulation.

(31) "Participant-directed services" or "PDS" means an option established by KRS 205.5606 within the 1915(c) home and community based service waiver programs which allows participants to receive non-medical services in which the individual:

- (a) Assists with the design of the program;
- (b) Chooses the providers of services; and
- (c) Directs the delivery of services to meet their needs.

(32) "Person-centered service plan" means a written individualized plan of services for a participant that meets the requirements established in Section 4 of this administrative regulation.

(33) "Person-centered team" means the participant, the participant's guardian or representative, and other individuals who are natural or paid supports, and who:

(a) Recognize that evidenced based decisions are determined within the basic framework of what is important for the participant and within the context of what is important to the participant based on informed choice;

(b) Work together to identify what roles they will assume to assist the participant in becoming as independent as possible in meeting the participant's needs; and

(c) Include providers who receive payment for services who shall:

1. Be active contributing members of the person centered team meetings;
2. Base their input upon evidence-based information; and
3. Not request reimbursement for person centered team meetings.

(34) "Physical therapist" is defined by KRS 327.010(2).

(35) "Physical therapist assistant" means a skilled health care worker who:

- (a) Is certified by the Kentucky Board of Physical Therapy; and
- (b) Performs physical therapy and related duties as assigned by the supervising physical therapist

(36) "Pro re nata" or "PRN" means as needed.

(37) "Psychologist" is defined by KRS 319.010(9)(e).

(38) "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

(39) "Qualified mental health professional" is defined by KRS 202A.011(13)(42).

(40) "Registered nurse" or "RN" means a person who:

- (a) Meets the definition established in KRS 314.011(5); and
- (b) Has one (1) year or more experience as a professional nurse.

(41) "Representative" is defined by KRS 205.5605(6).

(42) "Speech-language pathologist" is defined by KRS 334A.020(9)[(3)].

(43) "Support broker" means an individual designated by the department to:

(a) Provide training, technical assistance, and support to a participant; and

(b) Assist a participant in any other aspects of participant-directed services.

Section 2. Non-PDS Provider Participation Requirements.

(1) In order to provide an ABI waiver service in accordance with Section 4 of this administrative regulation, excluding a participant-directed service, an ABI provider shall:

(a) Be enrolled as a Medicaid provider in accordance with 907 KAR 1:671;

(b) Be located within an office in the Commonwealth of Kentucky; and

(c)

1. Be a licensed provider in accordance with:

a. 902 KAR 20:066, if an adult day health care provider;

b. 902 KAR 20:081, if a home health service provider; or

c. 902 KAR 20:091, if a community mental health center; or

2. Be certified by the department in accordance with 907 KAR 12:010, Section 3, or 907 KAR 3:090, Section 2, if a provider type is not listed in subparagraph 1. of this paragraph; and

(d) Complete and submit a MAP-4100a to the department.

(2) An ABI provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672;

(c) 907 KAR 1:673;

(d) 907 KAR 7:005;

(e) The Health Insurance Portability and Accountability Act, 42 U.S.C. 1320d-2, and 45 C.F.R. Parts 160, 162, and 164; and

(f) 42 U.S.C. 1320d to 1320d-8.

(3) An ABI provider shall have a governing body that shall be:

(a) A legally-constituted entity within the Commonwealth of Kentucky; and

(b) Responsible for the overall operation of the organization including establishing policy that complies with this administrative regulation concerning the operation of the agency and the health, safety, and welfare of a participant served by the agency.

(4) An ABI provider shall:

(a) Unless providing participant-directed services, ensure that an ABI waiver service is not provided to a participant by a staff member of the ABI provider who has one (1) of the following blood relationships to the participant:

1. Child;

2. Parent;

3. Sibling; or

4. Spouse;

(b) Not enroll a participant for whom the ABI provider cannot meet the service needs; and

(c) Have and follow written criteria in accordance with this administrative regulation for determining the eligibility of an individual for admission to services.

(5) An ABI provider shall meet the following requirements if responsible for the management of a participant's funds:

(a) Separate accounting shall be maintained for each participant or for the participant's interest in a common trust or special account;

(b) Account balance and records of transactions shall be provided to the participant or legal representative on a quarterly basis; and

(c) The participant or legal representative shall be notified if a large balance is accrued that may affect Medicaid eligibility.

(6) An ABI provider shall have a written statement of its mission and values.

(7) An ABI provider shall have written policies and procedures for communication and interaction with a family and legal representative of a participant which shall:

(a) Require a timely response to an inquiry;

(b) Require the opportunity for interaction with direct care staff;

(c) Require prompt notification of any unusual incident;

(d) Permit visitation with the participant at a reasonable time and with due regard for the participant's right of privacy;

(e) Require involvement of the legal representative in decision-making regarding the selection and direction of the service provided; and

(f) Consider the cultural, educational, language, and socioeconomic characteristics of the participant.

(8)

(a) An ABI provider shall have written policies and procedures for all settings that assure the participant has:

1. Rights of privacy, dignity, respect, and freedom from coercion and restraint; and

2. Freedom of choice:

a. As defined by the experience of independence, individual initiative, or autonomy in making life choices, both in small everyday matters (what to eat or what to wear), and in large, life-defining matters (where and with whom to live and work); and

b. Including the freedom to choose:

(i) Services;

(ii) Providers;

(iii) Settings from among setting options including non-disability specific settings; and

(iv) Where to live with as much independence as possible and in the most community-integrated environment.

(b) The setting options and choices shall be:

1. Identified and documented in the person-centered service plan; and

2. Based on the participant's needs and preferences.

(c) For a residential setting, the resources available for room and board shall be documented in the person-centered service plan.

(9) An ABI provider shall have written policies and procedures for residential settings that assure the participant has:

(a) Privacy in the sleeping unit and living unit in a residential setting;

(b) An option for a private unit in a residential setting;

(c) A unit with lockable entrance doors and with only the participant and appropriate staff having keys to those doors;

(d) A choice of roommate or housemate;

(e) The freedom to furnish or decorate the sleeping or living units within the lease or other agreement;

(f) Visitors of the participant's choosing at any time and access to a private area for visitors; and

(g) Physical accessibility, defined as being easy to approach, enter, operate, or participate in a safe manner and with dignity by a person with or without a disability.

1. Settings considered to be physically accessible shall also meet the Americans with Disabilities Act standards of accessibility for all participants served in the setting.

2. All communal areas shall be accessible to all participants as well as have a means to enter the building (i.e. keys, security codes, etc.).

3. Bedrooms shall be accessible to the appropriate persons.

4.

a. Any modification of an additional residential condition except for the setting being physically accessible requirement shall be supported by a specific assessed need and justified in the participant's person-centered service plan.

b. Regarding a modification, the following shall be documented in a participant's person-centered service plan:

(i) That the modification is the result of an identified specific and individualized assessed need;

(ii) Any positive intervention or support used prior to the modification;

(iii) Any less intrusive method of meeting the participant's need that was tried but failed;

(iv) A clear description of the condition that is directly proportionate to the specific assessed need;

(v) Regular collection and review of data used to measure the ongoing effectiveness of the modification;

(vi) Time limits established for periodic reviews to determine if the modification remains necessary or should be terminated;

(vii) Informed consent by the participant or participant's representative for the modification; and

(viii) An assurance that interventions and supports will cause no harm to the participant.

(10) An ABI provider shall cooperate with monitoring visits from monitoring agents.

(11) An ABI provider shall maintain a record for each participant served that shall:

(a) Be recorded in permanent ink;

(b) Be free from correction fluid;

(c) Have a strike through for each error which is initialed and dated; and

(d) Contain no blank lines between each entry.

(12) A record of each participant who is served shall:

(a) Be cumulative;

(b) Be readily available;

(c) Contain a legend that identifies any symbol or abbreviation used in making a record entry;

(d) Contain the following specific information:

1. The participant's name and Medical Assistance Identification Number (MAID);

2. An assessment summary relevant to the service area;

3. The person-centered service plan;

4. The crisis prevention and response plan that shall include:

a. A list containing emergency contact telephone numbers; and

b. The participant's history of any allergies with appropriate allergy alerts for severe allergies;

5. The training objective for any service which provides skills training to the participant;

6. The participant's medication record, including a copy of the prescription or the signed physician's order and the medication log if medication is administered at the service site;

7. Legally-adequate consent for the provision of services or other treatment including consent for emergency attention which shall be located at each service site;

8. The MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form updated at recertification; and

9. Current level of care certification;

(e) Be maintained by the provider in a manner to ensure the confidentiality of the participant's record and other personal information and to allow the participant or legal representative to determine when to share the information;

(f) Be secured against loss, destruction, or use by an unauthorized person ensured by the provider; and

(g) Be available to the participant or legal guardian according to the provider's written policy and procedures which shall address the availability of the record.

(13) An ABI provider:

(a) Shall ensure that each new staff person or volunteer performing direct care or a supervisory function has had a tuberculosis (TB) risk assessment performed by a licensed medical professional and, if indicated, a TB skin test with a negative result within the past twelve (12) months as documented on test results received by the provider;

(b) Shall maintain documentation of the annual TB risk assessment or negative TB test result described in paragraph (a) of this subsection for:

1. Existing staff; or

2. A volunteer, if the volunteer performs direct care or a supervisory function;

(c) Shall ensure that an employee or volunteer who tests positive for TB, or has a history of a positive TB skin test, shall be assessed annually by a licensed medical professional for signs or symptoms of active disease;

(d) Shall if it is determined that signs and symptoms of active TB are present, ensure that the employee or volunteer has follow-up testing administered by the employee's or volunteer's physician and that the follow-up test results indicate the employee or volunteer does not have active TB disease;

(e) Shall not permit an individual to work for or volunteer for the provider if the individual has TB or symptoms of active TB;

(f) Shall maintain documentation for an employee or volunteer with a positive TB test to ensure that active disease or symptoms of active disease are not present;

(g)

1. Shall:

a. Prior to the employee's date of hire or the volunteer's date of service, obtain the results of:

(i) A criminal record check from the Administrative Office of the Courts or the equivalent out-of-state agency if the individual resided, worked, or volunteered outside Kentucky during the year prior to employment or volunteer service in Kentucky;

(ii) A Nurse Aide Abuse Registry check as described in 906 KAR 1:100; and

(iii) A Caregiver Misconduct Registry check as described in 922 KAR 5:120; and

b. Within thirty (30) days of the date of hire or service as a volunteer, obtain the results of a Central Registry check as described in 922 KAR 1:470; or

2. May use Kentucky's national background check program established by 906 KAR 1:190 to satisfy the background check requirements of subparagraph 1 of this paragraph;

(h) Shall annually, for twenty-five (25) percent of employees randomly selected, obtain the results of a criminal record check from:

1. The Kentucky Administrative Office of the Courts; or

2. The equivalent out-of-state agency, if the individual resided or worked outside of Kentucky during the year prior to employment;

(i) Shall evaluate and document the performance of each employee upon completion of the agency's designated probationary period, and at a minimum, annually thereafter;

(j) Conduct and document periodic and regularly scheduled supervisory visits of all professional and paraprofessional direct service staff at the service site in order to ensure that high quality, appropriate services are provided to the participant;

(k) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a prior conviction of an offense delineated in KRS 17.165(1) through (3) or prior felony conviction;

(l) Not permit an employee or volunteer to transport a participant, if the employee or volunteer has a conviction of Driving under the Influence (DUI) during the past year;

(m) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a conviction of abuse or sale of illegal drugs during the past five (5) years;

(n) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a conviction of abuse, neglect, or exploitation;

(o) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a Cabinet for Health and Family Services finding of:

1. Child abuse or neglect pursuant to the Central Registry; or

2. Adult abuse, neglect, or exploitation pursuant to the Caregiver Misconduct Registry; and

(p) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual is listed on the:

1. Nurse Aide Abuse Registry pursuant to 906 KAR 1:100; or

2. Kentucky Caregiver Misconduct Registry pursuant to 922 KAR 5:120.

(14) An ABI provider shall:

(a) Have an executive director who:

1. Is qualified with a bachelor's degree from an accredited institution in administration or a human services field; and

2. Has a minimum of one (1) year of administrative responsibility in an organization which served an individual with a disability; and

(b) Have adequate direct contact staff who:

1. Is eighteen (18) years of age or older and has a high school diploma or GED; and

2. Has a minimum of two (2) years of experience in providing a service to an individual with a disability or has successfully completed a formalized training program approved by the department.

(15) An ABI provider shall establish written guidelines which:

(a) Ensure the health, safety, and welfare of the participant;

(b) Address maintenance of sanitary conditions;

(c) Ensure each site operated by the provider is equipped with:

1. Operational smoke detectors placed in strategic locations; and

2. A minimum of two (2) correctly charged fire extinguishers placed in strategic locations, one (1) of which shall be capable of extinguishing a grease fire and with a rating of 1A10BC;

(d) Ensure the availability of a supply of hot and cold running water with the water temperature at a tap, for water used by the participant, not exceeding 120 degrees Fahrenheit, for a Supervised Residential Care, Adult Day Training, or Adult Day Health provider;

(e) Ensure that the nutritional needs of the participant are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician;

(f) Ensure that staff who supervise waiver participants in medication administration:

1. Unless the employee is a licensed or registered nurse, have been provided specific training by a licensed medical professional and competency has been documented on cause and effect and proper administration and storage of medication; and

2. Document on a medication log all medication administered, including:

a. Self-administered and over-the-counter drugs; and

b. The date, time, and initials of the person who administered the medication;

(g) Ensure that the medication shall be:

1. Kept in a locked container;

2. Kept under double lock if it is a controlled substance;

3. Carried in a proper container labeled with medication, dosage, and time of administration, if administered to the participant or self-administered at a program site other than the participant's residence;

4. Documented on a medication administration form; and

5. Properly disposed of if it is discontinued; and

(h) Establish policy and procedures for monitoring of medication administration, which shall be approved by the department before services begin to ensure that medication administration will be properly monitored under the policies and procedures as approved by the department.

(16) An ABI provider shall establish and follow written guidelines for handling an emergency or a disaster which shall:

(a) Be readily accessible on site;

(b) Include an evacuation drill:

1. To be conducted and documented at least quarterly; and

2. For a residential setting, scheduled to include a time when a participant is asleep;

(c) Mandate:

1. That the result of an evacuation drill be evaluated and modified as needed; and

2. That results of the prior years' evacuation drills be maintained on site.

(17) An ABI provider shall:

(a) Provide orientation for each new employee which shall include the agency's:

1. Mission;

2. Goals;

3. Organization; and

4. Policies and procedures;

(b) Require documentation of all training provided which shall include the:

1. Type of training;

2. Name and title of the trainer;

3. Length of the training;

4. Date of completion; and

5. Signature of the trainee verifying completion;

(c) Ensure that each employee completes ABI training consistent with the curriculum that has been approved by the department, prior to working independently with a participant, which shall include:

1. Required orientation in brain injury;

2. Identifying and reporting:

a. Abuse;

b. Neglect; and

c. Exploitation;

3. Unless the employee is a licensed or registered nurse, first aid provided by an individual certified as a trainer by:

a. The American Red Cross; or

b. Other nationally accredited organization; and

4. Coronary pulmonary resuscitation provided by an individual certified as a trainer by:

a. The American Red Cross; or

b. Other nationally accredited organization;

(d) Ensure that each employee completes six (6) hours of continuing education in brain injury annually, following the first year of service;

(e) Not be required to receive the training specified in paragraph (c)1 of this subsection if the provider is a professional who has, within the prior five (5) years, attained 2,000 hours of experience providing services to a person with a primary diagnosis of a brain injury including:

1. An occupational therapist or occupational therapy assistant providing occupational therapy;

2. A psychologist or psychologist with autonomous functioning providing psychological services;

3. A speech-language pathologist providing speech therapy;

4. A board certified behavior analyst; or

5. A physical therapist or physical therapist assistant providing physical therapy; and

(f) Ensure that prior to the date of service as a volunteer, an individual receives training which shall include:

1. Required orientation in brain injury as specified in paragraph (c)1, 2, 3, and 4 of this subsection;

2. Orientation to the agency;

3. A confidentiality statement; and

4. Individualized instruction on the needs of the participant to whom the volunteer shall provide services.

(18) An ABI provider shall provide information to a case manager necessary for completion of a Mayo-Portland Adaptability Inventory-4 for each participant served by the provider.

Section 3. Participant Eligibility, Enrollment, and Termination.

(1)

(a) To be eligible to receive a service in the ABI long term care waiver program, an individual shall:

1. Be at least eighteen (18) years of age;

2. Have an ABI which necessitates:

a. Supervision;

b. Rehabilitative services; and

c. Long term supports;

3. Have an ABI that involves:

a. Cognition;

b. Behavior; or

c. Physical function; and

4. Be screened by the department for the purpose of making a preliminary determination of whether the individual might qualify for ABI waiver services.

(b) In addition to the individual meeting the requirements established in paragraph (a) of this subsection, the individual or a representative on behalf of the individual shall:

1. Apply for 1915(c) home and community based waiver services via the MWMA; and

2. Complete and upload into the MWMA a MAP - 115 Application Intake - Participant Authorization.

(2) The department shall utilize a first come, first serve priority basis to enroll an individual who meets the eligibility criteria established in this section.

(3) If funding is not available, an individual shall be placed on the ABI long term care waiver waiting list in accordance with Section 9 of this administrative regulation.

(4)

(a) A certification packet shall be entered into the MWMA by a case manager or support broker on behalf of the applicant.

(b) The packet shall contain:

1. A copy of the allocation letter sent to the applicant at the time funding was allocated for the applicant's participation in the ABI Long Term Care Waiver program;

- 2. A MAP-351, Medicaid Waiver Assessment;
- 3. A statement of the need for ABI long term care waiver services which shall be signed and dated by a physician on a MAP 10, Waiver Services Physician's Recommendation form;
- 4. A MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form; and
- 5. A person-centered service plan.

(5) An individual shall receive notification of potential funding allocated for the ABI long term care waiver services for the individual in accordance with this section.

(6) An individual shall meet the patient status criteria for nursing facility services established in 907 KAR 1:022, including nursing facility services for a brain injury.

(7) An individual shall:

(a) Have a primary diagnosis that indicates an ABI with structural, non-degenerative brain injury;

(b) Be medically stable;

(c) Meet Medicaid eligibility requirements established in 907 KAR 20:010;

(d) Exhibit:

- 1. Cognitive damage;
- 2. Behavioral damage;
- 3. Motor damage; or
- 4. Sensory damage;

(e) Have a rating of at least four (4) or above on the Family Guide to the Rancho Levels of Cognitive Functioning; and

(f) Receive notification of approval from the department.

(8) The basis of an eligibility determination for participation in the ABI long term care waiver program shall be the:

(a) Presenting problem;

(b) Person-centered service plan;

(c) Expected benefit of the admission;

(d) Expected outcome;

(e) Service required; and

(f) Cost effectiveness of service delivery as an alternative to nursing facility and nursing facility brain injury services.

(9) An ABI long term care waiver service shall not be furnished to an individual if the individual is:

(a) An inpatient of a hospital, nursing facility, or an intermediate care facility for individuals with an intellectual disability; or

(b) Receiving a service in another 1915(c) home and community based services waiver program.

(10) The department shall make:

(a) An initial evaluation to determine if an individual meets the nursing facility level of care criteria established in 907 KAR 1:022; and

(b) A determination of whether to admit an individual into the ABI long term care waiver program.

(11) To maintain eligibility as a participant:

(a) An individual shall maintain Medicaid eligibility requirements established in 907 KAR 20:010;

(b) A reevaluation shall be conducted at least once every twelve (12) months to determine if the individual continues to meet the patient status criteria for nursing facility services established in 907 KAR 1:022; and

(c) Progress toward outcomes identified in the approved person-centered service plan shall not be required.

(12) The department shall exclude an individual from receiving an ABI long term care waiver service for whom the average cost of ABI waiver service is reasonably expected to exceed the cost of a nursing facility service.

(13) Involuntary termination and loss of an ABI long term care waiver program placement shall be in accordance with 907 KAR 1:563 and shall be initiated if:

(a) An individual fails to initiate an ABI long term care waiver service within sixty (60) days of notification of potential funding without good cause shown. The individual or legal representative shall have the burden of providing documentation of good cause, including:

- 1. A statement signed by the participant or legal representative;
- 2. Copies of letters to providers; and
- 3. Copies of letters from providers;

(b) A participant or legal representative fails to access the required service as outlined in the person-centered service plan for a period greater than sixty (60) consecutive days without good cause shown.

1. The participant or legal representative shall have the burden of providing documentation of good cause including:

- a. A statement signed by the participant or legal representative;
- b. Copies of letters to providers; and
- c. Copies of letters from providers.

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension period, which shall not exceed sixty (60) days, to the participant during which time period the participant shall initiate the ABI long term care waiver services or access the required services as outlined in the person-centered service plan. The extension shall be in writing;

(c) A participant changes residence outside the Commonwealth of Kentucky;

(d) A participant does not meet the patient status criteria for nursing facility services established in 907 KAR 1:022;

(e) A participant is no longer able to be safely served in the community; or

(f) A participant is no longer actively participating in services within the approved person-centered service plan as determined by the person-centered team.

(14) Involuntary termination of a service to a participant by an ABI provider shall require:

(a) Simultaneous notice, which shall:

1. Be sent at least thirty (30) days prior to the effective date of the action, to the:

- a. Department;
- b. Participant or legal representative; and
- c. Case manager; and

2. Include:

- a. A statement of the intended action;
- b. The basis for the intended action;
- c. The authority by which the action is taken; and
- d. The participant's right to appeal the intended action through the provider's appeal or grievance process; and

(b) The case manager in conjunction with the provider to:

- 1. Provide the participant with the name, address, and telephone number of each current ABI provider in the state;
- 2. Provide assistance to the participant in making contact with another ABI provider;
- 3. Arrange transportation for a requested visit to an ABI provider site;

4. Provide a copy of pertinent information to the participant or legal representative;

5. Ensure the health, safety, and welfare of the participant until an appropriate placement is secured;

6. Continue to provide supports until alternative services or another placement is secured; and

7. Provide assistance to ensure a safe and effective service transition.

(15) Voluntary termination and loss of an ABI long term care waiver program placement shall be initiated if a participant or legal representative submits a written notice of intent to discontinue services to the service provider and to the department.

(a) An action to terminate services shall not be initiated until thirty (30) calendar days from the date of the notice.

(b) The participant or legal representative may reconsider and revoke the notice in writing during the thirty (30) calendar day period.

Section 4. Person-centered Service Plan Requirements.

(1) A person-centered service plan shall be established:

(a) For each participant; and

(b) By the participant's person-centered service plan team.

(2) A participant's person-centered service plan shall:

(a) Be developed by:

1. The participant, the participant's guardian, or the participant's representative;

2. The participant's case manager;

3. The participant's person-centered team; and

4. Any other individual chosen by the participant if the participant chooses any other individual to participate in developing the person-centered service plan;

(b) Use a process that:

1. Provides the necessary information and support to empower the participant, the participant's guardian, or participant's legal representative to direct the planning process in a way that empowers the participant to have the freedom and support to control the participant's schedules and activities without coercion or restraint;

2. Is timely and occurs at times and locations convenient for the participant;

3. Reflects cultural considerations of the participant;

4. Provides information:

a. Using plain language in accordance with 42 C.F.R. 435.905(b); and

b. In a way that is accessible to an individual with a disability or who has limited English proficiency;

5. Offers an informed choice defined as a choice from options based on accurate and thorough knowledge and understanding to the participant regarding the services and supports to be received and from whom;

6. Includes a method for the participant to request updates to the person-centered service plan as needed;

7. Enables all parties to understand how the participant:

a. Learns;

b. Makes decisions; and

c. Chooses to live and work in the participant's community;

8. Discovers the participant's needs, likes, and dislikes;

9. Empowers the participant's person-centered team to create a person-centered service plan that:

a. Is based on the participant's:

(i) Assessed clinical and support needs;

(ii) Strengths;

(iii) Preferences; and

(iv) Ideas;

b. Encourages and supports the participant's:

(i) Rehabilitative needs;

(ii) Habilitative needs; and

(iii) Long term satisfaction;

c. Is based on reasonable costs given the participant's support needs;

d. Includes:

(i) The participant's goals;

(ii) The participant's desired outcomes; and

(iii) Matters important to the participant;

e. Includes a range of supports including funded, community, and natural supports that shall assist the participant in achieving identified goals;

f. Includes:

(i) Information necessary to support the participant during times of crisis; and

(ii) Risk factors and measures in place to prevent crises from occurring;

g. Assists the participant in making informed choices by facilitating knowledge of and access to services and supports;

h. Records the alternative home and community-based settings that were considered by the participant;

i. Reflects that the setting in which the participant resides was chosen by the participant;

j. Is understandable to the participant and to the individuals who are important in supporting the participant;

k. Identifies the individual or entity responsible for monitoring the person-centered service plan;

l. Is finalized and agreed to with the informed consent of the participant or participant's legal representative in writing with signatures by each individual who will be involved in implementing the person-centered service plan;

m. Shall be distributed to the individual and other people involved in implementing the person-centered service plan;

n. Includes those services which the individual elects to self-direct; and

o. Prevents the provision of unnecessary or inappropriate services and supports; and

(c) Includes in all settings the ability for the participant to:

1. Have access to make private phone calls, texts, or emails at the participant's preference or convenience; and

2.

a. Choose when and what to eat;

b. Have access to food at any time;

c. Choose with whom to eat or whether to eat alone; and

d. Choose appropriating clothing according to the:

(i) Participant's preference;

(ii) Weather; and

(iii) Activities to be performed.

(3) If a participant's person-centered service plan includes ADHC services, the ADHC services plan of treatment shall be addressed in the person-centered service plan.

(4)

(a) A participant's person-centered service plan shall be:

1. Entered into the MWMA by the participant's case manager; and

2. Updated in the MWMA by the participant's case manager.

(b) A participant or participant's authorized representative shall complete and upload into the MWMA a MAP - 116 Service Plan – Participant Authorization prior to or at the time the person-centered service plan is uploaded into the MWMA.

Section 5. Case Management Requirements.

(1) A case manager shall:

(a)

1. Be a registered nurse;

2. Be a licensed practical nurse; or

3. Be an individual with a bachelor's degree or master's degree in a human services field who meets all applicable requirements of his or her particular field including a degree in:

a. Psychology;

b. Sociology;

c. Social work;

d. Rehabilitation counseling; or

e. Occupational therapy;

(b)

1. Be independent as defined as not being employed by an agency that is providing ABI waiver services to the participant; or

2. Be employed by or work under contract with a free-standing case management agency; and

(c) Have completed case management training that is consistent with the curriculum that has been approved by the department prior to providing case management services.

(2) A case manager shall:

(a) Communicate in a way that ensures the best interest of the participant;

(b) Be able to identify and meet the needs of the participant;

(c)

1. Be competent in the participant's language either through personal knowledge of the language or through interpretation; and

2. Demonstrate a heightened awareness of the unique way in which the participant interacts with the world around the participant;

(d) Ensure that:

1. The participant is educated in a way that addresses the participant's:

a. Need for knowledge of the case management process;

b. Personal rights; and

c. Risks and responsibilities as well as awareness of available services; and

2. All individuals involved in implementing the participant's person-centered service plan are informed of changes in the scope of work related to the person-centered service plan as applicable;

(e) Have a code of ethics to guide the case manager in providing case management which shall address:

1. Advocating for standards that promote outcomes of quality;

2. Ensuring that no harm is done;

3. Respecting the rights of others to make their own decisions;

- 4. Treating others fairly; and
- 5. Being faithful and following through on promises and commitments;

(f)

- 1. Lead the person-centered service planning team; and
- 2. Take charge of coordinating services through team meetings with representatives of all agencies involved in implementing a participant's person-centered service plan;

(g)

- 1. Include the participant's participation or legal representative's participation in the case management process; and
- 2. Make the participant's preferences and participation in decision making a priority;

(h) Document:

- 1. A participant's interactions and communications with other agencies involved in implementing the participant's person-centered service plan; and
- 2. Personal observations;

(i) Advocate for a participant with service providers to ensure that services are delivered as established in the participant's person-centered service plan;

(j) Be accountable to:

- 1. A participant to whom the case manager provides case management in ensuring that the participant's needs are met;
- 2. A participant's person-centered service plan team and provide leadership to the team and follow through on commitments made; and

3. The case manager's employer by following the employer's policies and procedures;

(k) Stay current regarding the practice of case management and case management research;

(l) Assess the quality of services, safety of services, and cost effectiveness of services being provided to a participant in order to ensure that implementation of the participant's person-centered service plan is successful and done so in a way that is efficient regarding the participant's financial assets and benefits;

(m) Document services provided to a participant by entering the following into the MWMA:

1. A monthly department-approved person centered monitoring tool; and

2. A monthly entry which shall include:

- a. The month and year for the time period the note covers;
- b. An analysis of progress toward the participant's outcome or outcomes;
- c. Identification of barriers to achievement of outcomes;
- d. A projected plan to achieve the next step in achievement of outcomes;
- e. The signature and title of the case manager completing the note; and
- f. The date the note was generated;

(n) Document via an entry into the MWMA if a participant is:

- 1. Admitted to the ABI long term care waiver program;
- 2. Terminated from the ABI long-term care waiver program;
- 3. Temporarily discharged from the ABI long term care waiver program;
- 4. Admitted to a hospital;
- 5. Admitted to a nursing facility;
- 6. Changing the primary ABI provider;
- 7. Changing the case management agency;
- 8. Transferred to another Medicaid 1915(c) home and community based waiver service program; or
- 9. Relocated to a different address; and

(o) Provide information about participant-directed services to the participant or the participant's guardian:

- 1. At the time the initial person-centered service plan is developed; and
- 2. At least annually thereafter and upon inquiry from the participant or participant's guardian.

(3) A case management provider shall:

(a) Establish a human rights committee which shall:

- 1. Include an:
 - a. Individual with a brain injury or a family member of an individual with a brain injury;

- b. Individual not affiliated with the ABI provider; and
- c. Individual who has knowledge and experience in human rights issues;

2. Review and approve each person-centered service plan with human rights restrictions at a minimum of every six (6) months;

3. Review and approve, in conjunction with the participant's team, behavior intervention plans that contain human rights restrictions; and

4. Review the use of a psychotropic medication by a participant without an Axis I diagnosis; and

(b) Establish a behavior intervention committee which shall:

1. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior intervention plan;

2. Be separate from the human rights committee; and

3. Review and approve, prior to implementation and at a minimum of every six (6) months in conjunction with the participant's team, an intervention plan that includes highly restrictive procedures or contain human rights restrictions; and

(c) Complete and submit a Mayo-Portland Adaptability Inventory-4 to the department for each participant:

1. Within thirty (30) days of the participant's admission into the ABI program;

2. Annually thereafter; and

3. Upon discharge from the ABI waiver program.

(4)

(a) Case management for any participant who begins receiving ABI waiver services after the effective date of this administrative regulation shall be conflict free.

(b)

1. Conflict free case management shall be a scenario in which a provider including any subsidiary, partnership, not-for-profit, or for-profit business entity that has a business interest in the provider who renders case management to a participant shall not also provide another 1915(c) home and community based waiver service to that same participant unless the provider is the only willing and qualified ABI waiver services provider within thirty (30) miles of the participant's residence.

2. An exemption to the conflict free case management requirement shall be granted if:

a. A participant requests the exemption;

b. The participant's case manager provides documentation of evidence to the department, that there is a lack of a qualified case manager within thirty (30) miles of the participant's residence;

c. The participant or participant's representative and case manager signs a completed MAP - 531 Conflict-Free Case Management Exemption; and

d. The participant, participant's representative, or case manager uploads the completed MAP - 531 Conflict-Free Case Management Exemption into the MWMA.

3. If a case management service is approved to be provided despite not being conflict free, the case management provider shall document conflict of interest protections, separating case management and service provision functions within the provider entity and demonstrate that the participant is provided with a clear and accessible alternative dispute resolution process.

4. An exemption to the conflict free case management requirement shall be requested upon reassessment or at least annually.

(c) A participant who receives ABI waiver services prior to the effective date of this administrative regulation shall transition to conflict free case management when the participant's next level of care determination occurs.

(d) During the transition to conflict free case management, any case manager providing case management to a participant shall educate the participant and members of the participant's person-centered team of the conflict free case management requirement in order to prepare the participant to decide, if necessary, to change the participant's:

1. Case manager; or

2. Provider of non-case management ABI waiver services.

(5) Case management shall:

VOLUME 51, NUMBER 8– February 1, 2025

(a) Include initiation, coordination, implementation, and monitoring of the assessment or reassessment, evaluation, intake, and eligibility process;

(b) Assist a participant in the identification, coordination, and facilitation of the person centered team and person centered team meetings;

(c) Assist a participant and the person centered team to develop an individualized person-centered service plan and update it as necessary based on changes in the participant's medical condition and supports;

(d) Include monitoring of the delivery of services and the effectiveness of the person-centered service plan, which shall:

1. Be initially developed with the participant and legal representative if appointed prior to the level of care determination;

2. Be updated within the first thirty (30) days of service and as changes or recertification occurs; and

3. Include the person-centered service plan being sent to the department or its designee prior to the implementation of the effective date the change occurs with the participant;

(e) Include a transition plan that shall:

1. Be:

a. Developed within the first thirty (30) days of service;

b. Updated as changes or recertification occurs; and

c. Updated thirty (30) days prior to discharge; and

2. Include:

a. The skills or service obtained from the ABI waiver program upon transition into the community; and

b. A listing of the community supports available upon the transition;

(f) Assist a participant in obtaining a needed service outside those available by the ABI waiver;

(g) Be provided by a case manager who:

1. Meets the requirements of subsection (1) of this section;

2. Shall provide a participant and legal representative with a listing of each available ABI provider in the service area;

3. Shall maintain documentation signed by a participant or legal representative of informed choice of an ABI provider and of any change to the selection of an ABI provider and the reason for the change;

4. Shall provide a distribution of the crisis prevention and response plan, transition plan, person-centered service plan, and other documents within the first thirty (30) days of the service to the chosen ABI service provider and as information is updated;

5. Shall provide twenty-four (24) hour telephone access to a participant and chosen ABI provider;

6. Shall work in conjunction with an ABI provider selected by a participant to develop a crisis prevention and response plan which shall be:

a. Individual-specific; and

b. Updated as a change occurs and at each recertification;

7. Shall assist a participant in planning resource use and assuring protection of resources;

8. Shall conduct one (1) face-to-face meeting with a participant within a calendar month occurring at a covered service site with one (1) visit quarterly at the participant's residence;

9. Shall ensure twenty-four (24) hour availability of services; and

10. Shall ensure that the participant's health, welfare, and safety needs are met; and

(h) Be documented by a detailed staff note in the MWMA which shall include:

1. The participant's health, safety and welfare;

2. Progress toward outcomes identified in the approved person-centered service plan;

3. The date of the service;

4. Beginning and ending time;

5. The signature and title of the individual providing the service; and

6. A quarterly summary which shall include:

a. Documentation of monthly contact with each chosen ABI provider; and

b. Evidence of monitoring of the delivery of services approved in the participant's person-centered service plan and of the effectiveness of the person-centered service plan.

(6) Case management shall involve:

(a) A constant recognition of what is and is not working regarding a participant; and

(b) Changing what is not working.

Section 6. Covered Services.

(1) An ABI waiver service shall:

(a) Not be covered unless it has been prior-authorized by the department; and

(b) Be provided pursuant to the participant's person-centered service plan.

(2) An ABI waiver provider shall provide the following services to a participant:

(a) Case management services in accordance with Section 4 of this administrative regulation;

(b) Behavioral services, which shall:

1. Be a systematic application of techniques and methods to influence or change a behavior in a desired way;

2. Include a functional analysis of the participant's behavior including:

a. An evaluation of the impact of an ABI on:

(i) Cognition; and

(ii) Behavior;

b. An analysis of potential communicative intent of the behavior;

c. The history of reinforcement for the behavior;

d. Critical variables that precede the behavior;

e. Effects of different situations on the behavior; and

f. A hypothesis regarding the:

(i) Motivation behind the behavior;

(ii) Purpose of the behavior; and

(iii) Factors that maintain the behavior;

3. Include the development of a behavioral support plan, which shall:

a. Be developed by the behavioral specialist;

b. Not be implemented by the behavior specialist who wrote the plan;

c. Be revised as necessary;

d. Define the techniques and procedures used;

e. Include the hierarchy of behavior interventions ranging from the least to the most restrictive;

f. Reflect the use of positive approaches; and

g. Prohibit the use of:

(i) Prone or supine restraint;

(ii) Corporal punishment;

(iii) Seclusion;

(iv) Verbal abuse; and

(v) Any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;

4. Include the provision of training to other ABI providers concerning implementation of the behavioral intervention plan;

5. Include the monitoring of a participant's progress, which shall be accomplished through:

a. The analysis of data concerning the behavior's:

(i) Frequency;

(ii) Intensity; and

(iii) Duration; and

b. Reports involved in implementing the behavioral service plan;

6. Be provided by a behavior specialist who shall:

a. Be:

(i) A psychologist;

(ii) A psychologist with autonomous functioning;

(iii) A licensed psychological associate;

(iv) A psychiatrist;

(v) A licensed clinical social worker;

(vi) A clinical nurse specialist with a master's degree in psychiatric nursing or rehabilitation nursing;

(vii) An advanced practice registered nurse;

(viii) A board certified behavior analyst; or

(ix) A licensed professional clinical counselor; and

b. Have at least one (1) year of behavior specialist experience or provide documentation of completed coursework regarding learning and behavior principles and techniques; and

VOLUME 51, NUMBER 8– February 1, 2025

7. Be documented by a detailed staff note in the MWMA which shall include:

- a. The date of the service;
- b. The beginning and ending time;
- c. The signature and title of the behavioral specialist; and
- d. A summary of data analysis and progress of the individual related to the approved person-centered service plan;

(c) Community living supports, which shall:

1. Be provided in accordance with the participant's person-centered service plan, including:

- a. A nonmedical service;
- b. Supervision; or
- c. Socialization;

2. Include assistance, prompting, observing, or training in activities of daily living;

3. Include activities of daily living which shall include:

- a. Bathing;
- b. Eating;
- c. Dressing;
- d. Personal hygiene;
- e. Shopping; and
- f. Money management;

4. Include prompting, observing, and monitoring of medications and nonmedical care not requiring a nurse or physician intervention;

5. Include socialization, relationship building, and participation in community activities according to the approved person-centered service plan which are therapeutic and not diversional in nature;

6. Accompany and assist a participant while utilizing transportation services;

7. Include documentation in a detailed staff note in the MWMA which shall include the:

- a. Progress toward goals and objectives identified in the approved person-centered service plan;
- b. Date of the service;
- c. Beginning and ending time; and
- d. Signature and title of the individual providing the service;

8. Not be provided to a participant who receives community residential services; and

9. Be provided by a:

a. Home health agency licensed and operating in accordance with 902 KAR 20:081;

b. Community mental health center licensed and operating in accordance with 902 KAR 20:091;

c. Community habilitation program certified at least annually by the department; or

d. Supervised residential care setting certified at least annually by the department;

(d) Supervised residential care level I, which:

1. Shall be provided by:

a. A community mental health center licensed and operating in accordance with 902 KAR 20:091 and certified at least annually by the department; or

b. An approved waiver provider certified at least annually by the department;

2. Shall not be provided to a participant unless the participant has been authorized to receive residential care by the department's residential review committee which shall:

a. Consider applications for residential care in the order in which the applications are received;

b. Base residential care decisions on the following factors:

(i) Whether the applicant resides with a caregiver or not;

(ii) Whether the applicant resides with a caregiver but demonstrates maladaptive behavior which places the applicant at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the applicant's behavior or the risk it poses, resulting in the need for removal from the home to a more structured setting; or

(iii) Whether the applicant demonstrates behavior which may result in potential legal problems if not ameliorated;

c. Be comprised of three (3) Cabinet for Health and Family Services employees:

(i) With professional or personal experience with brain injury or other cognitive disabilities; and

(ii) Two (2) of whom shall not be supervised by the manager of the acquired brain injury branch; and

d. Only consider applications for a monthly committee meeting which were received no later than the close of business the day before the committee convenes;

3. Shall not have more than three (3) participants simultaneously in a home rented or owned by the ABI provider;

4. Shall provide twenty-four (24) hours of supervision daily unless the provider implements, pursuant to subparagraph 5. of this paragraph, an individualized plan allowing for up to five (5) unsupervised hours per day;

5. May include the provision of up to five (5) unsupervised hours per day per participant if the provider develops an individualized plan for the participant to promote increased independence which shall:

a. Contain provisions necessary to ensure the participant's health, safety, and welfare;

b. Be approved by the participant's treatment team, with the approval documented by the provider; and

c. Contain periodic reviews and updates based on changes, if any, in the participant's status;

6. Shall include assistance and training with daily living skills including:

- a. Ambulating;
- b. Dressing;
- c. Grooming;
- d. Eating;
- e. Toileting;
- f. Bathing;
- g. Meal planning;
- h. Grocery shopping;
- i. Meal preparation;
- j. Laundry;
- k. Budgeting and financial matters;
- l. Home care and cleaning;
- m. Leisure skill instruction; or
- n. Self-medication instruction;

7. Shall include social skills training including the reduction or elimination of maladaptive behaviors in accordance with the individual's person-centered service plan;

8. Shall include provision or arrangement of transportation to services, activities, or medical appointments as needed;

9. Shall include accompanying or assisting a participant while the participant utilizes transportation services as specified in the participant's person-centered service plan;

10. Shall include participation in medical appointments or follow-up care as directed by the medical staff;

11. Shall be documented by a detailed staff note in the MWMA which shall document:

- a. Progress toward goals and objectives identified in the approved person-centered service plan;
- b. The date of the service;
- c. The beginning and ending time of the service; and
- d. The signature and title of the individual providing the service;

12. Shall not include the cost of room and board;

13. Shall be provided to a participant who:

a. Does not reside with a caregiver;

b. Is residing with a caregiver but demonstrates maladaptive behavior that places him or her at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the behavior or the risk it presents, resulting in the need for removal from the home to a more structured setting; or

c. Demonstrates behavior that may result in potential legal problems if not ameliorated;

14. May utilize a modular home only if the:

- a. Wheels are removed;
- b. Home is anchored to a permanent foundation; and
- c. Windows are of adequate size for an adult to use as an exit in an emergency;

15. Shall not utilize a motor home;

16. Shall provide a sleeping room which ensures that a participant:

a. Does not share a room with an individual of the opposite gender who is not the participant's spouse;

b. Does not share a room with an individual who presents a potential threat; and

c. Has a separate bed equipped with substantial springs, a clean and comfortable mattress, and clean bed linens as required for the participant's health and comfort; and

17. Shall provide service and training to obtain the outcomes for the participant as identified in the approved person-centered service plan;

(e) Supervised residential care level II, which shall:

1. Meet the requirements established in paragraph (d) of this subsection except for the requirements established in paragraph (d)4 and 5;

2. Provide twelve (12) to eighteen (18) hours of daily supervision, the amount of which shall:

a. Be based on the participant's needs;

b. Be approved by the participant's treatment team; and

c. Be documented in the participant's person-centered service plan which shall also contain periodic reviews and updates based on changes, if any, in the participant's status; and

3. Include provision of twenty-four (24) hour on-call support;

(f) Supervised residential care level III, which shall:

1. Meet the requirements established in paragraph (d) of this subsection except for the requirements established in paragraph (d)4 and 5;

2. Be provided in a single family home, duplex, or apartment building to a participant who lives alone or with an unrelated roommate;

3. Not be provided to more than two (2) participants simultaneously in one (1) apartment or home;

4. Not be provided in more than two (2) apartments in one (1) building;

5. If provided in an apartment building, have staff:

a. Available twenty-four (24) hours per day and seven (7) days per week; and

b. Who do not reside in a dwelling occupied by a participant; and

6. Provide less than twelve (12) hours of supervision or support in the home based on an individualized plan developed by the provider to promote increased independence which shall:

a. Contain provisions necessary to ensure the participant's health, safety, and welfare;

b. Be approved by the participant's treatment team, with the approval documented by the provider; and

c. Contain periodic reviews and updates based on changes, if any, in the participant's status;

(g) Counseling services, which:

1. Shall be designed to help a participant resolve personal issues or interpersonal problems resulting from the participant's ABI;

2. Shall assist a family member in implementing a participant's approved person-centered service plan;

3. In a severe case, shall be provided as an adjunct to behavioral programming;

4. Shall include substance use or chemical dependency treatment, if needed;

5. Shall include building and maintaining healthy relationships;

6. Shall develop social skills or the skills to cope with and adjust to the brain injury;

7. Shall increase knowledge and awareness of the effects of an ABI;

8. May include group counseling if the service is:

a. Provided to a maximum of twelve (12) participants; and

b. Included in the participant's approved person-centered service plan for:

(i) Substance use or chemical dependency treatment;

(ii) Building and maintaining healthy relationships;

(iii) Developing social skills;

(iv) Developing skills to cope with and adjust to a brain injury, including the use of cognitive remediation strategies consisting of the development of compensatory memory and problem solving strategies, and the management of impulsivity; and

(v) Increasing knowledge and awareness of the effects of the acquired brain injury upon the participant's functioning and social interactions;

9. Shall be provided by:

a. A psychiatrist;

b. A psychologist;

c. A psychologist with autonomous functioning;

d. A licensed psychological associate;

e. A licensed clinical social worker;

f. A clinical nurse specialist with a master's degree in psychiatric nursing;

g. An advanced practice registered nurse;

h. A certified alcohol and drug counselor;

i. A licensed marriage and family therapist;

j. A licensed professional clinical counselor;

k. A licensed clinical alcohol and drug counselor associate effective and contingent upon approval by the Centers for Medicare and Medicaid Services; or

l. A licensed clinical alcohol and drug counselor effective and contingent upon approval by the Centers for Medicare and Medicaid Services; and

10. Shall be documented by a detailed staff note in the MWMA which shall include:

a. Progress toward the goals and objectives established in the person-centered service plan;

b. The date of the service;

c. The beginning and ending time; and

d. The signature and title of the individual providing the service;

(h) Family training, which shall:

1. Provide training and counseling services for the families of individuals served in the ABI long term care waiver. Training to family or other responsible persons shall include:

a. Interpretation or explanation of medical examinations and procedures;

b. Treatment regimens;

c. Use of equipment specified in the person-centered service plan; or

d. Advising how to assist the participant;

2. Include updates as needed to safely maintain the participant at home;

3. Include specified goals in the participant's person-centered service plan;

4. Be training provided to family that may include a person who:

a. Lives with, or provides care to, a participant; and

b. Is a:

(i) Parent;

(ii) Spouse;

(iii) Child;

(iv) Relative;

(v) Foster family; or

(vi) In-law;

5. Not include an individual who is employed to care for the participant;

6. Be provided by an approved ABI waiver provider that is certified at least annually and which may include:

a. An occupational therapist;

b. A certified occupational therapy assistant;

c. A licensed practical nurse;

d. A physical therapist;

e. A physical therapist assistant;

f. A registered nurse;

g. A speech-language pathologist;

h. A psychiatrist;

i. A psychologist;

j. A psychologist with autonomous functioning;

k. A licensed psychological associate;

l. A clinical nurse specialist with a master's degree in:

(i) Psychiatric nursing; or

(ii) Rehabilitative nursing;

m. An advanced practice registered nurse;

n. A certified alcohol and drug counselor;

o. A licensed professional clinical counselor;

p. A board certified behavior analyst;

q. A licensed clinical social worker;

r. A licensed marriage and family therapist;
 s. A licensed clinical alcohol and drug counselor associate effective and contingent upon approval by the Centers for Medicare and Medicaid Services; or

t. A licensed clinical alcohol and drug counselor effective and contingent upon approval by the Centers for Medicare and Medicaid Services; and

7. Be documented by a detailed staff note in the MWMA which shall include:

a. Progress toward the goals and objectives established in the person-centered service plan;

b. The date of the service;

c. The beginning and ending time; and

d. The signature and title of the individual providing the service;

(i) Nursing supports, which shall include:

1.

a. A physician order to monitor medical conditions; or

b. A physician order for training and oversight of medical procedures;

2. The monitoring of specific medical conditions;

3. Services that shall be provided by:

a. A registered nurse who meets the definition established in KRS 314.011(5); or

b. A licensed practical nurse as defined by KRS 314.011(9) who works under the supervision of a registered nurse; and

4. Documentation by a detailed staff note in the MWMA which shall include:

a. Progress toward the goals and objectives established in the person-centered service plan;

b. The date of the service;

c. The beginning and ending time; and

d. The signature and title of the individual providing the service;

(j) Occupational therapy, which shall be:

1. A physician-ordered evaluation of a participant's level of functioning by applying diagnostic and prognostic tests;

2. Physician-ordered services in a specified amount and duration to guide a participant in the use of therapeutic, creative, and self-care activities to assist the participant in obtaining the highest possible level of functioning;

3. Provided by an occupational therapist or an occupational therapy assistant if supervised by an occupational therapist in accordance with 201 KAR 28:130; and

4. Documented by a detailed staff note in the MWMA which shall include:

a. Progress toward goals and objectives identified in the approved person-centered service plan;

b. The date of the service;

c. The beginning and ending time; and

d. The signature and title of the individual providing the service;

(k) A physical therapy service, which shall be:

1. A physician-ordered evaluation of a participant by applying muscle, joint, and functional ability tests;

2. Physician-ordered treatment in a specified amount and duration to assist a participant in obtaining the highest possible level of functioning;

3. Training of another ABI provider to improve the level of functioning of the participant in that provider's service setting;

4. Provided by a physical therapist or a physical therapist assistant supervised by a physical therapist in accordance with 201 KAR 22:001 and 201 KAR 22:020; and

5. Documented by a detailed staff note in the MWMA, which shall include:

a. Progress made toward outcomes identified in the person-centered service plan;

b. The date of the service;

c. The beginning and ending time of the service; and

d. The signature and title of the individual providing the service;

(l) A respite service, which shall:

1. Be provided only to a participant unable to administer self-care;

2. Be provided by a:

a. Nursing facility;

b. Community mental health center;

c. Home health agency;

d. Supervised residential care provider;

e. Adult day training provider; or

f. Adult day health care provider;

3. Be provided on a short-term basis due to the absence or need for relief of a non-paid primary caregiver;

4. Be limited to 5,760 fifteen (15) minute units per one (1) year authorized person-centered service plan period unless an individual's non-paid primary caregiver is unable to provide care due to a:

a. Death in the family;

b. Serious illness; or

c. Hospitalization;

5. Not be provided to a participant who receives supervised residential care;

6. Not include the cost of room and board if provided in a nursing facility; and

7. Be documented by a detailed staff note in the MWMA, which shall include:

a. Progress toward goals and objectives identified in the approved person-centered service plan;

b. The date of the service;

c. The beginning and ending time; and

d. The signature and title of the individual providing the service;

(m) Speech-language pathology services, which shall be:

1. A physician-ordered evaluation of a participant with a speech, hearing, or language disorder;

2. A physician-ordered rehabilitative service in a specified amount and duration to assist a participant with a speech and language disability in obtaining the highest possible level of functioning;

3. Provided by a speech-language pathologist; and

4. Documented by a detailed staff note in the MWMA, which shall include:

a. Progress toward goals and objectives identified in the approved person-centered service plan;

b. The date of the service;

c. The beginning and ending time; and

d. The signature and title of the individual providing the service;

(n) Adult day training services, which shall:

1. Be provided by:

a. An adult day training center that is certified at least annually by the department;

b. An outpatient rehabilitation facility that is licensed and operating in accordance with 902 KAR 20:190; or

c. A community mental health center licensed and operating in accordance with 902 KAR 20:091;

2. Focus on enabling the participant to attain or maintain the participant's maximum functional level and reintegrate the participant into the community;

3. Not exceed a staffing ratio of five (5) participants per one (1) staff person;

4. Include the following services:

a. Social skills training related to problematic behaviors identified in the participant's person-centered service plan;

b. Sensory or motor development;

c. Reduction or elimination of a maladaptive behavior;

d. Prevocational; or

e. Teaching concepts and skills to promote independence including:

(i) Following instructions;

(ii) Attendance and punctuality;

(iii) Task completion;

(iv) Budgeting and money management;

(v) Problem solving; or

(vi) Safety;

5. Be provided in a nonresidential setting;

6. Be developed in accordance with a participant's overall approved person-centered service plan;

7. Reflect the recommendations of a participant's person-centered team;

8. Be appropriate:

a. Given a participant's:

(i) Age;

- (ii) Level of cognitive and behavioral function; and
- (iii) Interest;
- b. Given a participant's ability prior to and after the participant's injury; and
- c. According to the approved person-centered service plan and be therapeutic in nature and not diversional;
- 9. Be coordinated with the occupational, speech, or other rehabilitation therapy included in a participant's person-centered service plan;
- 10. Provide a participant with an organized framework within which to function in the participant's daily activities;
- 11. Entail frequent assessments of a participant's progress and be appropriately revised as necessary; and
- 12. Be documented by a detailed staff note in the MWMA, which shall include:
 - a. Progress toward goals and objectives identified in the approved person-centered service plan;
 - b. The date of the service;
 - c. The beginning and ending time; and
 - d. The signature and title of the individual providing the service;
 - (o) Adult day health care services, which shall:
 - 1. Be provided by an adult day health care center that is licensed and operating in accordance with 902 KAR 20:066; and
 - 2. Include the following basic services and necessities provided to a participant during the posted hours of operation:
 - a. Skilled nursing services provided by a registered nurse or licensed practical nurse, including:
 - (i) Ostomy care;
 - (ii) Urinary catheter care;
 - (iii) Decubitus care;
 - (iv) Tube feeding;
 - (v) Venipuncture;
 - (vi) Insulin injections;
 - (vii) Tracheotomy care; or
 - (viii) Medical monitoring;
 - b. Meal service corresponding with hours of operation with a minimum of one (1) meal per day and therapeutic diets as required;
 - c. Snacks;
 - d. Supervision by a registered nurse;
 - e. Daily activities that are appropriate, given a participant's:
 - (i) Age;
 - (ii) Level of cognitive and behavioral function; and
 - (iii) Interest; and
 - f. Routine services that meet the daily personal and health care needs of a participant, including:
 - (i) Monitoring of vital signs;
 - (ii) Assistance with activities of daily living; and
 - (iii) Monitoring and supervision of self-administered medications, therapeutic programs, and incidental supplies and equipment needed for use by a participant;
 - 3. Include developing, implementing, and maintaining nursing policies for nursing or medical procedures performed in the adult day health care center;
 - 4. Focus on enabling the participant to attain or maintain the participant's maximum functional level and reintegrate a participant into the community by providing the following training:
 - a. Social skills training related to problematic behaviors identified in the participant's person-centered service plan;
 - b. Sensory or motor development;
 - c. Reduction or elimination of a maladaptive behavior per the participant's person-centered service plan;
 - d. Prevocational services; or
 - e. Teaching concepts and skills to promote independence including:
 - (i) Following instructions;
 - (ii) Attendance and punctuality;
 - (iii) Task completion;
 - (iv) Budgeting and money management;
 - (v) Problem solving; or
 - (vi) Safety;
 - 5. Be provided in a nonresidential setting;

- 6. Be developed in accordance with a participant's overall approved person-centered service plan, therapeutic in nature, and not diversional;
- 7. Reflect the recommendations of a participant's person-centered team;
- 8. Include ancillary services in accordance with 907 KAR 1:023 if ordered by a physician, physician assistant, or advanced practice registered nurse in a participant's adult day health care plan of treatment. Ancillary services shall:
 - a. Consist of evaluations or reevaluations for the purpose of developing a plan that shall be carried out by the participant or adult day health care center staff;
 - b. Be reasonable and necessary for the participant's condition;
 - c. Be rehabilitative in nature;
 - d. Include:
 - (i) Physical therapy provided by a physical therapist or physical therapist assistant;
 - (ii) Occupational therapy provided by an occupational therapist or occupational therapy assistant; or
 - (iii) Speech-language pathology services provided by a speech-language pathologist; and
 - e. Comply with the physical, occupational, and speech-language pathology service requirements established in 907 KAR 1:030, Section 3;
- 9. Be provided to a participant by the health team in an adult day health care center, which may include:
 - a. A physician;
 - b. A physician assistant;
 - c. An advanced practice registered nurse;
 - d. A registered nurse;
 - e. A licensed practical nurse;
 - f. An activities director;
 - g. A physical therapist;
 - h. A physical therapist assistant;
 - i. An occupational therapist;
 - j. An occupational therapy assistant;
 - k. A speech-language pathologist;
 - l. A social worker;
 - m. A nutritionist;
 - n. A health aide;
 - o. An LPCC;
 - p. A licensed marriage and family therapist;
 - q. A certified psychologist with autonomous functioning; or
 - r. A licensed psychological associate;
- 10. Be provided pursuant to a plan of treatment and developed annually in accordance with 902 KAR 20:066 and from information in the MAP 351, Medicaid Waiver Assessment and revised as needed; and
- 11. Be documented by a detailed staff note in the MWMA, which shall include:
 - a. Progress toward goals and objectives identified in the approved person-centered service plan;
 - b. The date of the service;
 - c. The beginning and ending time;
 - d. The signature and title of the individual providing the service; and
 - e. A monthly summary that assesses the participant's status related to the approved person-centered service plan;
 - (p) Supported employment, which shall be:
 - 1. Intensive, ongoing services for a participant to maintain paid employment in an environment in which an individual without a disability is employed;
 - 2. Provided by a:
 - a. Supported employment provider;
 - b. Sheltered employment provider; or
 - c. Structured day program provider;
 - 3. Provided one-on-one;
 - 4. Unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 99-457 (34 C.F.R. Parts 300 to 399), proof of which shall be documented in the participant's file;

VOLUME 51, NUMBER 8– February 1, 2025

5. Limited to forty (40) hours per week alone or in combination with adult day training or adult day health services;
6. An activity needed to sustain paid work by a participant receiving waiver services, including:
 - a. Supervision; and
 - b. Training;
7. Exclusive of work performed directly for the supported employment provider; and
8. Documented by a time and attendance record, which shall include:
 - a. Progress toward the goals and objectives identified in the person-centered service plan;
 - b. The date of service;
 - c. The beginning and ending time; and
 - d. The signature and title of the individual providing the service;
- (q) Specialized medical equipment and supplies, which shall:
 1. Include durable and nondurable medical equipment, devices, controls, appliances, or ancillary supplies;
 2. Enable a participant to increase his or her ability to perform daily living activities or to perceive, control, or communicate with the environment;
 3. Be ordered by a physician, documented in a participant's person-centered service plan, entered into the MWMA by the participant's case manager or support broker, and include three (3) estimates if the equipment is needed for vision or hearing;
 4. Include equipment necessary for the proper functioning of specialized items;
 5. Not be available through the department's durable medical equipment, vision, or hearing programs;
 6. Not be necessary for life support;
 7. Meet applicable standards of manufacture, design, and installation; and
 8. Exclude those items which are not of direct medical or remedial benefit to a participant;
- (r) Environmental and minor home adaptations, which shall:
 1. Be provided in accordance with applicable state and local building codes;
 2. Be provided to a participant if:
 - a. Ordered by a physician;
 - b. Prior-authorized by the ABIB;
 - c. Specified in the participant's approved person-centered service plan and entered into the MWMA, by the participant's case manager or support broker;
 - d. Necessary to enable the participant to function with greater independence within the participant's home; and
 - e. Without the modification, the participant requires institutionalization;
3. Not include a vehicle modification;
4. Be limited to no more than \$2,000 for a participant in a twelve (12) month period; and
5. If entailing:
 - a. Electrical work, be provided by a licensed electrician; or
 - b. Plumbing work, be provided by a licensed plumber;
- (s) Assessment services, which shall:
 1. Be a comprehensive assessment that shall identify a participant's needs and the services that the participant's family cannot manage or arrange for the participant;
 2. Evaluate a participant's physical health, mental health, social supports, and environment;
 3. Be requested by an individual requesting ABI services or a family or legal representative of the individual;
 4. Be conducted by an ABI case manager or support broker;
 5. Be conducted within seven (7) calendar days of receipt of the request for assessment;
 6. Include at least one (1) face-to-face contact with the participant and, if appropriate, the participant's family by the assessor in the participant's home; and
 7. Not be reimbursable if the individual does not receive a level of care certification; or
- (t) Reassessment services, which shall:
 1. Be performed at least every twelve (12) months;

2. Be conducted using the same procedures as for an assessment service;
3. Be conducted by an ABI case manager or support broker and submitted to the department no more than three (3) weeks prior to the expiration of the current level of care certification to ensure that certification is consecutive;
4. Not be reimbursable if conducted during a period that the participant is not covered by a valid level of care certification; and
5. Not be retroactive.

Section 7. Exclusions of the Acquired Brain Injury Waiver Program. A condition included in the following list shall not be considered an acquired brain injury requiring specialized rehabilitation:

- (1) A stroke treatable in a nursing facility providing routine rehabilitation services;
- (2) A spinal cord injury for which there is no known or obvious injury to the intracranial central nervous system;
- (3) Progressive dementia or another condition related to mental impairment that is of a chronic degenerative nature, including:
 - (a) Senile dementia;
 - (b) Organic brain disorder;
 - (c) Alzheimer's disease;
 - (d) Alcoholism; or
 - (e) Another addiction;
- (4) A depression or a psychiatric disorder in which there is no known or obvious central nervous system damage;
- (5) A birth defect;
- (6) An intellectual disability without an etiology to an acquired brain injury; or
- (7) A condition which causes an individual to pose a level of danger or an aggression that is unable to be managed and treated in a community.

Section 8. Incident Reporting Process.

- (1)
 - (a) There shall be two (2) classes of incidents.
 - (b) The following shall be the two (2) classes of incidents:
 1. An incident; or
 2. A critical incident.
 - (2) An incident shall be any occurrence that impacts the health, safety, welfare, or lifestyle choice of a participant and includes:
 - (a) A minor injury;
 - (b) A medication error without a serious outcome; or
 - (c) A behavior or situation that is not a critical incident.
 - (3) A critical incident shall be an alleged, suspected, or actual occurrence of an incident that:
 - (a) Can reasonably be expected to result in harm to a participant; and
 - (b) Shall include:
 1. Abuse, neglect, or exploitation;
 2. A serious medication error;
 3. Death;
 4. A homicidal or suicidal ideation;
 5. A missing person; or
 6. Other action or event that the provider determines may result in harm to the participant.
 - (4)
 - (a) If an incident occurs, the ABI provider shall:
 1. Report the incident by making an entry into the MWMA that includes details regarding the incident; and
 2. Be immediately assessed for potential abuse, neglect, or exploitation.
 - (b) If an assessment of an incident indicates that the potential for abuse, neglect, or exploitation exists:
 1. The incident shall immediately be considered a critical incident;
 2. The critical incident procedures established in subsection (5) of this section shall be followed; and
 3. The ABI provider shall report the incident to the participant's case manager and participant's guardian, if the participant has a guardian, within twenty-four (24) hours of discovery of the incident.

(5)

(a) If a critical incident occurs, the individual who witnessed the critical incident or discovered the critical incident shall immediately act to ensure the health, safety, and welfare of the at-risk participant.

(b) If the critical incident:

1. Requires reporting of abuse, neglect, or exploitation, the critical incident shall be immediately reported via the MWMA by the individual who witnessed or discovered the critical incident; or

2. Does not require reporting of abuse, neglect, or exploitation, the critical incident shall be reported via the MWMA by the individual who witnessed or discovered the critical incident within eight (8) hours of discovery.

(c) The ABI provider shall:

1. Conduct an immediate investigation and involve the participant's case manager in the investigation; and

2. Prepare a report of the investigation, which shall be recorded in the MWMA and shall include:

a. Identifying information of the participant involved in the critical incident and the person reporting the critical incident;

b. Details of the critical incident; and

c. Relevant participant information including:

(i) Axis I diagnosis or diagnoses;

(ii) Axis II diagnosis or diagnoses;

(iii) Axis III diagnosis or diagnoses;

(iv) A listing of recent medical concerns;

(v) An analysis of causal factors; and

(vi) Recommendations for preventing future occurrences.

(6)

(a) Following a death of a participant receiving ABI services from an ABI provider, the ABI provider shall enter mortality data documentation into the MWMA within fourteen (14) days of the death.

(b) Mortality data documentation shall include:

1. The participant's person-centered service plan at the time of death;

2. Any current assessment forms regarding the participant;

3. The participant's medication administration records from all service sites for the past three (3) months along with a copy of each prescription;

4. Progress notes regarding the participant from all service elements for the past thirty (30) days;

5. The results of the participant's most recent physical exam;

6. All incident reports, if any exist, regarding the participant for the past six (6) months;

7. Any medication error report, if any exists, related to the participant for the past six (6) months;

8. The most recent psychological evaluation of the participant;

9. A full life history of the participant including any update from the last version of the life history;

10. Names and contact information for all staff members who provided direct care to the participant during the last thirty (30) days of the participant's life;

11. Emergency medical services notes regarding the participant if available;

12. The police report if available;

13. A copy of:

a. The participant's advance directive, medical order for scope of treatment, living will, or health care directive if applicable;

b. Any functional assessment of behavior or positive behavior support plan regarding the participant that has been in place over any part of the past twelve (12) months; and

c. The cardiopulmonary resuscitation and first aid card for any ABI provider's staff member who was present at the time of the incident that resulted in the participant's death;

14. A record of all medical appointments or emergency room visits by the participant within the past twelve (12) months; and

15. A record of any crisis training for any staff member present at the time of the incident which resulted in the participant's death.

(7)

(a) An ABI provider shall report a medication error to the MWMA.

(b) An ABI provider shall document all medication error details on a medication error log retained on file at the ABI provider site.

Section 9. ABI Long Term Care Waiver Waiting List.

(1) An individual eighteen (18) years of age or older applying for an ABI long term care waiver service shall be placed on a statewide ABI long term care waiver waiting list that shall be maintained by the department.

(2) In order to be placed on the ABI long term care waiver waiting list, an individual or the individual's representative shall:

(a) Apply for 1915(c) home and community based waiver services via the MWMA;

(b) Complete and upload into the MWMA a MAP – 115 Application Intake – Participant Authorization; and

(c) Upload into the MWMA a completed MAP 10, Waiver Services Physician's Recommendation form that has been signed by a physician.

(3) The order of placement on the ABI long term care waiver waiting list shall be determined by the:

(a) Chronological date of complete application information regarding the individual being entered into the MWMA;

(b) Category of need of the individual as follows:

1. Emergency. An emergency shall exist if an immediate service is indicated as determined by:

a. The individual currently is demonstrating behavior related to the individual's acquired brain injury that places the participant, caregiver, or others at risk of significant harm; or

b. The individual is demonstrating behavior related to the individual's acquired brain injury which has resulted in the individual's arrest; or

2. Nonemergency; and

(c) Emergency Committee, which shall consider applications for the Acquired Brain Injury long term care waiver program for emergency placement.

1. The Emergency Committee meetings shall regularly occur during the fourth week of each month. To be considered at the monthly committee meeting, an application shall be received by the department no later than three (3) business days before the scheduled committee meeting.

2. The Emergency Review Committee shall be comprised of three (3) program staff of the cabinet.

a. Each member shall have professional or personal experience with brain injuries or other cognitive disabilities.

b. At least two (2) members shall not be supervised by the branch manager of the Acquired Brain Injury Branch.

(4) In determining chronological status, the original date of the individual's complete application information being entered into the MWMA shall:

(a) Be maintained; and

(b) Not change if an individual is moved from one (1) category of need to another.

(5) A written statement by a physician or other qualified mental health professional shall be required to support the validation of risk of significant harm to an individual or caregiver, or the nature of the individual's medical need.

(6) Written documentation by law enforcement or court personnel shall be required to support the validation of a history of arrest.

(7) A written notification of placement on the waiting list shall be mailed to the individual or the individual's legal representative and case management provider if identified.

(8) Maintenance of the ABI long term care waiver waiting list shall occur as follows:

(a) The department shall, at a minimum, update the waiting list annually; and

(b) If an individual is removed from the ABI long term care waiver waiting list, written notification shall be mailed by the department to the:

1. Individual;

2. Individual's legal representative; and

3. ABI case manager.

(9) Reassignment of category of need shall be completed based on the updated information and validation process.

(10) An individual or legal representative may submit a request for consideration of movement from one (1) category of need to another at any time an individual's status changes.

(11) An individual shall be removed from the ABI long term care waiver waiting list if:

(a) After a documented attempt, the department is unable to locate the individual or the individual's legal representative;

(b) The individual is deceased;

(c) The individual or individual's legal representative refuses the offer of ABI long term care waiver services and does not request to be maintained on the ABI long term care waiver waiting list; or

(d) The individual does not access services without demonstration of good cause within sixty (60) days of the placement allocation date.

1. The individual or individual's legal representative shall have the burden of providing documentation of good cause including:

a. A signed statement by the individual or the legal representative;

b. Copies of letters to providers; and

c. Copies of letters from providers.

2. Upon receipt of documentation of good cause, the department shall grant one (1) sixty (60) day extension in writing.

(12) The removal of an individual from the ABI long term care waiver waiting list shall not prevent the submittal of a new application at a later date.

(13) Potential funding allocated for services for an individual shall be based upon:

(a) The individual's category of need; and

(b) The individual's chronological date of placement on the ABI long term care waiver waiting list.

Section 10. Participant-Directed Services.

(1) Covered services and supports provided to a participant receiving PDS shall include:

(a) A home and community support service, which shall:

1. Be available only as a participant-directed service;

2. Be provided in the participant's home or in the community;

3. Be based upon therapeutic goals and not be diversional in nature;

4. Not be provided to an individual if the same or similar service is being provided to the individual by a non-PDS acquired brain injury service; and

5.

a. Be respite for the primary caregiver; or

b. Be supports and assistance related to chosen outcomes to facilitate independence and promote integration into the community for an individual residing in the individual's own home or the home of a family member and may include:

(i) Routine household tasks and maintenance;

(ii) Activities of daily living;

(iii) Personal hygiene;

(iv) Shopping;

(v) Money management;

(vi) Medication management;

(vii) Socialization;

(viii) Relationship building;

(ix) Meal planning;

(x) Meal preparation;

(xi) Grocery shopping; or

(xii) Participation in community activities;

(b) Goods and services, which shall:

1. Be individualized;

2. Be utilized to reduce the need for personal care or to enhance independence within the home or community of the participant;

3. Not include experimental goods or services; and

4. Not include chemical or physical restraints; and

(c) A community day support service, which shall:

1. Be available only as a participant-directed service;

2. Be provided in a community setting;

3. Be tailored to the participant's specific personal outcomes related to the acquisition, improvement, and retention of skills and abilities to prepare and support the participant for:

a. Work or community activities;

b. Socialization; and

c. Leisure or retirement activities;

4. Be based upon therapeutic goals and not be diversional in nature; and

5. Not be provided to an individual if the same or similar service is being provided to the individual by a non-PDS acquired brain injury service.

(2) To be covered, a PDS shall be specified in a participant's person-centered service plan.

(3) Reimbursement for a PDS shall not exceed the department's allowed reimbursement for the same or a similar service provided in a non-PDS ABI setting.

(4) A participant, including a married participant, shall choose a provider and the choice of PDS provider shall be documented in the participant's person-centered service plan.

(5)

(a) A participant may designate a representative to act on the participant's behalf.

(b) The PDS representative shall:

1. Be twenty-one (21) years of age or older;

2. Not be monetarily compensated for acting as the PDS representative or providing a PDS; and

3. Be appointed by the participant on a MAP-2000, Initiation/Termination of Participant-Directed Services.

(6) A participant may voluntarily terminate PDS by completing a MAP-2000, Initiation/Termination of Participant-Directed Services and submitting it to the support broker.

(7) The department shall immediately terminate a participant from receiving PDS if:

(a) Imminent danger to the participant's health, safety, or welfare exists;

(b) The participant fails to pay patient liability;

(c) The participant's person-centered service plan indicates the participant requires more hours of service than the program can provide, jeopardizing the participant's safety and welfare due to being left alone without a caregiver present; or

(d) The participant, caregiver, family, or guardian threatens or intimidates a support broker or other PDS staff.

(8) The department may terminate a participant from receiving PDS if the department determines that the participant's PDS provider has not adhered to the person-centered service plan.

(9) Except as provided in subsection (7) of this section, prior to a participant's termination from receiving PDS, the support broker shall:

(a) Notify the assessment or reassessment service provider of potential termination;

(b) Assist the participant in developing a resolution and prevention plan;

(c) Allow at least thirty (30), but no more than ninety (90), days for the participant to resolve the issue, develop and implement a prevention plan, or designate a PDS representative;

(d) Complete and submit to the department a MAP-2000, Initiation/Termination of Participant-Directed Services terminating the participant from receiving PDS if the participant fails to meet the requirements in paragraph (c) of this subsection; and

(e) Assist the participant in transitioning back to traditional ABI services.

(10) Upon an involuntary termination of PDS, the department shall:

(a) Notify a participant in writing of its decision to terminate the participant's PDS participation; and

(b) Except if the participant failed to pay patient liability, inform the participant of the right to appeal the department's decision in accordance with Section 13 of this administrative regulation.

(11) A PDS provider shall:

(a) Be selected by the participant;

(b) Submit a completed Kentucky Participant-Directed Services Employee Provider Contract to the support broker;

(c) Be eighteen (18) years of age or older;

(d) Be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a U.S. citizen;

(e) Be able to communicate effectively with the participant, participant representative, or family;

(f) Be able to understand and carry out instructions;

VOLUME 51, NUMBER 8— February 1, 2025

- (g) Be able to keep records as required by the participant;
- (h) Submit to a criminal background check conducted by:
 1. The Administrative Office of the Courts if the individual is a Kentucky resident; or
 2. An equivalent out-of-state agency if the individual resided or worked outside Kentucky during the year prior to selection as a provider of PDS;
- (i) Submit to a check of the Central Registry maintained in accordance with 922 KAR 1:470 and not be found on the registry.
 1. A participant may employ a provider prior to a Central Registry check result being obtained for up to thirty (30) days.
 2. If a participant does not obtain a Central Registry check result within thirty (30) days of employing a provider, the participant shall cease employment of the provider until a favorable result is obtained;
- (j) Submit to a check of the:
 1. Nurse Aide Abuse Registry maintained in accordance with 906 KAR 1:100 and not be found on the registry; and
 2. Caregiver Misconduct Registry in accordance with 922 KAR 5:120 and not be found on the registry;
- (k) Not have pled guilty or been convicted of committing a sex crime or violent crime as defined in KRS 17.165(1) through (3);
- (l) Complete training on the reporting of abuse, neglect, or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the participant;
- (m) Be approved by the department;
- (n) Maintain and submit timesheets documenting hours worked; and
 - (o) Be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the participant.
- (12) A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of family members who receive waiver services.
- (13)
 - (a) The department shall establish a budget for a participant based on the individual's historical costs in any Medicaid waiver program minus five (5) percent to cover costs associated with administering participant-directed services.
 - (b) If no historical cost exists for the participant, the participant's budget shall equal the average per capita historical costs of a participant participating in the ABI waiver program established by 907 KAR 3:090 minus five (5) percent.
 - (c) Cost of services authorized by the department for the participant's prior year person-centered service plan but not utilized may be added to the budget if necessary to meet the individual's needs.
 - (d) The department may adjust a participant's budget based on the participant's needs and in accordance with paragraphs (e) and (f) of this subsection.
 - (e) A participant's budget shall not be adjusted to a level higher than established in paragraph (a) of this subsection unless:
 1. The participant's support broker requests an adjustment to a level higher than established in paragraph (a) of this subsection; and
 2. The department approves the adjustment.
 - (f) The department shall consider the following factors in determining whether to allow for a budget adjustment:
 1. If the proposed services are necessary to prevent imminent institutionalization;
 2. The cost effectiveness of the proposed services;
 3. Protection of the participant's health, safety, and welfare; or
 4. If a significant change has occurred in the participant's:
 - a. Physical condition resulting in additional loss of function or limitations to activities of daily living and instrumental activities of daily living;
 - b. Natural support system; or
 - c. Environmental living arrangement resulting in the participant's relocation.
 - (g) A participant's budget shall not exceed the average per capita cost of services provided to individuals with a brain injury in a nursing facility.

- (14) Unless approved by the department pursuant to subsection (13)(c) through (f) of this section, if a PDS is expanded to a point in which expansion necessitates a budget allowance increase, the entire service shall only be covered via a traditional (non-PDS) waiver service provider.
- (15) A support broker shall:
 - (a) Provide needed assistance to a participant with any aspect of PDS or blended services;
 - (b) Be available by phone or in person to a participant twenty-four (24) hours per day, seven (7) days per week to assist the participant in obtaining community resources as needed;
 - (c) Comply with applicable federal and state laws and requirements;
 - (d) Continually monitor a participant's health, safety, and welfare; and
 - (e) Complete or revise a person-centered service plan using person-centered planning principles.
- (16) For a participant receiving PDS, a support broker may conduct an assessment or reassessment.
- (17) Services provided by a support broker shall meet the conflict free requirements established for case management in Section 5(4) of this administrative regulation.
- (18) Financial management services shall:
 - (a) Include managing, directing, or dispersing a participant's funds identified in the participant's approved PDS budget;
 - (b) Include payroll processing associated with an individual hired by a participant or the participant's representative;
 - (c) Include withholding local, state, and federal taxes and making payments to appropriate tax authorities on behalf of a participant;
 - (d) Be performed by an entity:
 1. Enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and
 2. With at least two (2) years of experience working with acquired brain injury; and
 - (e) Include preparing fiscal accounting and expenditure reports for:
 1. A participant or participant's representative; and
 2. The department.

Section 11. Reimbursement and Coverage.

- (1) The department shall reimburse a participating provider for a service provided to a Medicaid eligible person who meets the ABI long term care waiver program requirements as established in this administrative regulation.
- (2) The department shall reimburse an ABI participating long term waiver provider for a prior-authorized ABI long term waiver service if the service is:
 - (a) Included in the person-centered service plan;
 - (b) Medically necessary; and
 - (c) Essential to provide an alternative to institutional care to an individual with an acquired brain injury who requires maintenance services.
- (3) Under the ABI long term care waiver program, the department shall not reimburse a provider for a service provided:
 - (a) To an individual who does not meet the criteria established in Section 3 of this administrative regulation; or
 - (b) Which has not been prior authorized as a part of the person-centered service plan.
- (4)
 - (a) A participating ABI long term care waiver service provider shall be reimbursed a fixed rate for reasonable and medically necessary services for a prior-authorized unit of service provided to a participant.
 - (b) A participating ABI long term care waiver service provider certified in accordance with this administrative regulation shall be reimbursed at the lesser of:
 1. The provider's usual and customary charge; or
 2. The Medicaid fixed upper payment limit per unit of service as established in subsection (5) of this section.

VOLUME 51, NUMBER 8– February 1, 2025

(5)

(a) The unit amounts and base rate payment shall be [fixed upper payment limits, and other limits] established in the following table [shall apply]:

Service	Unit	Base Rate Effective January 1, 2025
Adult Day Health Care	15-minute	\$3.86
Adult Day Training	15-minute	\$4.88
Assessment & Reassessment	Per Assessment	\$121.00
Behavior Programming Services	15-minute	\$40.67
Case Management	Per Month	\$453.75
Community Living Supports	15-minute	\$6.73
Community Living Supports - PDS	15-minute	\$6.73
Counseling, Individual	15-minute	\$28.85
Counseling, Group	15-minute	\$6.96
Environmental and Minor Home Modifications	Per Year	Up to \$2,420.00
Family Training	15-minute	\$30.25
Financial Management Services	Per month	\$121.00
Nursing Supports	15-minute	\$30.25
Occupational Therapy	15-minute	\$31.34
Physical Therapy	15-minute	\$30.25
Respite	15-minute	\$5.92
Respite - PDS	15-minute	\$5.92
Speech Therapy	15-minute	\$34.38
Supervised Residential Care - Level I	Per Day	\$300.00
Supervised Residential Care - Level II	Per Day	\$225.00
Supervised Residential Care - Level III	Per Day	\$112.50
Supported Employment	15-minute	\$10.54
Supported Employment - PDS	15-minute	\$10.54

(b) Specialized medical equipment and supplies shall be reimbursed on a per item basis based on a reasonable cost as negotiated by the department if they meet the following criteria:

1. They are not covered through the Medicaid durable medical equipment program established in 907 KAR 1:479; and

2. They are provided to an individual participating in the ABI waiver program.

(c) Respite care may exceed 1,440 hours in a twelve (12) month period if an individual's usual caregiver is unable to provide care due to a:

1. Death in the family;
2. Serious illness; or
3. Hospitalization.

(d) If supported employment services are provided at a work site in which persons without disabilities are employed, payment shall be made only for the supervision and training required as the result of the participant's disabilities and shall not include payment for supervisory activities normally rendered.

(e)

1. The department shall only pay for supported employment services for an individual if supported employment services are unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 94-142 (34 C.F.R. Subtitle B, Chapter III).

2. For an individual receiving supported employment services, documentation shall be maintained in the individual's record demonstrating that the services are not currently available under a

program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 94-142 (34 C.F.R. Subtitle B, Chapter III).

(6) Payment shall not include:

(a) The cost of room and board unless provided as part of respite care in a Medicaid certified nursing facility. If a participant is placed in a nursing facility to receive respite care, the department shall pay the nursing facility its per diem rate for that individual;

(b) The cost of maintenance, upkeep, an improvement, or an environmental modification to a group home or other licensed facility;

(c) The cost of a service that is not listed in the approved person-centered service plan; or

(d) A service provided by a family member unless provided as an approved participant-directed service.

(7) A participating provider shall:

(a) Maintain fiscal and service records for a period of at least six (6) years. If the Secretary of the United States Department of Health and Human Services requires a longer document retention period, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period;

(b) Provide, as requested by the department, a copy of, and access to, each record of the ABI Waiver Program retained by the provider pursuant to paragraph (a) of this subsection or 907 KAR 1:672; and

(c) Upon request, make available service and financial records to a representative or designee of the:

1. Commonwealth of Kentucky, Cabinet for Health and Family Services;
2. United States Department for Health and Human Services, Comptroller General;
3. United States Department for Health and Human Services, Centers for Medicare and Medicaid Services (CMS);
4. General Accounting Office;
5. Commonwealth of Kentucky, Office of the Auditor of Public Accounts; or
6. Commonwealth of Kentucky, Office of the Attorney General.

Section 12. Electronic Signature Usage. The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

Section 13. Appeal Rights.

(1) An appeal of a department decision regarding a Medicaid beneficiary 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 based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a provider based upon an application of this administrative regulation:

(a) Regarding a provider's reimbursement shall be in accordance with 907 KAR 1:671, Sections 8 and 9; or

(b) Not regarding a provider's reimbursement shall be in accordance with 907 KAR 1:671.

Section 14. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "MAP 10, Waiver Services Physician's Recommendation", June 2015;

(b) "MAP – 115 Application Intake – Participant Authorization", May 2015;

(c) "MAP – 116 Service Plan – Participant Authorization", May 2015;

(d) "MAP – 531 Conflict-Free Case Management Exemption", October 2015;

(e) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", June 2015;

(f) "MAP 351, Medicaid Waiver Assessment", July 2015;

(g) "MAP-2000, Initiation/Termination of Participant-Directed Services (CDO)", June 2015;

(h) "Mayo-Portland Adaptability Inventory-4", March 2003;

VOLUME 51, NUMBER 8– February 1, 2025

- (i) "Family Guide to the Rancho Levels of Cognitive Functioning", August 2006;
- (j) "Kentucky Participant-Directed Services Employee Provider Contract", June 2015; and
- (k) "MAP 4100a Acquired Brain Injury Waiver Program Provider Information and Services", September 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:

(a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at <https://www.chfs.ky.gov/agencies/dms/dca/Pages/abi.aspx> [<http://www.chfs.ky.gov/dms/incorporated.htm>].

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 20, 2024

FILED WITH LRC: December 23, 2024 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 24, 2025, 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 requester the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by February 17, 2025, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until February 28, 2025. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan Scott or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medicaid program coverage provisions and requirements regarding acquired brain injury (ABI) long-term waiver services. The ABI long-term program enables individuals who have suffered a brain injury to live, and receive services, in a community setting rather than in an institution.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish coverage policies for the Medicaid ABI long-term waiver program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid ABI long-term coverage provisions and requirements for a program that enables individuals who have suffered a brain injury to live, and receive services, in a community setting rather than in an institution.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation will assist in the effective administration of the authorizing statutes by establishing Medicaid coverage provisions and requirements for a program that enables individuals who have suffered a brain injury to live, and receive services, in a community setting rather than in an institution.

(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 delete and update the reimbursement methodology to reflect the approval of new federal 1915(c) waivers. A new table has been inserted to reflect the new rates.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update reimbursement methodology to new, higher rates approved by the federal government.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by implementing a federally approved rate increase.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists with the effective administration of the statutes by establishing a process to update increased federal reimbursement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: DMS anticipates that up to 463 recipients will utilize the services available under this waiver.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required, regulated entities will be able to bill and receive a higher reimbursement.

(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 in the expanded reimbursement now available for this waiver.

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

(a) Initially: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(b) On a continuing basis: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Department for Medicaid Services is the promulgating agency, other agencies have not been identified.

(a) Estimate the following for the first year:

Expenditures: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 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 anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): N/A

(a) Estimate the following for the first year:

Expenditures: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 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 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): Enrolled providers providing Michelle P. waiver services.

(a) Estimate the following for the first year:

Expenditures: DMS does not anticipate additional expenditures for regulated entities.

Revenues: Participating providers will benefit from increased reimbursement.

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 anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6. Future slots and increases will be dependent on the state budgeting process and federal reimbursement requirements. Revenues: Participating providers will benefit from increased reimbursement. Cost Savings: The department does not anticipate cost savings as a result of this administrative regulation.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6. Future slots and increases will be dependent on the state budgeting process and federal reimbursement requirements.

(b) Methodology and resources used to determine the fiscal impact: The department worked with interested parties to gain input and perspectives as well as completed a multiyear process working with a contracted third party to re-design the 1915(c) waivers and reimbursement.

(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:

This administrative regulation will provide additional reimbursement for all 1915(c) providers.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. 441.305(b).

(2) State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

(3) Minimum or uniform standards contained in the federal mandate. Federal approval is for a limited number of waiver slots.

(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.

STATEMENT OF EMERGENCY 907 KAR 7:015E.

This emergency amendment to an existing administrative regulation is being promulgated to implement reimbursement methodology that reflects the approval by the U.S. Centers for Medicare and Medicaid Services of new federal waivers issued pursuant to 42 U.S.C. Ch. 7, Sec. 1396n(c), also called "1915(c) waivers", effective January 1, 2025. The approval allows for higher reimbursement for providers and this administrative regulation is being updated to reflect the higher reimbursement. This emergency amendment to an existing administrative regulation is being filed pursuant to KRS 13A.190(1)(a)2., to preserve state and federal funding and ensure the most efficient use of funds, and also pursuant to KRS 13A.190(1)(a)1. to preserve the welfare of Medicaid recipients who qualify for a federal waiver issued pursuant to 42 U.S.C. Ch. 7, Sec. 1396n(c).

This emergency amendment will be filed with an ordinary amendment that is identical to this emergency amendment.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Fiscal Management (Emergency Amendment)

907 KAR 7:015E. Reimbursement for home and community based waiver services version 2.

EFFECTIVE: December 23, 2024

RELATES TO: 42 C.F.R. 441 Subparts B, G, 42 U.S.C. 1396a, 1396b, 1396d, 1396n

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, is required 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 reimbursement requirements and provisions for home and community based waiver services version 2.

Section 1. Definitions.

(1) "ADHC" means adult day health care.

(2) "ADHC center" means an adult day health care center that is:

(a) Licensed in accordance with 902 KAR 20:066; and
(b) Certified for Medicaid participation by the department.

(3) "Department" means the Department for Medicaid Services or its designee.

(4) "Fixed upper payment limit" means the maximum amount the department shall reimburse per unit.

(5) "HCB" means home and community based waiver.

(6) "Participant" means a recipient who:

(a) Meets the nursing facility level of care criteria established in 907 KAR 1:022; and

(b) Meets the eligibility criteria for HCB services established in 907 KAR 7:010.

(7) "Recipient" is defined by KRS 205.8451(9).

VOLUME 51, NUMBER 8– February 1, 2025

Section 2. HCB Service Reimbursement.

(1)

(a) Except as provided in Section 3, 4, or 5 of this administrative regulation, the department shall reimburse for a home and community based waiver service or item at the lesser of the billed charges or the fixed upper payment limit for each unit.

(b) The ~~base payment rate~~~~fixed upper payment limits~~, unit amounts, and reimbursement maximums established in the following table shall apply:

<u>Service</u>	<u>Unit</u>	<u>Base Rate Effective January 1, 2025</u>
<u>Adult Day Health Care - Level I</u>	<u>15-Minute</u>	<u>\$3.82</u>
<u>Adult Day Health Care - Level II</u>	<u>15-Minute</u>	<u>\$4.15</u>
<u>Attendant Care - Traditional</u>	<u>15-Minute</u>	<u>\$7.26</u>
<u>Attendant Care - PDS</u>	<u>15-Minute</u>	<u>\$7.26</u>
<u>Conflict Free Case Management</u>	<u>Per Month</u>	<u>\$425.92</u>
<u>Environmental and Minor Home Modifications</u>	<u>Per Year</u>	<u>Up to \$3,025</u>
<u>Financial Management</u>	<u>Per Month</u>	<u>\$196.63</u>
<u>Goods and Services - Traditional</u>	<u>Per Year</u>	<u>Up to \$4,235</u>
<u>Goods and Services - PDS</u>	<u>Per Year</u>	<u>Up to \$4,235</u>
<u>Home Delivered Meals</u>	<u>Per Meal</u>	<u>\$9.08</u>
<u>Non-Specialized Respite - Traditional</u>	<u>15-Minute</u>	<u>\$5.92</u>
<u>Non-Specialized Respite - PDS</u>	<u>15-Minute</u>	<u>\$5.92</u>
<u>Specialized Respite - Level I</u>	<u>15-Minute</u>	<u>\$5.92</u>
<u>Specialized Respite - Level II</u>	<u>15-Minute</u>	<u>\$12.10</u>
<u>Specialized Respite - Level I (Congregate Setting)</u>	<u>15-Minute</u>	<u>\$5.92</u>
<u>Specialized Respite - Level II (Congregate Setting)</u>	<u>15-Minute</u>	<u>\$12.10</u>

<u>[Service]</u>	<u>[Fixed Upper Payment Limit]</u>	<u>[Unit Amount]</u>	<u>[Maximum]</u>
<u>[PDS coordination]</u>	<u>[\$162.50 per unit]</u>		<u>[Two (2) units per month]</u>
<u>[Case management]</u>	<u>[\$100.00]</u>	<u>[One (1) month]</u>	<u>[One (1) unit per month]</u>
<u>[Attendant care not as a PDS]</u>	<u>[\$24.00 per hour]</u>	<u>[One (1) hour]</u>	<u>[\$200 per day alone or in combination with ADHC services. Travel to and from the participant's residence shall be excluded]</u>
<u>[Home and community supports]</u>	<u>[\$2.88 per unit]</u>	<u>[Fifteen (15) minutes]</u>	<u>[Forty-five (45) hours per week; Maximum of \$200 per day alone or in combination with ADHC services; Travel to and from the</u>

			participant's residence shall be excluded]
[Non-specialized respite]	[\$2.75 per unit]	[Fifteen (15) minutes]	[\$200 per day alone or in combination with specialized respite. Non-specialized respite alone or in combination with specialized respite shall not exceed \$4,000 per level of care year.]
[Goods and services]	[\$3,500 per level of care year]	[Level of care year]	[\$3,500 per level of care year; shall not be covered unless prior authorized]
[Home delivered meals]	[\$7.50 per hot meal]	[One (1) hot meal]	[One (1) hot meal per day and five (5) hot meals per week]
[Adult day health care services]	[\$2.83 per unit for Level I services; \$3.43 per unit for Level II services except for specialized respite, which shall be \$10.00 per unit for Level II]	[Fifteen (15) minutes]	[200 units per week]
[Specialized respite]	[\$4.00 per unit for Level I; \$10.00 per unit for Level II]	[Fifteen (15) minutes]	[\$200 per day alone or in combination with non-specialized respite. Specialized respite alone or in combination with non-specialized respite shall not exceed \$4,000 per level of care year.]
[Environmental or minor home adaptation]	[\$2,500 per level of care year]	[One (1) level of care year]	[\$2,500 per level of care year; shall not be covered unless prior authorized]

(2)

(a) Reimbursement for a service provided as a PDS shall not exceed the department's allowed reimbursement for the same service as established in the table in subsection (1) of this section.

(b) Participants receiving services through the PDS option shall have three (3) months from the date of level of care recertification to

VOLUME 51, NUMBER 8– February 1, 2025

comply with the reimbursement limit established in paragraph (a) of this subsection.

(3)

(a) Three (3) quotes from a prospective provider shall be required for:

1. An environmental or minor home adaptation; or
2. Goods and services.

(b) Documentation justifying the need for the following shall be uploaded into the MWMA:

1. An environmental or minor home adaptation; or
2. Goods and services.

(4) A service listed in subsection (1) of this section shall not be subject to cost settlement by the department unless provided by a local health department.

Section 3. Local Health Department HCB Service Reimbursement.

(1) The department shall reimburse a local health department for HCB services:

- (a) Pursuant to Section 2 of this administrative regulation; and
- (b) Equivalent to the local health department's HCB services cost for a fiscal year.

(2) A local health department shall:

(a) Each year complete a Home Health and Home and Community Based Cost Report completed in accordance with the Home Health and Home and Community Based Cost Reporting Instructions; and

(b) Submit the Home Health and Home and Community Based Cost Report to the department at fiscal year's end.

(3) The department shall determine, based on a local health department's most recently submitted annual Home Health and Home and Community Based Cost Report, the local health department's estimated costs of providing HCB services by multiplying the cost per unit by the number of units provided during the period.

(4) If a local health department's HCB service reimbursement for a fiscal year is less than its cost, the department shall make supplemental payment to the local health department equal to the difference between:

(a) Payments received for HCB services provided during a fiscal year; and

(b) The estimated cost of providing HCB services during the same time period.

(5) If a local health department's HCB service cost as estimated from its most recently submitted annual Home Health and Home and Community Based Cost Report is less than the payments received pursuant to Section 2 of this administrative regulation, the department shall recoup any excess payments.

(6) The department shall audit a local health department's Home Health and Home and Community Based Cost Report if it determines an audit is necessary.

Section 4. Reimbursement for an ADHC Service.

(1) Reimbursement for an ADHC service shall:

(a) Be made:

1. Directly to an ADHC center; and

2. For a service only if the service was provided on site and during an ADHC center's posted hours of operation;

(b) If made to an ADHC center for a service not provided during the center's posted hours of operation, be recouped by the department; and

(c) Be limited to 200 units per calendar week per participant.

(2) Level I reimbursement shall be the lesser of:

(a) The provider's usual and customary charges; or

(b) The base payment rate established for this service in the table established in Section 3~~[Two (2) dollars and eighty-three (83) cents per unit of service].~~

(3)

(a) Except as established in paragraph (b) of this subsection, Level II reimbursement shall be the lesser of:

1. The provider's usual and customary charges; or

2. The base payment rate established for this service in the table established in Section 3~~[Three (3) dollars and forty-three (43) cents per unit of service].~~

(b)

1. The department shall pay a Level II reimbursement for specialized respite provided by a:

a. Registered nurse; or

b. Licensed practical nurse under the supervision of a registered nurse.

2. The Level II reimbursement for specialized respite shall be the lesser of:

a. The ADHC center's usual and customary charges; or

b. The base payment rate established for this service in the table established in Section 3~~[Ten (10) dollars per unit of service].~~

(c) An ADHC center's reimbursement for Level II services shall be:

1. Per participant; and

2. Based upon the participant's assessed level of care and most recent person-centered service plan.

(4) An ADHC basic daily service shall constitute care for one (1) participant.

(5) One (1) unit of ADHC basic daily service shall equal fifteen (15) minutes.

(6) The level of and reimbursement rate for any ADHC service provided to a participant shall be determined by an assessment of the participant using the Kentucky Home Assessment Tool (K-HAT).

Section 5. Criteria for High Intensity Level II Reimbursement and Home Health Level II Reimbursement.

(1) Any ADHC service provided to a participant by an ADHC center shall qualify for Level II reimbursement if the participant meets the Level II High Intensity criteria established in the Kentucky Home Assessment Tool (K-HAT).

(2)

(a) Specialized respite care provided to a participant by a home health agency shall qualify for Level II reimbursement if:

1. The participant meets the Level II High Intensity criteria established in the Kentucky Home Assessment Tool (K-HAT); and

2. Provided by a:

a. Registered nurse; or

b. Licensed practical nurse under the supervision of a registered nurse.

(b) The Level II reimbursement for specialized respite provided by a home health agency shall be the reimbursement established in Section 4(3)(b) of this administrative regulation.

(3) If a participant's assessment determines that:

(a) ADHC services to the participant do not qualify for Level II reimbursement, the department shall reimburse the Level I rate to the ADHC center for services provided to the participant; or

(b) Specialized respite care to the participant does not qualify for Level II reimbursement, the department shall reimburse the Level I rate to the ADHC center or home health agency for the specialized respite care service.

Section 6. Applicability. The reimbursement provisions and requirements established in this administrative regulation shall:

(1) Apply to services or items provided to individuals who receive home and community based services version 2 pursuant to 907 KAR 7:010; and

(2) Not apply to services or items provided to individuals receiving home and community based services version 1 pursuant to 907 KAR 1:160.

Section 7. Appeal Rights. An HCB service provider may appeal a department decision as to the application of this administrative regulation as it impacts the provider's reimbursement in accordance with 907 KAR 1:671, Sections 8 and 9.

Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Kentucky Home Assessment Tool (K-HAT)", July 1, 2015;

(b) "The Home Health and Home and Community Based Cost Report", November 2007; and

(c) "The Home Health and Home and Community Based Cost Report Instructions", November 2007.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:

(a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at <https://www.chfs.ky.gov/agencies/dms/dca/Pages/hcb-waiver.aspx> [<http://www.chfs.ky.gov/dms/incorporated.htm>].

LISA D. LEE, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 20, 2024

FILED WITH LRC: December 23, 2024 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 24, 2025, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by February 17, 2025, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until February 28, 2025. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan Scott or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medicaid Program reimbursement requirements and provisions for home and community based waiver services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Medicaid Program reimbursement requirements and provisions for home and community based waiver 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 Medicaid Program reimbursement requirements and provisions for home and community based waiver services.

(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 Medicaid Program reimbursement requirements and provisions for home and community based waiver 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 delete and update the reimbursement methodology to reflect the approval of new federal 1915(c) waivers. The approvals allow for higher reimbursement for providers and this administrative regulation is being updated to reflect the higher reimbursement.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update reimbursement methodology to new, higher rates approved by the federal government.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by implementing a federally approved rate increase.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists with the effective administration of the statutes by establishing a process to update increased federal reimbursement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: DMS anticipates that up to 16,500 recipients will utilize the services available under this waiver.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required, regulated entities will be able to bill and receive a higher reimbursement.

(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 in the expanded reimbursement now available for this waiver.

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

(a) Initially: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(b) On a continuing basis: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Department for Medicaid Services is the promulgating agency, other agencies have not been identified.

(a) Estimate the following for the first year:

Expenditures: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 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 anticipates no additional costs beyond those

budgeted in 2024 Regular Session HB 6.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): N/A

(a) Estimate the following for the first year:

Expenditures: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 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 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): Enrolled providers providing supports for community living waiver services.

(a) Estimate the following for the first year:

Expenditures: DMS does not anticipate additional expenditures for regulated entities.

Revenues: Participating providers will benefit from increased reimbursement.

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 anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6. Future slots and increases will be dependent on the state budgeting process and federal reimbursement requirements. Revenues: Participating providers will benefit from increased reimbursement. Cost Savings: The department does not anticipate cost savings as a result of this administrative regulation.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6. Future slots and increases will be dependent on the state budgeting process and federal reimbursement requirements.

(b) Methodology and resources used to determine the fiscal impact: The department worked with interested parties to gain input and perspectives as well as completed a multiyear process working with a contracted third party to re-design the 1915(c) waivers and reimbursement.

(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: This administrative regulation will provide additional reimbursement for all 1915(c) providers.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. 441.305(b).

(2) State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

(3) Minimum or uniform standards contained in the federal mandate. Federal approval is for a limited number of waiver slots.

(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.

STATEMENT OF EMERGENCY
907 KAR 12:020E.

This emergency amendment to an existing administrative regulation is being promulgated to implement reimbursement methodology that reflects the approval by the U.S. Centers for Medicare and Medicaid Services of new federal waivers issued pursuant to 42 U.S.C. Ch. 7, Sec. 1396n(c), also called "1915(c) waivers", effective January 1, 2025. The approval allows for higher reimbursement for providers and this administrative regulation is being updated to reflect the higher reimbursement. This emergency amendment to an existing administrative regulation is being filed pursuant to KRS 13A.190(1)(a)2., to preserve state and federal funding and ensure the most efficient use of funds, and also pursuant to KRS 13A.190(1)(a)1. to preserve the welfare of Medicaid recipients who qualify for a federal waiver issued pursuant to 42 U.S.C. Ch. 7, Sec. 1396n(c).

This emergency amendment will be filed with an ordinary amendment that is identical to this emergency amendment.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Fiscal Management
(Emergency Amendment)

907 KAR 12:020E. Reimbursement for New Supports for Community Living Waiver Services.

EFFECTIVE: December 23, 2024

RELATES TO: KRS 205.520, 42 C.F.R. 441, Subpart G, 447.272, 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 142.363, 194A.030(3), 194A.050(1), 205.520(3), 205.6317

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, is required 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 reimbursement policies for SCL waiver services provided to individuals pursuant to the new Supports for Community Living (SCL) waiver program established by 907 KAR 12:010.

Section 1. Definitions.

(1) "DBHDID" means the Department for Behavioral Health, Developmental and Intellectual Disabilities.

(2) "Department" means the Department for Medicaid Services or its designee.

(3) "Developmental disability" means a disability that:

(a) Is manifested prior to the age of twenty-two (22);

(b) Constitutes a substantial disability to the affected individual; and

(c) Is attributable either to an intellectual disability or a condition related to an intellectual disability that:

1. Results in an impairment of general intellectual functioning and adaptive behavior similar to that of a person with an intellectual disability; and

2. Is a direct result of, or is influenced by, the person's cognitive deficits.

(4) "Exceptional support" means a service:

(a) Requested by a participant and the participant's team; and

(b) That due to an extraordinary circumstance related to a participant's physical health, psychiatric issue, or behavioral health issue is necessary to:

1. Be provided in excess of the upper payment limit for the service for a specified amount of time; and

2. Meet the assessed needs of the participant.

(5) "Immediate family member" is defined by KRS 205.8451(3).

(6) "Intellectual disability" or "ID" means:

VOLUME 51, NUMBER 8– February 1, 2025

- (a) A demonstration:
1. Of significantly sub-average intellectual functioning and an intelligence quotient (IQ) of seventy (70) plus or minus five (5); and
 2. Of concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:
 - a. Communication;
 - b. Self-care;
 - c. Home living;
 - d. Social or interpersonal skills;
 - e. Use of community resources;
 - f. Self-direction;
 - g. Functional academic skills;
 - h. Work;
 - i. Leisure; or
 - j. Health and safety; and
- (b) An intellectual disability that had an onset before eighteen (18) years of age.
- (7) "Legally responsible individual" means an individual who has a duty under state law to care for another person and includes:
- (a) A parent (biological, adoptive, or foster) who provides care to the parent's minor child;
 - (b) A guardian who provides care to the guardian's minor child;
- or
- (c) A spouse of a participant.
 - (8) "Participant" means a Medicaid recipient who:
 - (a) Meets patient status criteria for an intermediate care facility for individuals with intellectual disabilities as established in 907 KAR 1:022;
 - (b) Is authorized by the department to receive SCL waiver services; and
 - (c) Utilizes SCL waiver services and supports in accordance with a person-centered service plan.
 - (9) "Participant-directed service" means an option established by KRS 205.5606 within the 1915(c) home and community based service waiver programs that allows recipients to receive non-medical services in which the individual:
 - (a) Assists with the design of the program;
 - (b) Chooses the providers of services; and
 - (c) Directs the delivery of services to meet his or her needs.
 - (10) "State plan" is defined by 42 C.F.R. 430.10.
 - (11) "Supports for community living services" or "SCL services" means community-based waiver services for a participant who has an intellectual or developmental disability.

Section 2. Coverage.

- (1) The department shall reimburse a participating SCL provider for a covered service provided to a participant.
- (2) In order to be reimbursable by the department, a service shall be:
 - (a) Provided in accordance with the terms and conditions specified in 907 KAR 12:010; and
 - (b) Prior authorized by the department.
- (3) Funding for the SCL waiver program shall be associated with and generated through SCL waiver program participants rather than SCL waiver service providers.

Section 3. SCL Reimbursement and Limits.

- (1) Except as established in Section 4 of this administrative regulation, the department shall reimburse for an SCL service provided in accordance with 907 KAR 12:010 to a participant an amount:
 - (a) Equal to the charge billed by the provider; and
 - (b) Not to exceed the fixed upper payment limit for the service.
- (2) The unit amounts and ~~base payment rate~~~~[fixed upper payment limits]~~ listed in the following table shall apply:

<u>Service</u>	<u>Unit</u>	<u>Base Rate Effective January 1, 2025</u>
<u>Case Management</u>	<u>Per Month</u>	<u>\$425.92</u>
<u>Community Access, Individual</u>	<u>15-minute</u>	<u>\$10.65</u>

<u>Community Access, Individual - PDS</u>	<u>15-minute</u>	<u>\$10.65</u>
<u>Community Access, Group</u>	<u>15-minute</u>	<u>\$5.32</u>
<u>Community Access, Group - PDS</u>	<u>15-minute</u>	<u>\$5.32</u>
<u>Community Guide</u>	<u>15-minute</u>	<u>\$10.65</u>
<u>Community Guide - PDS</u>	<u>15-minute</u>	<u>\$10.65</u>
<u>Community Transition</u>	<u>Per Transition</u>	<u>Up to \$2,420</u>
<u>Consultative Clinical and Therapeutic Services (Behavioral)</u>	<u>15-minute</u>	<u>\$29.95</u>
<u>Consultative Clinical and Therapeutic Services (Dietary)</u>	<u>15-minute</u>	<u>\$29.95</u>
<u>Consultative Clinical and Therapeutic Services (Psychological)</u>	<u>15-minute</u>	<u>\$29.95</u>
<u>Consultative Clinical and Therapeutic Services (Functional analysis)</u>	<u>15-minute</u>	<u>\$29.95</u>
<u>Day Training</u>	<u>15-minute</u>	<u>\$3.62</u>
<u>Day Training - PDS</u>	<u>15-minute</u>	<u>\$3.62</u>
<u>Day Training at an ADHC</u>	<u>15-minute</u>	<u>\$3.99</u>
<u>Environmental Accessibility Adaptation Services</u>	<u>Lifetime</u>	<u>Up to \$9,680</u>
<u>Environmental Accessibility Adaptation Services - PDS</u>	<u>Lifetime</u>	<u>Up to \$9,680</u>
<u>Financial Management Services</u>	<u>Per month</u>	<u>\$121.00</u>
<u>Goods and Services</u>	<u>Per Year</u>	<u>Up to \$2,178</u>
<u>Goods and Service - PDS</u>	<u>Per Year</u>	<u>Up to \$2,178</u>
<u>Natural Supports Training</u>	<u>Per Year</u>	<u>Up to \$1,210</u>
<u>Natural Supports Training - PDS</u>	<u>Per Year</u>	<u>Up to \$1,210</u>
<u>Person-Centered Coaching</u>	<u>15-minute</u>	<u>\$7.66</u>
<u>Personal Assistance</u>	<u>15-minute</u>	<u>\$7.37</u>
<u>Personal Assistance - PDS</u>	<u>15-minute</u>	<u>\$7.37</u>
<u>Positive Behavior Support Plan</u>	<u>Per Plan</u>	<u>\$885.12</u>
<u>Residential Support Level I - 3 residents or fewer</u>	<u>Per Day</u>	<u>\$284.57</u>
<u>Residential Support Level I - 4 to 8 residents</u>	<u>Per Day</u>	<u>\$215.09</u>
<u>Residential Support Level II</u>	<u>Per Day</u>	<u>\$129.91</u>
<u>Residential Support Level II - 12+ hours of supervision</u>	<u>Per Day</u>	<u>\$198.70</u>
<u>Respite</u>	<u>15-minute</u>	<u>\$5.92</u>
<u>Respite - PDS</u>	<u>15-minute</u>	<u>\$5.92</u>
<u>Shared Living</u>	<u>Per Day</u>	<u>\$726.00</u>
<u>Supported Employment</u>	<u>15-minute</u>	<u>\$13.65</u>
<u>Supported Employment - PDS</u>	<u>15-minute</u>	<u>\$13.65</u>
<u>Technology Assisted Residential</u>	<u>Per Day</u>	<u>\$105.15</u>
<u>Transportation</u>	<u>Per Month</u>	<u>\$320.65</u>
<u>Vehicle Adaptations</u>	<u>Every Five Years</u>	<u>Up to \$7,260</u>

(3) Any combination of day training, community access, personal assistance, or any hours of paid community employment or on-site supported employment service shall not exceed sixteen (16) hours per day.

(4) Community access services shall not exceed 160 units per week.

VOLUME 51, NUMBER 8– February 1, 2025

(5) Community guide services shall not exceed 576 units per one (1) year authorized person-centered service plan period.

(6) Community transition shall be based on prior authorized cost not to exceed ~~\$2,420~~[\$2,000] per approved transition.

(7) Consultative clinical and therapeutic services shall not exceed 160 units per one (1) year authorized person-centered service plan period.

(8) Day training alone or in combination with any hours of paid community employment or on-site supported employment service shall not exceed 160 units per week.

(9) An environmental accessibility adaptation service shall be:

(a) Based on a prior authorized, estimated cost; and

(b) Limited to an ~~\$9,680~~[\$8,000] lifetime maximum.

(10) Goods and services shall not exceed ~~\$2,178~~[\$1,800] per one (1) year authorized person-centered service plan period.

(11) Natural support training shall be based on a prior authorized, estimated cost not to exceed ~~\$1,210~~[\$1,000] per one (1) year authorized person-centered service plan period.

(12) Person centered coaching shall not exceed 1,320 units per year.

(13) Respite shall be limited to 3,320 units (830 hours) per one (1) year authorized person-centered service plan period.

(14) Shared living shall be based on a prior authorized amount not to exceed ~~\$726~~[\$600] per month.

(15) A vehicle adaptation shall be limited to ~~\$7,260~~[\$6,000] per five (5) years per participant.

(16) Transportation shall be reimbursed:

(a)

1. If provided as a participant directed service:

a. Based on the mileage; and

b. At two thirds of the rate established in 200 KAR 2:006, Section 8(2)(d), if provided by an individual. The rate shall be adjusted quarterly in accordance with 200 KAR 2:006, Section 8(2)(d); or

2. If provided by a public transportation service provider, at the cost per trip as documented by the receipt for the specific trip; and

(b) A maximum of ~~\$320.65~~[\$265] per calendar month.

(17) An estimate for a supply item requested under specialized medical equipment or goods and services shall be based on the actual price to be charged to the provider, participant, or individual by a retailer or manufacturer.

(18) Specialized medical equipment or goods and services shall not include equipment and supplies covered under the Kentucky Medicaid program's state plan including:

(a) Durable medical equipment;

(b) Early and Periodic Screening, Diagnosis, and Treatment Services;

(c) Orthotics and prosthetics; or

(d) Hearing services.

(19) A participant shall not receive multiple SCL services during the same segment of time except in the case of the following collateral services that shall be allowed to overlap other SCL services:

(a) Community guide services;

(b) Consultative clinical and therapeutic services; or

(c) Person centered coaching.

Section 4. Exceptional Supports.

(1) A service listed in subsection (2) or (3) of this section, regardless of delivery method, shall qualify as an exceptional support:

(a) Based on the needs of the participant for whom the exceptional support is requested;

(b) For a limited period of time not to exceed a full person-centered service plan year;

(c) If the service meets the requirements for an exceptional support in accordance with the Kentucky Exceptional Supports Protocol; and

(d) If approved by DBHDID to be an exceptional support.

(2)

(a) The following shall qualify as an exceptional support and be reimbursed at a rate higher than the base payment rate~~[upper payment limit]~~ established in Section 3 of this administrative regulation if meeting the criteria established in subsection (1) of this section:

1. Community access services;

2. Day training that is not provided in an adult day health care center;

3. Personal assistance;

4. Respite;

5. Residential Level I – three (3) or fewer residents;

6. Residential Level I – four (4) to eight (8) residents; or

7. Residential Level II – twelve (12) or more hours.

(b) A rate increase for a service authorized as an exceptional support shall:

1. Be based on the actual cost of providing the service; and

2. Not exceed twice the upper payment limit established for the service in Section 3 of this administrative regulation.

(3) The following shall qualify as an exceptional support and be provided in excess of the unit limits established in Section 3 of this administrative regulation if meeting the criteria established in subsection (1) of this section:

(a) Consultative clinical and therapeutic services;

(b) Person centered coaching;

(c) Personal assistance; or

(d) Respite.

(4) A service that qualifies as an exceptional support shall:

(a) Either:

1. Be authorized to be reimbursed at a rate higher than the base payment rate~~[upper payment limit]~~ established for the service in Section 3 of this administrative regulation; or

2. Be authorized to be provided in excess of the unit limit established for the service in Section 3 of this administrative regulation; and

(b) Not be authorized to be reimbursed at both a higher rate than the base payment rate~~[upper payment limit]~~ and in excess of the service limit established for the service in Section 3 of this administrative regulation.

Section 5. Participant Directed Services.

(1) A reimbursement rate for a participant directed service shall:

(a) Not exceed the base payment rate~~[upper payment limit]~~ established for the service in Section 3 of this administrative regulation unless the service qualifies as an exceptional support in accordance with Section 4(2)(a) of this administrative regulation; and

(b) Include:

1. All applicable local, state, and federal withholdings; and

2. Any applicable employment related administrative costs, which shall be the responsibility of the participant who is directing the service.

(2) An employee who provides a participant directed service shall not be approved to provide more than forty (40) hours of service per week unless authorized to do so by the department.

(3) A legally responsible individual or immediate family member shall not be authorized to be reimbursed for more than forty (40) hours of participant directed services per week.

Section 6. Auditing and Reporting. An SCL provider shall maintain fiscal records and incident reports in accordance with the requirements established in 907 KAR 12:010.

Section 7. Appeal Rights. A provider may appeal a department decision regarding the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 8. Federal Approval and Federal Financial Participation. The department's reimbursement of services pursuant to this administrative regulation shall be contingent upon:

VOLUME 51, NUMBER 8– February 1, 2025

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

Section 9. Incorporation by Reference.

(1) The "Kentucky Exceptional Supports Protocol", April 2016, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law[.];

(a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at: <https://www.chfs.ky.gov/agencies/dms/dca/Pages/scl-waiver.aspx>.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 20, 2024

FILED WITH LRC: December 23, 2024 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 24, 2025, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by February 17, 2025, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until February 28, 2025. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan Scott or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement policies for SCL waiver services provided to individuals pursuant to the new Supports for Community Living (SCL) waiver program established by 907 KAR 12:010.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the reimbursement policies for SCL waiver services provided to individuals pursuant to the new Supports for Community Living (SCL) waiver program established by 907 KAR 12:010.

(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 reimbursement policies for SCL waiver services provided to individuals pursuant to the new Supports for Community Living (SCL) waiver program established by 907 KAR 12:010.

(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 reimbursement policies for SCL waiver services provided to individuals pursuant to the new Supports for Community Living (SCL) waiver program established by 907 KAR 12:010.

(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 delete and update the reimbursement methodology to reflect the approval of new federal 1915(c) waivers. The approvals allow for higher reimbursement for providers and this administrative regulation is being updated to reflect the higher reimbursement.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update reimbursement methodology to new, higher rates approved by the federal government.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by implementing a federally approved rate increase.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists with the effective administration of the statutes by establishing a process to update increased federal reimbursement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: DMS anticipates about 5,200 recipients will utilize the services available under this waiver.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required, regulated entities will be able to bill and receive a higher reimbursement.

(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 in the expanded reimbursement now available for this waiver.

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

(a) Initially: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(b) On a continuing basis: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Department for Medicaid Services is the promulgating agency, other agencies have not been identified.

(a) Estimate the following for the first year:

Expenditures: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 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 anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): N/A

(a) Estimate the following for the first year:

Expenditures: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 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 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): Enrolled providers providing supports for community living waiver services.

(a) Estimate the following for the first year:

Expenditures: DMS does not anticipate additional expenditures for regulated entities.

Revenues: Participating providers will benefit from increased reimbursement.

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 anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6. Future slots and increases will be dependent on the state budgeting process and federal reimbursement requirements. Revenues: Participating providers will benefit from increased reimbursement. Cost Savings: The department does not anticipate cost savings as a result of this administrative regulation.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6. Future slots and increases will be dependent on the state budgeting process and federal reimbursement requirements.

(b) Methodology and resources used to determine the fiscal impact: The department worked with interested parties to gain input and perspectives as well as completed a multiyear process working with a contracted third party to re-design the 1915(c) waivers and reimbursement.

(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: This administrative regulation will provide additional reimbursement for all 1915(c) providers.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. 441.305(b).

(2) State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

(3) Minimum or uniform standards contained in the federal mandate. Federal approval is for a limited number of waiver slots.

(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 Medicaid Services Division of Health Care Policy (Emergency Amendment)

907 KAR 20:005E. Medicaid technical eligibility requirements not related to a modified adjusted gross income standard or former foster care individuals.

EFFECTIVE: December 23, 2024

RELATES TO: KRS 205.520, 205.6481-205.6497, 341.360, 42 C.F.R. 435, 403, 45 C.F.R. 233.100, 8 U.S.C. 1101, 1153(a)(7), 1157, 1158, 1182(d)(5), 1231(b)(3), 1253(h), 1522, 1612, 1613, 1622, 1641, 38 U.S.C. 101, 107, 1101, 1301, 1304, 5303A, 42 U.S.C. 402, 416, 423, 1382c, 1383c, 1395i, 1396a

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a(1)(a)(84)(D), 1396a(a)(10), (r)(2), [4396b(f), 1396d(q)(2)(B), 1397aa, 1397bb

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 technical eligibility requirements of the Medicaid Program except for individuals whose Medicaid eligibility standard is a modified adjusted gross income or for former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage. Individuals to whom the technical eligibility requirements in this administrative regulation apply include children in foster care; aged, blind, or disabled individuals; and individuals who receive supplemental security income benefits.

Section 1. The Categorically Needy.

(1) An individual receiving Title IV-E benefits, SSI benefits, or an optional or a mandatory state supplement shall be eligible for Medicaid as a categorically-needy individual.

(2) The following classifications of persons shall be considered categorically needy and eligible for Medicaid participation as categorically needy:

(a) A child in a foster family home or private child-caring facility dependent on a governmental or private agency;

(b) A child in a psychiatric hospital, psychiatric residential treatment facility, or intermediate care facility for individuals with an intellectual disability beginning with day thirty-one (31) of the child's stay in the psychiatric hospital, psychiatric residential treatment facility, or intermediate care facility for individuals with an intellectual disability;

(c) A child in a subsidized adoption dependent on a governmental agency;

(d) A qualified severely impaired individual as specified in 42 U.S.C. 1396a(a)(10)(A)(i)(II) and 1396d(q), to the extent the coverage is mandatory in this state;

(e) An individual who loses SSI benefit eligibility but would be eligible for SSI benefits except for entitlement to or an increase in his or her child's insurance benefits based on disability as specified in 42 U.S.C. 1383c;

(f) An individual specified in 42 U.S.C. 1383c who:

1. Loses SSI benefits or state supplement payments as a result of receipt of benefits pursuant to 42 U.S.C. 402(e) or (f);

2. Would be eligible for SSI benefits or state supplement payments except for these benefits; and

3. Is not entitled to Medicare Part A benefits;

(g) A disabled widow, widower, or disabled surviving divorced spouse, who would be eligible for SSI benefits except for entitlement to an OASDI benefit resulting from a change in the definition of disability;

(h) A child who:

1. Was receiving SSI benefits on August 22, 1996; and
2. Except for the change in definition of childhood disability would continue to receive SSI benefits; or

(i) A person with hemophilia who would be eligible for SSI benefits except that the individual received a settlement in a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation".

(3) The classifications of persons listed in this subsection shall be considered categorically-needy and eligible for Medicaid participation as limited by the provisions of this subsection.

(a) A family which correctly received Medicaid for three (3) of the last six (6) calendar months, and would have been terminated from receipt of AFDC using AFDC methodologies in effect on July 16, 1996 as a result of new or increased collection of child or spousal support, shall be eligible for extended Medicaid coverage for four (4) consecutive calendar months beginning with the first month the family would have been ineligible for AFDC.

(b) A family which would have been terminated from AFDC assistance using the AFDC methodologies in effect on July 16, 1996 because of increased earnings, hours of employment, or loss of earnings disregards shall be eligible for up to four (4) months of extended Medicaid.

(c)

1. Except as provided in subparagraph 3 of this paragraph, an individual in an institution meeting appropriate patient status criteria who, if not institutionalized, would not be eligible for SSI benefits or optional state supplement benefits due to income shall be eligible under a special income level which is set at 300 percent of the SSI benefit amount payable for an individual with no income.

2. Except as provided in subparagraph 3 of this paragraph, eligibility for a similar hospice participant or similar participant in a 1915(c) home and community based waiver program for individuals with an intellectual disability or the aged, blind, or disabled shall be determined using the method established in subparagraph 1 of this subsection.

3. Eligibility of an individual in an intermediate care facility for individuals with an intellectual disability (ICF IID) or supports for community living for an individual with an intellectual disability or a developmental disability waiver meeting appropriate patient status criteria whose gross income exceeds 300 percent of the SSI benefit amount shall be determined by comparing the cost of the individual's care to the individual's income.

Section 2. Citizenship and Residency Requirements.

(1) The citizenship requirements established in 42 C.F.R. 435.406 shall apply.

(2) Except as established in subsection (3) or (4) of this section, to satisfy the Medicaid:

(a) Citizenship requirement, an applicant or recipient shall be:

1. A citizen of the United States as verified through satisfactory documentary evidence of citizenship or nationality presented during initial application or if a current recipient, upon next redetermination of continued eligibility;

2. A qualified alien who entered the United States before August 22, 1996, and is:

a. Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101;

b. Granted asylum pursuant to 8 U.S.C. 1158;

c. A refugee admitted to the United States pursuant to 8 U.S.C. 1157;

d. Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1) year;

e. An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);

f. Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7), as in effect prior to April 1, 1980;

g. An alien who is granted status as a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;

h. A battered alien pursuant to 8 U.S.C. 1641(c);

i. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

j. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);

k. The spouse or unmarried dependent child of an individual described in clause i. or j. of this subparagraph or the unremarried surviving spouse of an individual described in clause i. or j. of this subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304; or

l. An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or

3. A qualified alien who entered the United States on or after August 22, 1996 and is:

a. Granted asylum pursuant to 8 U.S.C. 1158;

b. A refugee admitted to the United States pursuant to 8 U.S.C. 1157;

c. An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);

d. An alien who is granted status as a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;

e. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

f. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);

g. The spouse or unmarried dependent child of an individual described in clause e. or f. of this subparagraph or the unremarried surviving spouse of an individual described in clause e. or f. of this subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304;

h. An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or

i. An individual lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 who has earned forty (40) quarters of Social Security coverage; and

(b) Residency requirements, the applicant or recipient shall be a resident of Kentucky who meets the conditions for determining state residency pursuant to 42 C.F.R. 435.403.

(3) A qualified or nonqualified alien shall be eligible for medical assistance as provided in this paragraph.

(a) The individual shall meet the income, resource, and categorical requirements of the Medicaid Program.

(b) The individual shall have, or have had within at least one (1) of the three (3) months prior to the month of application, an emergency medical condition:

1. Not related to an organ transplant procedure; and

2. Which shall be a medical condition, including severe pain, in which the absence of immediate medical attention could reasonably be expected to result in placing the individual's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

(c)

1. Approval of eligibility shall be for a time limited period which includes, except as established in subparagraph 2 of this paragraph, the month in which the medical emergency began and the next following month.

2. The eligibility period shall be extended for an appropriate period of time upon presentation to the department of written documentation from the medical provider that the medical emergency will exist for a more extended period of time than is allowed for in the time limited eligibility period.

(d) The Medicaid benefits to which the individual is entitled shall be limited to the medical care and services, including limited follow-up, necessary for the treatment of the emergency medical condition of the individual.

(4)

(a) The satisfactory documentary evidence of citizenship or nationality requirement in subsection (2)(a)1 of this section shall not apply to an individual who:

1. Is receiving SSI benefits;
2. Previously received SSI benefits but is no longer receiving them;
3. Is entitled to or enrolled in any part of Medicare;
4. Previously received Medicare benefits but is no longer receiving them;
5. Is receiving:
 - a. Disability insurance benefits under 42 U.S.C. 423; or
 - b. Monthly benefits under 42 U.S.C. 402 based on the individual's disability pursuant to 42 U.S.C. 423(d);
6. Is in foster care and who is assisted under Title IV-B of the Social Security Act, which is codified as 42 U.S.C. 621 through 628b; or
7. Receives foster care maintenance or adoption assistance payments under Title IV-E of the Social Security Act, which is codified as 42 U.S.C. 670 through 679c.

(b) The department's documentation requirements shall be in accordance with the requirements established in 42 U.S.C. 1396b(x).

(5) The department shall assist an applicant or recipient who is unable to secure satisfactory documentary evidence of citizenship or nationality in a timely manner because of incapacity of mind or body and lack of a representative to act on the applicant's or recipient's behalf.

(6) An individual shall be determined eligible for Medicaid for up to three (3) months prior to the month of application if all conditions of eligibility are met.

Section 3. The Medically Needy Who Qualify Via Spenddown. A medically needy individual who has sufficient income to meet the individual's basic maintenance needs may apply for Medicaid with need determined in accordance with the income and resource standards established in 907 KAR 20:020 through 907 KAR 20:045, if the individual meets:

- (1) The income and resource standards of the medically needy program established in 907 KAR 20:020 and 907 KAR 20:025; and
- (2) The technical requirements of the appropriate categorically needy group identified in Section 1 of this administrative regulation.

Section 4. Qualified Medicare Beneficiaries, Qualified Disabled and Working Individuals, Specified Low-Income Medicare Beneficiaries, and Medicare Qualified Individuals Group 1 (QI-1).

(1) Coverage shall be extended to a qualified Medicare beneficiary as specified in 42 U.S.C. 1396a(a)(10)(E):

- (a) Subject to the income limits established in 907 KAR 20:020;
- (b) Subject to the resource limits established in 907 KAR 20:025; and

(c) For the scope of benefits specified for a QMB in 907 KAR 1:006.

(2) A QMB shall:

- (a) Be eligible for or receive Medicare Part A and Part B benefits;
- (b) Be determined to be eligible for QMB benefits effective for the month after the month in which the eligibility determination has been made; and

(c) Not be eligible for QMB benefits:

1. Retroactively; or
2. For the month in which the eligibility determination was made.

(3) A qualified disabled and working individual shall be eligible under Medicaid for payment of the individual's Medicare Part A premiums as established in 907 KAR 1:006.

(4) A specified low-income Medicare beneficiary shall be eligible under Medicaid for payment of the Medicare Part B premiums.

(5) A Medicare qualified individual group 1 (QI-1) shall be eligible for payment of all of the Medicare Part B premium.

Section 5. Technical Eligibility Requirements. The technical eligibility factors for an individual included as categorically needy under Section 1 of this administrative regulation shall be as established in this section.

(1) The following shall meet the requirements of a child in accordance with 907 KAR 20:001, Section 1(19):

- (a) A child in foster care;
- (b) A child in a private institution;

- (c) A child in a psychiatric hospital;
- (d) A child in a psychiatric residential treatment facility; or
- (e) A child in an intermediate care facility for individuals with an intellectual disability.

(2) An aged individual shall be at least sixty-five (65) years of age.

(3) A blind individual shall meet the definition of blindness as contained in 42 U.S.C. 416 and 42 U.S.C. 1382c relating to Retirement, Survivors, and Disability Insurance or SSI benefits.

(4) A disabled individual shall meet the definition of permanent and total disability as established in 42 U.S.C. 423(d) and 42 U.S.C. 1382c(a)(3) relating to RSDI and SSI benefits.

(5)

(a) Using AFDC methodologies in effect on July 16, 1996, a family who loses Medicaid eligibility solely because of increased earnings or hours of employment of the caretaker relative or loss of earnings disregards may receive up to four (4) months of extended medical assistance for family members included in the medical assistance unit prior to losing Medicaid eligibility.

(b) The family shall meet the eligibility and reporting requirements for the benefit period established in this subsection.

(c) The benefit period shall begin with the month the family would have become ineligible for AFDC using AFDC methodologies in effect on July 16, 1996.

1. To be eligible for this transitional benefit period, the family shall:

a. Have correctly received Medicaid assistance in three (3) of the six (6) months immediately preceding the month the family would have become ineligible for AFDC using AFDC methodologies in effect on July 16, 1996;

b. Have a dependent child living in the home; and

c. Report earnings and child care costs no later than the 21st day of the fourth month.

2. If the family no longer has a dependent child living in the home, medical assistance shall be terminated the last day of the month the family no longer includes a dependent child.

(6) An applicant who is deceased shall have eligibility determined in the same manner as if the applicant were alive to cover medical expenditures during the terminal illness.

(7)

(a) An individual shall be determined eligible for Medicaid for up to three (3) months prior to the month of application if all conditions of eligibility are met and the applicant is not enrolled in a managed care organization.

(b) The effective date of Medicaid shall be the first day of the month of eligibility.

(8)

(a) Benefits shall be denied to a family for a month in which a parent with whom the child is living is, on the last day of the month, participating in a strike, and the individual's needs shall not be considered in determining eligibility for Medicaid for the family if, on the last day of the month, the individual is participating in a strike.

(b) A strike shall include a concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) or any concerted slowdown or other concerted interruption of operations by employees.

Section 6. Institutional Status.

(1) An individual shall not be eligible for Medicaid if the individual is a:

(a) Resident or inmate of a nonmedical public institution except as provided in Section 7 of this administrative regulation;

(b) Patient in a state tuberculosis hospital unless he or she has reached age sixty-five (65);

(c) Patient in a mental hospital or psychiatric facility unless the individual is:

1. Under twenty-one (21) years of age;
2. Under age twenty-two (22) if the individual was receiving inpatient services on his or her 21st birthday; or
3. Sixty-five (65) years of age or over; or

(d) Patient in an institution for mental diseases, unless the individual has reached age sixty-five (65).

VOLUME 51, NUMBER 8– February 1, 2025

(2) In accordance with subsection (1)(c) of this section, if an individual is receiving services in a mental hospital or psychiatric facility at the time the individual reaches twenty-one (21) years of age and the services remain medically necessary for the individual, the individual shall remain eligible for the services until the individual reaches age twenty-two (22) years of age.

Section 7. Emergency Shelters or Incarceration Status.

(1) An individual or family group who is in an emergency shelter for a temporary period of time shall be eligible for medical assistance, even though the shelter is considered a public institution, under the following conditions:

(a) The individual or family group shall:

1. Be a resident of an emergency shelter no more than six (6) months in any nine (9) month period; and

2. Not be in the facility serving a sentence imposed by the court, or awaiting trial; and

(b) Eligibility for Medicaid shall have existed immediately prior to admittance to the shelter or it shall exist immediately after leaving the shelter.

(2) An inmate shall be eligible for Medicaid during the period of time the inmate is admitted to a hospital if the inmate:

(a) Has been admitted to a hospital;

(b) Has been an inpatient at the hospital for at least twenty-four (24) consecutive hours; and

(c) Meets the Medicaid eligibility criteria established in this administrative regulation.

Section 8. Justice Involved Children or Youth.

(1) A justice involved child or youth who is within thirty (30) days of their scheduled release date shall be eligible for Medicaid as established pursuant to 42 U.S.C. 1396a(1)(a)(84)(D) and 1397bb.

(2) Covered services for justice involved youth shall be provided by reentry organizations authorized and approved by the department and may include:

(a) The Department for Juvenile Justice;

(b) The Department of Corrections; or

(c) Local jails; or

(d) An approved third-party contractor that assists one (1) of the entities in paragraphs (a) through (c) of this subsection in delivering services pursuant to this section.

Section 9. Application for Other Benefits.

(1) Except as provided in subsection (2) of this section, as a condition of eligibility for Medicaid, an applicant or recipient shall apply for each annuity, pension, retirement, and disability benefit to which the applicant or recipient is entitled, unless the applicant or recipient can show good cause for not doing so.

(a) Good cause shall be considered to exist if other benefits have previously been denied with no change of circumstances or the individual does not meet all eligibility conditions.

(b) Annuities, pensions, retirement, and disability benefits shall include:

1. Veterans' compensations and pensions;
2. Retirement and survivors disability insurance benefits;
3. Railroad retirement benefits;
4. Unemployment compensation; and
5. Individual retirement accounts.

(2) An applicant or recipient shall not be required to apply for federal benefits if:

(a) The federal law governing that benefit specifies that the benefit is optional; and

(b) The applicant or recipient believes that applying for the benefit would be to the applicant's or recipient's disadvantage.

(3) An individual who would be eligible for SSI benefits but has not made application shall not be eligible for Medicaid.

Section 10.[Section 9.] Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient shall be deemed to have made an assignment to the cabinet of any medical support owed for the child not to exceed the amount of Medicaid payments made on behalf of the recipient.

Section 11.[Section 10.] Third-party Liability as a Condition of Eligibility.

(1)

(a) Except as provided in subsection (3) of this section, an individual applying for or receiving Medicaid shall be required as a condition of eligibility to cooperate with the cabinet in identifying, and providing information to assist the cabinet in pursuing, any third party who may be liable to pay for care or services available under the Medicaid Program unless the individual has good cause for refusing to cooperate.

(b) Good cause for failing to cooperate shall exist if cooperation:

1. Could result in physical or emotional harm of a serious nature to a child or custodial parent;
2. Is not in a child's best interest because the child was conceived as a result of rape or incest; or
3. May interfere with adoption considerations or proceedings.

(2) A failure of the individual to cooperate without good cause shall result in ineligibility of the individual.

(3) A pregnant woman with income up to 195 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2) shall not be required to cooperate in establishing paternity or securing support for her unborn child.

Section 12.[Section 11.] Provision of Social Security Numbers.

(1) Except as provided in subsections (2) and (3) of this section, an applicant or recipient of Medicaid shall provide a Social Security number as a condition of eligibility.

(2) An individual shall not be denied eligibility or discontinued from eligibility due to a delay in receipt of a Social Security number from the United States Social Security Administration if appropriate application for the number has been made.

(3) An individual who refuses to obtain a Social Security number due to a well-established religious objection shall not be required to provide a Social Security number as a condition of eligibility.

Section 13.[Section 12.] Applicability. The provisions and requirements of this administrative regulation shall:

(1) Apply to:

- (a) Children in foster care;
- (b) Aged, blind, or disabled individuals; and
- (c) Individuals who receive supplemental security income benefits; and

(2) Not apply to an individual whose Medicaid eligibility is determined:

- (a) Using the modified adjusted gross income standard pursuant to 907 KAR 20:100; or
- (b) Pursuant to 907 KAR 20:075.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 20, 2024

FILED WITH LRC: December 23, 2024 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 24, 2025, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by February 17, 2025, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until February 28, 2025. 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.

VOLUME 51, NUMBER 8– February 1, 2025

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: Jonathan Scott or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes technical eligibility requirements for Kentucky's Medicaid program for children in foster care; aged, blind, or disabled individuals; and individuals who receive supplemental security income (SSI) benefits.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid program eligibility requirements in accordance with federal law and regulation and as authorized by KRS 194A.030(2) which establishes the Department for Medicaid Services as the commonwealth's single state agency for administering the federal Social Security Act.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 194A.030(2), 194A.050(1) and 205.520(3) by establishing Medicaid program technical eligibility requirements in accordance with federal law and as authorized by KRS 194A.030(2).

(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 KRS 194A.030(2), 194A.050(1) and 205.520(3) by establishing Medicaid program technical eligibility requirements in accordance with federal law and as authorized by KRS 194A.030(2).

(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 allow incarcerated children or youth to receive targeted services 30 days prior to release. A citation to the specific targeted services required to be provided pursuant to federal law is also provided. In addition, departmental authority to provide covered services through reentry organizations is established.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to add a federal requirement to cover incarcerated youth as contained in the 2023 Consolidated Appropriations Act.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by implementing a federally required new group of recipients.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists with the effective administration of the statutes by implementing a new group of recipients required by federal law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: DMS anticipates that 250 incarcerated youth could be eligible for these services during the course of a 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: No action is required, regulated entities will be able to bill and receive a higher reimbursement.

(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 in the expanded reimbursement now available for this waiver.

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

(a) Initially: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(b) On a continuing basis: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Department for Medicaid Services is the promulgating agency, other agencies have not been identified.

(a) Estimate the following for the first year:

Expenditures: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 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 anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): N/A

(a) Estimate the following for the first year:

Expenditures: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 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 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): Enrolled providers providing services to this new eligibility group.

(a) Estimate the following for the first year:

Expenditures: DMS does not anticipate additional expenditures for regulated entities.

Revenues: Participating providers will benefit from reimbursement for this service.

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 anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6. Revenues: Participating providers will benefit from increased reimbursement. Cost Savings: The department does not anticipate cost savings as a result of this administrative regulation.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(b) Methodology and resources used to determine the fiscal impact: The consensus forecasting group established the Medicaid baseline budget and included the provisions of CAA Section 5121 in their estimations.

(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: This administrative regulation will provide additional reimbursement for providers treating justice involved youth.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. part 435

(2) State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

(3) Minimum or uniform standards contained in the federal mandate. General categorical, and optional eligibility requirements for the Medicaid program are established

(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.

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

COUNCIL ON POSTSECONDARY EDUCATION
(As Amended at ARRS, January 13, 2025)

13 KAR 2:120. Comprehensive funding model for the allocation of state general fund appropriations to public universities.

RELATES TO: KRS 48.600-48.630, 164.001, 164.092
STATUTORY AUTHORITY: KRS 164.092(12)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.092(12) requires the Council on Postsecondary Education to promulgate an administrative regulation to implement a comprehensive funding model for the public postsecondary education system. This administrative regulation establishes the formula by which general fund appropriations shall be distributed in the public university sector.

Section 1. Definitions.

(1) "Academic year" means July 1st through June 30th and all terms completed therein.

(2) "Bachelor's degrees" means the total number of bachelor's degrees awarded during the academic year, including degrees conferred to resident and non-resident students.

(3) "Comprehensive university" is defined by KRS 164.001(7).

(4) "Council" is defined by KRS 164.092(1)(c).

(5) "FAFSA form" means the free application for federal student aid form completed by students to determine eligibility to receive federal student financial aid.

(6) "First-generation college students" means students who report on the FAFSA form that neither parent has earned a college degree or credential, or one (1) parent if the other parent's education level is unknown.

(7) "Formula base amount" is defined by KRS 164.092(1)(e) and includes a deduction for mandated programs.

(8)(6) "Hold-harmless provision" is defined by KRS 164.092(1)(f).

(9)(7) "Institution" means a public university.

(10)(8) "Low-income student" means a student who received a Federal Pell Grant after the 2005-2006 academic year for attendance at the institution from which the student received a bachelor's degree.

(11)(9) "Mandated program" means a research or public service activity not integral to the instructional mission of the institution that is:

(a) Funded with greater than \$450,000 of state appropriations at research universities and \$200,000 at comprehensive universities; and

(b) Directed by statute, resolution, executive branch budget bill, executive order, or other legal mandate.

(12) "Non-traditional age students" is defined by ~~in~~ KRS 164.092(1)(k).

(13)(10) "Non-resident student" means a student who does not meet the requirements for Kentucky residency for purposes of tuition established set forth in 13 KAR 2:045.

(14)(11) "Research university" is defined by KRS 164.092(1)(m)(i).

(15)(12) "Resident student" means a student certified as a Kentucky resident for purposes of tuition pursuant to 13 KAR 2:045 and any non-resident student attending an institution under a state tuition reciprocity agreement entered into by the council.

(16)(13) "Small school adjustment" means a one (1)-time calculation made using the formula base amounts in 2017-2018 and equals:

(a) For a research university, ten (10) percent of the respective formula base amount for each institution; ~~and~~

(b) For a comprehensive university, ten (10) percent of the total formula base amount for all comprehensive universities divided by six (6); and ~~;~~

(c) For institutions that have a hold-harmless provision amount in fiscal year 2023-2024, an additional amount equaling the institution's 2023-2024 hold-harmless provision amount.

(17)(14) "STEM+H bachelor's degrees" means degrees in the fields of science, technology, engineering, math, and health sciences as determined by the council based on the U.S. Department of Homeland Security STEM Designated Degree Program List, as well as all programs in CIP 51.

(18)(15) "Stop-loss provision" is defined by KRS 164.092(1)(n)(k).

(19)(16) "Underrepresented [minority-]students" means first-generation college students ~~students who categorize themselves as Hispanic or Latino, American Indian or Alaska Native, Black or African American, Native Hawaiian or Other Pacific Islander, or two (2) or more races.~~

(20)(17) "University allocable resources" is defined by KRS 164.092(1)(o)(4).

Section 2. Allocable Resources. The council shall determine total university allocable resources for any given year by calculating each institution's formula base amount and subtracting the small school adjustment and any amount protected by a hold-harmless provision. These amounts shall then be combined along with any applicable increase or decrease in general fund appropriation.

Section 3. Metric Weighting. For purposes of Sections 5, 6, and 7 of this administrative regulation, bachelor's degrees, student progression, earned credit hours, facilities' square feet, instruction and student services costs, and full-time equivalent student enrollment shall be calculated with differential weights for research and comprehensive universities in accordance with the Public University Funding Model Metric Weighting Chart.

Section 4. Three (3)-year Rolling Average. Each metric shall be calculated by averaging the most recent three (3) years of finalized data.

Section 5. Student Success Outcomes. Forty (40) ~~Thirty-five (35)~~ percent of total university allocable resources shall be certified for distribution to each institution based on its share of the total volume of student success outcomes related to bachelor's degree production and student progression as established in KRS 164.092(6)(a)1. through 4,5, and in the following denominations:

(1) Nine (9) percent based on the ~~normalized~~ bachelor's degrees awarded in an academic year as established described in the Public University Sector Funding Model Formula Chart;

(2) Five (5) percent based on STEM+H bachelor's degrees awarded in an academic year;

(3) ~~Three (3) percent based on bachelor's degrees awarded to underrepresented minority students in an academic year;~~

(3)(4) Eight (8) Nine and a half (9.5) ~~Three (3)~~ percent based on bachelor's degrees awarded to low-income students in an academic year;

(4)(5) Three (3) percent based on the number of full-time and part-time undergraduate students reaching or surpassing thirty (30) cumulative earned credit hours in any term completed from August 1st to July 31st;

(5)(6) Five (5) percent based on the number of full-time and part-time undergraduate students reaching or surpassing sixty (60) cumulative earned credit hours in any term completed from August 1st to July 31st; ~~and~~

(6)(7) Seven (7) percent based on the number of full-time and part-time undergraduate students reaching or surpassing ninety (90) cumulative earned credit hours in any term completed from August 1st to July 31st; ~~and~~ ~~;~~

(7) Three (3) One and a half (1.5) percent based on the number of bachelor's degrees awarded to underrepresented first generation students in an academic year.

COUNCIL ON POSTSECONDARY EDUCATION
(As Amended at ARRS, January 13, 2025)

Section 6. Student Credit Hour Production. ~~Thirty (30)~~~~[Thirty-five (35)]~~ percent of total university allocable resources shall be certified for distribution to each institution based on its share of total volume of weighted student credit hours earned during an academic year as established in KRS 164.092(6)(b).

(1) Credit hour weighting by course level and discipline shall be in accordance with the Public University Funding Model Earned Credit Hour Production Weighting Index.

(a) Credit hours earned by non-resident students shall be given one-half (0.5) the weight of those earned by resident students in comparable programs of study.

(b) Beginning fiscal year 2024-2025,:

1. Credit hours earned by non-resident students shall be given three-quarters (.75) the weight of those earned by resident students in comparable programs of study; and

2. Resident undergraduate non-traditional age students shall be given twice the weight of those earned by traditional age students in comparable programs of study.; and]

(2) The calculation in subsection (1) of this section shall not include credit hours earned by high school students taking courses for college credit.

Section 7. Operational Support. Thirty (30) percent of total university allocable resources shall be certified for distribution to each institution in support of vital campus operations as established in KRS 164.092(6)(c)1. through 3.

(1) Ten (10) percent shall be allocated based on facilities' square feet as reported annually to the council and as established in KRS 164.092(6)(c)1.

(2) Ten (10) percent shall be allocated based on direct instruction and student services costs as reported on each institution's annual audited financial statement and as established in KRS 164.092(6)(c)2.

(3) Ten (10) percent shall be allocated based on total full-time equivalent student enrollment as established in KRS 164.092(6)(c)3 and using the formula established in the Public University Sector Funding Model Formula Chart.

Section 8. Hold-harmless and Stop-loss Provisions.

(1) Any final amounts certified for distribution to any institution shall account for any hold-harmless or stop-loss provisions established in KRS 164.092(9).

(2) The council shall determine hold-harmless amounts for institutions ~~[in fiscal year 2018-2019]~~ through application of the formula established in this administrative regulation.

(a) If the formula total amount generated for an institution is less than its initial allocable resources, the amount of that difference shall be designated as the institution's hold-harmless allocation.

(b) If applied, an institution maintaining a hold-harmless allocation shall not receive additional distributions of funding through the model until the hold-harmless allocation balance is brought to zero through improved institutional performance, additional appropriations, or some combination thereof.

~~[(c)] [The council shall apply these hold-harmless allocations, with any applicable credit adjustments as determined annually by the formula, to all applicable institutions in 2018-2019, 2019-2020, 2020-2021, and in any subsequent years as directed by the General Assembly.]~~

Section 9. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Public University Sector Funding Model Formula Chart," October~~April~~ 2024~~[June 2017]~~;

(b) "Public University Funding Model Metric Weighting Chart," April 2024~~[June 2017]~~; and

(c) "Public University Funding Model Earned Credit Hour Production Weighting Index," June 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Council on Postsecondary Education, 100 Airport Road, Third Floor~~[4024 Capital Center Drive, Suite 320]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and <https://cpe.ky.gov/>.

13 KAR 2:130. Comprehensive funding model for the allocation of state general fund appropriations to Kentucky Community and Technical College System institutions.

RELATES TO: KRS 48.600-48.630, 164.001, 164.092

STATUTORY AUTHORITY: KRS 164.092(12)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.092(12) requires the Council on Postsecondary Education to promulgate an administrative regulation to implement a comprehensive funding model for the public postsecondary education system. This administrative regulation establishes the formula by which general fund appropriations shall be distributed in the Kentucky Community and Technical College System sector.

Section 1. Definitions.

(1) "Academic year" means the Summer, Fall, and Spring terms~~[means July 1 through June 30 and all terms completed therein].~~

(2) "Council" is defined by KRS 164.092(1)(c).

(3) "Credentials" means the total number of certificates, diplomas, and associate degrees awarded during the academic year. "Associate degree" means total number of associate degrees awarded during the academic year, including degrees conferred to resident and non-resident students].

~~[(3)] ["Council" is defined by KRS 164.092(1)(c).]~~

(4) "Equity adjustment" means ten (10) percent of total KCTCS institution allocable resources divided by sixteen (16) and allocated to each institution using the Community Needs Index.

(5) "FAFSA form" means the free application for federal student aid form completed by students to determine eligibility for federal student financial aid.

(6) "First-generation college students" means students who report on the FAFSA that neither parent has earned a college degree or credential, or one (1) parent if the other parent's education level is unknown.

~~(7)~~~~[(5)]~~ "Formula base amount" is defined by KRS 164.092(1)(e) and includes a deduction for mandated programs.

~~(8)~~~~[(6)]~~ "Full-[]time equivalent student enrollment" means the total academic year credit hours taken divided by thirty (30).~~[fall semester credit hours earned divided by fifteen (15)]~~

~~(7)~~ ~~["High-wage, high-demand credentials" means credentials tied to occupations identified in the Kentucky Office of Employment and Training's Kentucky Occupational Outlooks and annual Occupational Employment statistics wage data that meet the following criteria:]~~

~~[(a)] [Have a median annual wage that is greater than or equal to the wage at the 75th percentile for all occupations in the state of Kentucky;]~~

~~[(b)] [Show growth greater than or equal to the projected percent change for all Kentucky occupations; or]~~

~~[(c)] [Have 100 or more average annual job openings.]~~

~~(9)~~~~[(8)]~~ "Hold-harmless provision" is defined by KRS 164.092(1)(f).

~~(10)~~~~[(9)]~~ "Institution" means a college in the Kentucky Community and Technical College System.

~~(11)~~~~[(10)]~~ "KCTCS" is defined by KRS 164.092(1)(h).

~~(12)~~~~[(11)]~~ "KCTCS institution allocable resources" is defined by KRS 164.092(1)(i).

~~(13)~~~~[(12)]~~ "Low-income student[students]" means a student who has received a Federal Pell Grant at any time since 2005-2006 at KCTCS~~[the graduating institution].~~

~~(14)~~~~[(13)]~~ "Mandated program" means a research or public service activity not integral to the instructional mission of the institution that is:

(a) Funded with greater than \$200,000 of state appropriations; and

(b) Directed by statute, resolution, executive branch budget bill, executive order, or other legal mandate.

(15) "Non-traditional ~~age college~~ students" is defined by KRS 164.092(1)(k).

VOLUME 51, NUMBER 8– February 1, 2025

~~[(16)]~~~~[(14)]~~ ["Non-resident student" means a student who does not meet the requirements for Kentucky residency for purposes of tuition set forth in 13 KAR 2:045.]

~~[(15)]~~ ["Resident student" means a student certified as a Kentucky resident for purposes of tuition pursuant to 13 KAR 2:045 and any non-resident student attending an institution under a state tuition reciprocity agreement entered into by the council.]

~~[(16)]~~ ["STEM+H degrees" mean degrees in the fields of science, technology, engineering, math, and health sciences as identified to annually by KCTCS.]

~~[(17)]~~ "Stop-loss provision" is defined by KRS 164.092(1)(n)~~[(k)]~~.

~~[(18)]~~ ["Targeted industry credentials" means credentials awarded in Classification of Instructional Programs (CIP) codes developed by the U.S. Department of Education's National Center for Education Statistics that crosswalk to occupations with education or training requirements of an associate degree or below in targeted industry sectors as identified in a targeted industry CIPs index provided annually by KCTCS.]

~~[(17)]~~~~[(19)]~~ "Underprepared students" means~~[mean]~~ students who tested into developmental English, math, or reading upon entering KCTCS~~[at any period of enrollment]~~ since the 2010-11 academic year.

~~[(18)]~~~~[(20)]~~ "Underrepresented [minority] students" means first-generation college students~~[mean students who categorized themselves as Hispanic or Latino, American Indian or Alaska Native, Black or African American, Native Hawaiian or Other Pacific Islander, or two (2) or more races].~~

Section 2. Allocable Resources. The council shall determine total KCTCS institution allocable resources for any given year by calculating each institution's formula base amount and subtracting the equity adjustment and any amount protected by a hold harmless provision. These amounts shall then be combined along with any applicable increase or decrease in general fund appropriation.

Section 3. Data Sets. Unless indicated otherwise, each metric, except facilities square footage, shall be calculated using a three (3) year rolling average~~[the most recent set of finalized data]~~.

Section 4. Student Success Outcomes. Thirty-five (35) percent of total KCTCS institution allocable resources shall be certified for distribution to each institution based on its share of the total volume of student success outcomes as established in KRS 164.092(8)(a)1. through ~~4~~~~[(7)]~~, and in the following denominations:

(1) ~~Eight (8)~~~~[(10)]~~ percent based on the credentials awarded in an academic year weighted to provide a premium for credentials that are aligned with the economic needs of the state using the **Credentials Tied to the Economy**~~[using an average of the most recent three (3) years of finalized data and weighted in the following manner:]~~

1.0]	[for an undergraduate certificate or diploma which a student can complete in less than one (1) academic year;]
2.0]	[for an undergraduate certificate or diploma which a student can complete in at least one (1), but less than two (2) academic years; and]
4.0]	[for an associate degree.]

~~[(2)]~~ ~~Two (2) percent based on STEM+H credentials awarded in an academic year;~~

~~[(2)]~~~~[(3)]~~ Four (4) One (1)~~[(2)]~~ percent based on ~~degrees~~~~[credentials]~~ awarded to underrepresented ~~[minority]~~ students in an academic year;

~~[(3)]~~~~[(4)]~~ Four (4) Five (5)~~[(2)]~~ percent based on credentials awarded to low-income students in an academic year;

~~[(4)]~~~~[(5)]~~ Four (4) Two (2) percent based on credentials awarded to underprepared students in an academic year;

~~[(5)]~~ Four (4) Six (6) percent based on credentials awarded to non-traditional age college students in an academic year;

~~[(6)]~~ Four (4) Two (2) percent based on the number of students in the cohort who transferred to a baccalaureate degree granting college or university after the last term a student was enrolled at a KCTCS institution in the academic year;

~~[(7)]~~ ~~Two (2) percent based on targeted industry credentials awarded in an academic year;~~

~~[(8)]~~ ~~One (1) percent based on high-wage, high-demand credentials awarded in an academic year;~~

~~[(7)]~~~~[(9)]~~ One (1) Two (2) percent based on the number of full-time and part-time undergraduate students reaching or surpassing fifteen (15) cumulative earned credit hours in an academic year;

~~[(8)]~~~~[(10)]~~ Two (2) Four (4) percent based on the number of full-time and part-time undergraduate students reaching or surpassing thirty (30) cumulative earned credit hours in an academic year; and

~~[(9)]~~~~[(11)]~~ Four (4) Six (6) percent based on the number of full-time and part-time undergraduate students reaching or surpassing forty-five (45) cumulative earned credit hours in an academic year.

Section 5. Student Credit Hour Production. Thirty-five (35) percent of total KCTCS allocable resources shall be certified for distribution to each institution based on its share of total volume of weighted student credit hours earned during an academic year as established in KRS 164.092(8)(b). Credit hour weighting by course discipline shall be in accordance with the KCTCS Funding Model Classification of Instructional Program (CIP) Cost Factors Index.

Section 6. Operational Support. Thirty (30) percent of total KCTCS allocable resources shall be certified for distribution to each institution in support of vital campus operations as established in KRS 164.092(8)(c)1. through 3.

(1) Ten (10) percent shall be allocated based on facilities' square feet as reported annually to the council and as established in KRS 164.092(8)(c)1.

(2) Ten (10) percent shall be allocated based on direct instruction and student services costs as reported to The Integrated Postsecondary Education Data System (IPEDS) and as established in KRS 164.092(8)(c)2.

(3) Ten (10) percent shall be allocated based on total full-time equivalent student enrollment as established in KRS 164.092(8)(c)3.

Section 7. Stop-loss and Hold-Harmless Provisions.

(1) Any final amounts certified for distribution to any institution shall account for any hold-harmless or stop-loss provisions established in KRS 164.092(9).

(2) The council shall determine hold-harmless provision amounts for institutions ~~[in fiscal year 2018-2019]~~ through application of the formula established in this administrative regulation.

(3) If the formula total amount generated for an institution is less than its initial allocable resources, the amount of that difference shall be certified to KCTCS as that institution's hold-harmless provision allocation.

~~[(4)]~~ ~~[The council shall apply these hold-harmless allocations to all applicable institutions in 2018-2019 and in any subsequent years as directed by the General Assembly.]~~

Section 8. Incorporation by Reference.

(1) The following material is incorporate by reference:

~~(a)~~ "KCTCS Funding Model Classification of Instructional Program (CIP) Cost Factors Index", June 2017;

~~(b)~~ "Community Needs Index (CNI)", April 2024; and

~~(c)~~ "Credentials tied to the Economy", April 2024~~[, is hereby incorporated by reference.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Council on Postsecondary Education, 100 Airport Road, Third Floor~~1024 Capital Center Drive, Suite 320~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and <https://cpe.ky.gov/>.

FILED WITH LRC: January 13, 2025

FINANCE AND ADMINISTRATION CABINET
 Teachers' Retirement System
 (As Amended at ARRS, January 13, 2025)

102 KAR 1:340. Calculation of final average salary.

RELATES TO: KRS 161.220-~~161.716(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 ~~by~~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) "Rank and step" means a single, specific cell on the salary schedule where rank serves as one (1) axis of the schedule and step as the other.

(6) "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 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

VOLUME 51, NUMBER 8– February 1, 2025

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 shall be the highest percentage increase for a specific cell of the salary schedule, as defined in Section 1(6), from one (1) fiscal year to the next and shall exclude 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 if when they advance on the salary schedule as defined in Section 1(6) in step or rank. Individual members may not have increases greater than the district's permissible increase if when they advance on a pay schedule or compensation agreement other than the salary schedule as defined in Section 1(6).

FILED WITH LRC: January 13, 2025

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, January 13, 2025)

105 KAR 1:130. Hazardous position duty coverage.

RELATES TO: KRS 16.505, 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 to require 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. "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

(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)

[4.] An employee who began participating in CERS prior to September 1, 2008, and was working in a CERS hazardous position prior to September 1, 2008, shall continue to participate as a hazardous position employee as long as he or she remains in a position that has been approved for hazardous position coverage.

(b) An employee who began participating in CERS prior to September 1, 2008, and is subsequently employed in a hazardous position, shall participate as a hazardous position employee as long as he or she remains in a position that has been approved for hazardous position coverage.

(c) An employee who began participating in CERS on or after September 1, 2008, in a position that was approved as a hazardous position prior to September 1, 2008, shall not be reported as a hazardous position employee.

VOLUME 51, NUMBER 8– February 1, 2025

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[~~fer~~] 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[~~of~~] 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)[(4)] 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~~]; and[~~;~~].

(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 required by[~~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 required by[~~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 complete[~~compet~~] and submit a valid Form 2011, HP-2, Hazardous Position Certification, at initial 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) A member shall:

- 1. Have a 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); and[~~;~~].

(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[~~;~~].

(a) 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); and[~~;~~].

(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) or[~~and~~] 78.545, unless:

- 1. The employer elects to pay the cost; or
- 2. The[~~If 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.

(b) Payments made by the member shall not be picked up by the employer as described in KRS 61.560(4) and 78.615(1).

(c)

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

VOLUME 51, NUMBER 8– February 1, 2025

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.

FILED WITH LRC: January 13, 2025

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 ARRS, January 13, 2025)

105 KAR 1:445. Trustee elections. [Electronic ballots in Trustee elections.]

RELATES TO: KRS 11A.020, 11A.040, 61.080, 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 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;]

[(b)] Recent photograph;

(b) [(c)] City and county of residence;

(c) [(d)] 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;

(d) [(e)] Education, including schools and universities attended and degrees earned;

[(f)] [Whether or not the candidate has been convicted of a felony;]

(e) [(g)] Any professional licenses or certifications held by the candidate;

(f) [(h)] Any organization of which the candidate is a member that is listed on the candidate's application; and

(g) [(i)] 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]

(b) Is [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.

(5) [(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 that [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.

(8) [(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.

VOLUME 51, NUMBER 8– February 1, 2025

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[Ballet]" means a timely cast vote[ballet 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) ~~or~~ 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) ~~A~~~~[An eligible voter may also submit a written]~~ request to modify the~~[for a paper]~~ ballot type shall be~~[#]~~ 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

VOLUME 51, NUMBER 8– February 1, 2025

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 an electronic vote or vote by telephone~~[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 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.~~

VOLUME 51, NUMBER 8– February 1, 2025

(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>.

FILED WITH LRC: January 13, 2025

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.

BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(As Amended at ARRS, January 13, 2025)

201 KAR 16:520. Approved veterinary medical programs for veterinarians[~~colleges~~]; approved veterinary technology programs for veterinary technicians.

RELATES TO: KRS 321.181, 321.193, 321.441
STATUTORY AUTHORITY: KRS 321.190, 321.193(4)[~~321.193(3), (5)~~], 321.235(1)(a)-(c), (2)(b)1.a., 3.b.[~~321.235(3)~~], 321.240(5), 321.441(1)(a), (d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.193(4)[~~321.193(3)~~] requires a veterinarian applicant to have received a degree from an approved veterinary medical program[a veterinary college approved by the Kentucky Board of Veterinary Examiners]. KRS 321.441(1)(a) requires a veterinary technician applicant to be a graduate of an approved veterinary technology program[~~accredited program of veterinary technology or its equivalent as approved by the board~~]. KRS 321.235(1)(a)-(c) **requires** [(2)(b)1.a. and 3.b.][~~KRS 321.235(3) and 321.240(5)~~][**authorize**] the board to promulgate administrative regulations to implement and enforce KRS Chapter 321. **KRS 321.235(2)(b)1.a. and 3.b. authorizes the board to promulgate administrative regulations to establish and enforce minimum standards for the criteria of programs or other mechanisms to ensure continuing competence, and to administer licensure, certification, permitting, and registration.** This administrative regulation establishes the approved veterinary medical programs and approved veterinary technology programs that are authorized[veterinary colleges and veterinary technician programs approved] by the board.

Section 1. Definitions.

(1) "Approved foreign equivalency program" is defined by KRS 321.181(10).

(2) "Approved veterinary medical program" is defined by KRS 321.181(13).

(3) "Approved veterinary technology program" is defined by KRS 321.181(14).

Section 2. Licensure of Veterinarians who Graduated from an Approved Veterinary Medical Program[~~Colleges~~].

(1) The board approves a[A] veterinary medical program as an approved veterinary medical program if the program holds[~~college shall be approved if it held~~] full accreditation, limited accreditation, or approval by the American Veterinary Medical Association (AVMA) Council on Education (COE).

(2) As one (1) part of the requirements for a veterinarian license to be granted, the applicant shall hold an advanced veterinary

medical degree from an approved veterinary medical program which held full accreditation, limited accreditation, or approval by the AVMA COE on the date when the applicant received their[a] degree from the program[veterinary college].

Section 3.[~~Section 2.~~] Licensure of Veterinarians who Graduated from a Program that is Not an Approved Veterinary Medical Program[~~non-approved Schools~~].

(1) If an applicant for a veterinarian license does not possess a degree from an approved veterinary medical program[a veterinary college within the scope established in Section 1 of this administrative regulation], the applicant shall be eligible to qualify for licensure and board approval after successfully completing and receiving certification from an approved foreign equivalency program for veterinarians.

(2) The board approves each of the following programs as an approved foreign equivalency program for veterinarians[~~one of the following programs~~]:

(a)[~~(4)~~] The Educational Commission for Foreign Veterinary Graduates (ECFVG) of the American Veterinary Medical Association (AVMA); or

(b)[~~(2)~~] The Program for the Assessment of Veterinary Education Equivalence (PAVE) of the American Association of Veterinary State Boards (AAVSB).

Section 4.[~~Section 3.~~] Licensure of Veterinary Technicians who Graduated from an Approved Veterinary Technology Program[~~Technician Programs~~].

(1) The board approves a[A] veterinary technician program, or veterinary technologist program, or veterinary nurse program, as an[~~shall be~~] approved veterinary technology program if the program holds[~~if it held~~] full accreditation, limited accreditation, or approval by the American Veterinary Medical Association (AVMA) Committee on Veterinary Technician Education and Activities (CVTEA).

(2) As one (1) part of the requirements for a veterinary technician license to be granted, the applicant shall hold a veterinary technology degree from an approved veterinary technology program which held full accreditation, limited accreditation, or approval by the AVMA CVTEA on the date when the applicant received their[a] degree from the program[institution].

Section 5.[~~Section 4.~~] Licensure of Veterinary Technicians who Graduated from a Program that is Not an Approved Veterinary Technology Program[~~Non-approved Schools or Programs~~].

(1) If an applicant for a veterinary technician license does not hold[~~possess~~] a degree from an approved[a] veterinary technology[~~technician~~] program[~~within the scope established in Section 3 of this administrative regulation~~], the applicant[~~candidate~~] shall be eligible to qualify for licensure and board approval by successfully completing and receiving certification from an approved foreign equivalency program for veterinary technicians.[~~]~~

(2) The board approves as an approved foreign equivalency program for veterinary technicians the Program for the Assessment of Veterinary Education Equivalence (PAVE) or its equivalent program of the American Association of Veterinary State Boards (AAVSB) for veterinary technicians.

[~~(4)~~]

[~~(a)~~] [Following graduation, submitting an official copy of final transcripts from the college of study, and any other requested documentation, showing successful completion of the program for the board's review and determination of approval; or]

[~~(b)~~] [Successfully completing the program and receiving certification from the Program for the Assessment of Veterinary Education Equivalence (PAVE) or its equivalent program of the American Association of Veterinary State Boards (AAVSB) for veterinary technicians; and]

[~~(2)~~] [Successfully completing all other application requirements for licensure.]

FILED WITH LRC: January 13, 2025

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.

BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(As Amended at ARRS, January 13, 2025)

201 KAR 16:530. Examination requirements for veterinarians and veterinary technicians.

RELATES TO: KRS 321.193, 321.201, 321.441

STATUTORY AUTHORITY: KRS 321.190, 321.193(5)[KRS 321.193(4)], 321.235(1)(a)-(c), (2)(b)1.a., 3.b.[321.235(3), 321.240(5)], 321.441(1)(b), (d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.193(5)[321.193(4)] requires the Kentucky Board of Veterinary Examiners to establish required examinations and passing scores for veterinarian applicants. KRS 321.441(1)(b) requires the board to establish required examinations and passing scores for veterinary technician applicants. KRS 321.235(1)(a)-(c) requires ~~(2)(b)1.a. and 3.b.~~[321.235(3) and 321.240(5)] ~~authorize~~ the board to promulgate administrative regulations to implement and enforce KRS Chapter 321. KRS 321.235(2)(b)1.a. and 3.b. authorizes the board to promulgate administrative regulations to establish and enforce mechanisms to ensure continuing competence, and to administer licensure, certification, permitting, and registration. This administrative regulation establishes examination requirements and passing scores for veterinarians and veterinary technicians for applicants to qualify for licensure by the board.

Section 1. National Exam Qualifications for Veterinarians.

(1) The board shall require a passing score on a board-approved national veterinary medical examination as one (1) requirement[required] for licensure by the board as a veterinarian.

(2) The required qualifying national veterinary medical examination for veterinarian licensure shall be determined by the date of the completed examination, and shall be approved by the board as listed in this subsection.

(a) Applicants for licensure who tested during or after May 2000 shall be required to successfully complete and achieve a passing score on[the successful completion of] the North American Veterinary Licensing Examination (NAVLE) as administered by[.]

~~[(2)] [Candidates shall apply to the board for verification of eligibility to take the NAVLE.]~~

~~[(3)] [Candidates seeking to take the NAVLE shall apply directly to the International Council for Veterinary Assessment (ICVA), its designee, or current administrator of the NAVLE for admission to the examination. A passing score shall be established by the ICVA or current examination administrator at the time of testing.]~~

(b) New applicants for licensure who tested between 1954 and April 2000 shall have successfully completed and achieved a passing score on the National Board Examination (NBE). A passing score on the NBE shall be seventy-five (75).~~;~~ ~~or~~

(c) Applicants for licensure who tested prior to 1954 shall have successfully completed and achieved a passing score on a state level competency exam, if one (1) was available.

(3) Exam Qualification and Registration.

(a) Applicants for licensure shall apply to the board for verification of eligibility to take or retake the NAVLE through the spring 2024 testing window. For all future testing windows, the ICVA shall conduct examination eligibility review.

(b) Candidates seeking to take the NAVLE shall apply directly to the ICVA, its designee, or current administrator of the NAVLE for admission to the examination.

(c) Candidates seeking to take or retake the NAVLE may:

1. Sit for the examination up to twelve (12) months in advance of the applicant's anticipated graduation date from an approved veterinary medical program if the veterinary student is in good academic standing with the approved veterinary medical program; and

2. ~~Seek~~[Candidates seeking] to retest after five (5) attempts if the candidates[may] make a request to the board to sit for the examination for additional times beyond five (5) attempts.

a. A candidate request to retest after five (5) attempts shall include a detailed remediation plan, including the process by which the applicant proposes to improve their performance on the NAVLE, the time proposed to be spent on remediation, and with whom the

applicant proposes to study or obtain further instruction, and any other information requested by the board.

b. Upon approval of the remediation plan by the board, the board shall petition ICVA or ~~the~~ current examination administrator for the candidate to have the opportunity to sit for the exam again.

(4) Applicants for veterinarian licensure to the board shall request and pay all necessary fees[a-fee] directly to the ICVA, its designee, the American Association of Veterinary State Boards (AAVSB), or current official records custodian, to have examination[test] scores sent directly to the board. Unofficial copies of scores from applicants or other sources shall not be accepted.

(5) Candidates for the NAVLE who designate Kentucky as their chosen state for a score report, and who do not receive a passing score shall apply to the board to retake the NAVLE[NAVLE] on the Application for a Special Permit[Retake of the NAVLE] form or online equivalent form through the spring 2024 testing window. For all future testing windows, the ICVA shall conduct examination eligibility review.

~~[(6)] [In addition to achieving a passing score on the NAVLE, applicants for licensure shall be required to achieve a score of eighty (80) percent or higher on the Commonwealth of Kentucky State Board Examination, which shall cover the specific requirements of KRS Chapter 321 and 201 KAR Chapter 16.]~~

~~[(7)] [The board shall recognize passing scores on the National Board Examination (NBE) and the Clinical Competency Test (CCT) in lieu of a NAVLE test score if the applicant for licensure completed both examinations prior to May, 2000.]~~

~~[(8)] [Graduates of veterinary schools or programs not approved by the American Veterinary Medical Association (AVMA) shall also submit proof of successful completion of one (1) of the following programs:]~~

~~[(a)] [The Educational Commission for Foreign Veterinary Graduates (ECFVG) program offered by the AVMA; or]~~

~~[(b)] [The Program for the Assessment of Veterinary Education Equivalence (PAVE) program offered by the American Association of Veterinary State Boards (AAVSB).]~~

Section 2. State Jurisprudence Exam Requirements for Veterinarians.

(1) The board shall require a passing score on a board-approved state jurisprudence examination as one (1) requirement for licensure by the board as a veterinarian.

(2) Candidates seeking a veterinarian license shall pay a state examination fee pursuant to 201 KAR 16:510.

(3) Candidates shall complete the Kentucky Board of Veterinary Examiners Jurisprudence Examination for Veterinarians, which shall cover the specific requirements of KRS Chapter 321 and 201 KAR Chapter 16, in either paper or electronic format.

(4) Applicants for a veterinarian license shall be required to achieve a score of eighty (80) percent or higher on the Kentucky Board of Veterinary Examiners Jurisprudence Examination for Veterinarians.

Section 3. National Exam Qualifications for Veterinary Technicians.

(1)

(a) Except as provided by paragraph (b) of this subsection, the examination required for licensure by the board as a veterinary technician shall be the successful completion of the Veterinary Technician National Exam (VTNE). A passing score for the VTNE shall be established by the AAVSB or current examination administrator at the time of testing.

(b) If the applicant for licensure as a veterinary technician graduated from an approved veterinary technology program prior to 1990, and successfully completed and passed one (1) of the following examinations[test]s prior to 1990, the board shall, as qualification for board approved licensure, accept official score report results showing a passing score on:

1. The ~~[board shall also accept official results showing a passing score from the]~~ Animal Technician National Exam (ATNE) if taken during the years 1986 – 1989; or

2. ~~A~~[The board shall also accept official results showing a passing score from a] jurisdictional level competency exam if taken prior to 1986.

VOLUME 51, NUMBER 8– February 1, 2025

(2) Candidates seeking to take the VTNE shall apply directly to the AAVSB, its designee, or current administrator of the VTNE for verification of eligibility and admission to the examination.

(3)

(a) Candidates seeking to take the VTNE may:

1. (a) Apply to sit for the exam up to two (2) months in advance of graduation from an approved veterinary technology program provided the student is in good academic standing with the program, and a resident of Kentucky; and

2. (b) Seek Candidates seeking to retest after five (5) attempts if the candidates may make a request to the board to sit for the examination for additional times beyond five (5) attempts.

(b)(c) A candidate request to retest after five (5) attempts shall include a detailed remediation plan, including the process by which the applicant proposes to improve their performance on the VTNE, the time proposed to be spent on remediation, and with whom the applicant proposes to study or obtain further instruction, and any other information requested by the board.

(c)(d) Upon approval of the remediation plan by the board, the board shall petition AAVSB or the current examination administrator for the candidate to have the opportunity to sit for the exam again.

(4) Applicants for veterinary technician licensure to the board shall request and pay any required fees [a fee] directly to the AAVSB, the current exam service provider [PSI Services], one (1) of their designees, or to the current official records custodian to have examination [test] scores sent directly to the board. Copies of scores from applicants or other sources shall not be accepted.

Section 4. [Section 3-] Incorporation by Reference.

(1) "Application for a Special Permit", 09/08/2024 [Application for Retake of the NAVLE", 3/2020], 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 [407 Corporate Drive, Frankfort, Kentucky 40601], Monday through Friday, 8:30 [8:00] a.m. to 4:30 p.m. This material may also be obtained at kbve.ky.gov [www.kybve.com].

FILED WITH LRC: January 13, 2025

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.

BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(As Amended at ARRS, January 13, 2025)

201 KAR 16:590. Continuing education requirements, veterinarians and veterinary technicians.

RELATES TO: KRS 321.181, 321.190, 321.211, 321.221, 321.235, 321.441, 321.442

STATUTORY AUTHORITY: KRS 321.211(7), 321.235(1)(a)-(c), (2)(b)1.a., 3.b. [321.235(3), 321.240(5)], 321.441(8) [321.441(3)], 321.442(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.235(2)(b)1.a., 321.211(7), [and] 321.441(8) [321.441(3)], and 321.442(7) authorize the Kentucky Board of Veterinary Examiners to require a person applying for renewal or reinstatement of a veterinarian or veterinary technician license to show evidence of completion of continuing education to ensure the continued competence of licensees. KRS 321.235(1)(a)-(c) requires, (2)(b)1.a., and 3.b. [321.235(3) and 321.240(5)] [authorize] the board to promulgate administrative regulations to implement and enforce KRS Chapter 321. KRS 321.235(2)(b)1.a. and 3.b. authorizes the board to promulgate administrative regulations to establish and enforce mechanisms to ensure continuing competence, and to administer licensure, certification, permitting, and registration. This administrative regulation establishes the requirements for continuing education hours relating

to licensure renewal for veterinarians [the practice of veterinary medicine] and veterinary technicians.

Section 1. Definitions.

(1) "Approved program of continuing education" is defined by KRS 321.181(11).

(2) "Approved provider of continuing education" is defined by KRS 321.181(12).

(3) "Continuing education" is defined by KRS 321.181(25).

Section 2. Continuing education (CE) is designed to ensure the continued competence of a board credential holder. CE is a part of personal life-long learning in the credential holder's area of expertise, responsibility, and domains of practice, ensuring a commitment to furthering the person's professional knowledge, as well as learning new skills and techniques in the person's their area of practice, in order to best serve and protect the public and animals of the Commonwealth.

Section 3. Continuing Education Requirements for Veterinarian and Veterinary Technician License Renewal and Reinstatement.

(1) A veterinarian shall complete biennially thirty (30) hours of continuing education to be eligible for renewal of their [his or her] license.

(a) At least twenty (20) of the thirty (30) hours shall be directly related to the practice of veterinary medicine.

(b) For the renewal period and reinstatements beginning after September 30, 2024, at least two (2) of the thirty (30) required renewal hours shall be in:

- 1. Pharmacy or controlled substances;
2. Antimicrobials; or
3. State or federal laws and regulations related to the practice of veterinary medicine.

(c) No more than ten (10) of the thirty (30) hours shall pertain to practice management or other administrative, wellbeing, and professional topics that are not directly related to the practice of veterinary medicine.

(2) A veterinary technician shall annually complete six (6) hours of continuing education in the area of the practice of veterinary medicine or veterinary technology to be eligible for renewal of their [his or her] license.

(a) For the renewal period and reinstatements beginning after September 30, 2024, at least one (1) of the six (6) hours shall be in:

- 1. Pharmacy or controlled substances;
2. Antimicrobials; or
3. State or federal laws and regulations related to the practice of veterinary medicine or the practice of veterinary technology.

(b) No more than three (3) of the six (6) hours shall pertain to practice management or other administrative, wellbeing, and professional topics that are not directly related to the practice of veterinary medicine or the practice of veterinary technology.

(3) In addition to attendance at a conference, lecture, or seminar, a veterinarian or veterinary technician may complete the hours of continuing education required for renewal or reinstatement by the completion of audio or video recordings or electronic, computer, or interactive material prepared or approved by any of the organizations established in Section 4 [subsections] (1) and (2) [Section 2(1) and (2)] of this administrative regulation. [section] [administrative regulation. There shall not be a limit to the number of online hours a licensee may apply to his or her renewal.]

(a) A veterinarian shall earn at least fifteen (15) of the required thirty (30) CE hours and a veterinary technician shall earn at least three (3) of the required six (6) CE hours in a live, realtime format either in-person or online.

(b) A veterinarian shall earn no more than fifteen (15) of the required thirty (30) CE hours and a veterinary technician shall earn no more than three (3) of the required six (6) CE hours in an online format that is pre-recorded.

(4) All CE earned shall be new, continuing education. A veterinarian or veterinary technician shall may not apply CE earned in the immediate prior renewal period, or earned and applied for licensure reinstatement toward renewal of their license in the current renewal cycle.

VOLUME 51, NUMBER 8– February 1, 2025

(5)

(a) Continuing education shall be earned from October 1 of each renewal period until September 30 at the end of the period, or until November 30 at the end of the grace period with the addition of a late fee in accordance with 201 KAR 16:510 for veterinarians and 201 KAR 16:512 for veterinary technicians.

(b) A licensee may apply continuing education hours to only one (1) renewal cycle. Continuing education hours earned for a given course shall not be applied to the total required hours again in any subsequent[the following] renewal cycle.

(c) A credential holder who receives a board discipline that requires continuing education as a part of any reprimand, settlement agreement, or final order, shall earn the required CE in addition to the CE required for licensure renewal.

~~(6)[(5)]~~ A veterinarian applying for renewal after completing ~~their[his or her]~~ initial term of licensure after graduating from a veterinary college may complete a reduced number of hours of continuing education to be eligible for renewal as established in this subsection. This subsection shall not apply to applicants for licensure by endorsement under KRS 321.221 who graduated prior to the renewal biennium during which they were initially licensed.

(a) A veterinarian completing ~~their[his or her]~~ initial term of licensure who graduated from a veterinary college during the first year of the ~~renewal[preceding]~~ biennium shall complete fifteen (15) hours of continuing education to be eligible for renewal.

(b) Continuing education requirements shall be waived for a veterinarian completing ~~their[his or her]~~ initial term of licensure who graduated during the second year of the ~~renewal[preceding]~~ biennium.

~~(7)[(6)]~~ For a veterinary technician, continuing education requirements shall be waived for a new licensee completing ~~their[his or her]~~ initial term of licensure who also graduated within ~~twelve (12)~~ [12-]months of initial licensure. ~~[This paragraph shall not apply to applicants for licensure by endorsement who graduated prior to the renewal cycle during which they were initially licensed.]~~

~~(8)[(7)]~~

(a) A veterinarian or veterinary technician may submit a written request to the board for approval of a fellowship, internship, or residency in lieu of the continuing education ~~courses[hours]~~ required for license renewal, subject to board review for the number of hours to be awarded.

(b) The number of continuing education hours granted shall be determined by the board.

(c) The request shall:

1. Include a letter of verification from an authorized representative of the organization providing the fellowship, internship, or residency opportunity;

2. Be printed on the organization's letterhead; ~~and~~

3. Provide a brief description of the position itself, a summary of assigned tasks, and the anticipated or completed beginning and ending dates of the position; and

4. Be signed by an authorized representative of the organization who is knowledgeable about the position being verified.

(9) Failure to earn the minimum required amount of CE by the renewal deadline or grace period deadline shall be cause for the board to move a license to an expired status.

~~(10)[(9)]~~ Continuing education hours shall be required as follows for reinstatement applications:

(a) For veterinarians, thirty (30) hours earned in a twenty-four[twenty-four] (24) month period immediately prior to the date of application, or as required by the board to complete the application after filing; and

(b) For veterinary technicians, six (6) hours earned in a twelve (12) month period immediately prior to the date of application, or as required by the board to complete the application after filing.

(11) During a statewide state of emergency declared by the Governor of Kentucky, a national emergency declared by the President of the United States, pandemic, or epidemic, the board may change the in-person requirement for CE or waive CE for a temporary period of time. After taking such an action, the board shall send notice to all licensees and post the change and duration of change on the board's Web site[website].

~~Section 4.[Section–2.]~~ Approved Programs of Continuing Education[–Courses].

(1) The board hereby approves the following continuing education courses:

(a) All scientific programs of the American Veterinary Medical Association (AVMA), its constituent organizations[–] and its recognized specialty groups as listed on the AVMA Web site, and Council on Education (COE) or Committee on Veterinary Technician Education and Activities (CVTEA) accredited veterinary medical institutions whose meetings impart educational material directly relating to veterinary medicine or veterinary technology;

(b) Programs approved by the Registry of Approved Continuing Education (RACE) of the American Association of Veterinary State Boards (AAVSB);

(c) Accreditation modules offered by the United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS), which shall be counted for one (1) hour per module;[–and]

(d) Attendance at a board meeting, which shall be counted for the time the attendee is present and during which the board is in session or the duration of the meeting in half-hour increments up to three (3) hours, per meeting. There shall be a maximum of six (6) hours allowable for veterinarians and three (3) hours per LVTs per renewal cycle; and

~~(e) All programs approved by the board pursuant to subsection (4)[(2)] of this section.~~

(2) Licensees may use a maximum of six (6) USDA APHIS Modules for licensees certified in Category II and a maximum of three (3) USDA APHIS Modules for licensees certified in Category I in any single renewal period.

(3) Licensees shall earn new CE each renewal cycle, and shall not use CE previously applied to any past renewal or to reinstatement, if reinstatement occurred during the current renewal cycle.

(4) Board approved CE requirements.

(a) ~~The[By a majority vote, the]~~ board may approve programs that are deemed to impart knowledge directly relating to the practice of veterinary medicine, including the utilization and application of new techniques, scientific and clinical advances, and the achievement of research to assure expansive and comprehensive care to the public.

(b) To request approval, a completed Request for Continuing Education Approval form, including all required attachments, and the submission of fees as prescribed in 201 KAR 16:516, shall be submitted to the board.

(c) A continuing education program that satisfies board requirements for an approved program of continuing education shall be:

1.

a. Be offered, provided, or sponsored by an organization that is an approved provider of continuing education; or

b. Be an approved program of continuing education;

2.

a. Have a clearly stated purpose and defined content area;

b. Be offered to the public or general licensee population, and not offered internally only to employees of a single organization;

c. Be consistent with the overall goals of continuing education as defined in Sections 2 and 3 of this administrative regulation;

d. Have a presenter who is a professional qualified in the defined content area; and

e. Clearly state the program's duration. Actual contact time shall be a minimum of one (1) continuing education contact hour as defined in KRS 321.181(26), and shall not include breaks or meals; and

3. If approved, the course provider shall maintain for a minimum of four (4) years records of CEs presented, and shall include the name and license number of each attendee.

~~Section 5.[Section–3.]~~ Continuing Education Documentation Requirements.

(1) A licensee shall:

(a) Secure official documentation from the course provider of completed attendance at a course, detailing the:

VOLUME 51, NUMBER 8– February 1, 2025

1. Hours[hours] earned;
2. Name of the course;
3. Provider of the course;
4. Method of delivery, and if an online course, live, interactive, or non-interactive;
5. Date of the course; and
6. Licensee's name.

(b) Submit on the Renewal Application for Veterinarians form or Renewal Application for Veterinary Technicians form as found in 201 KAR 16:570[201 KAR 16:700] or online equivalent forms, as appropriate, and include the name, dates, and identifying information for each course they[he or she] attended;[-and]

(c) If audited by the board or upon request by the board, supply copies of official documentation from the course provider which includes all the information required in paragraph (a) of this subsection; and

(d) Retain copies of continuing education documentation for a period of four (4) years from the date of licensure renewal.

(2) The board may require an applicant or licensee to submit copies of documentation in accordance with subsection (1) of this section documenting their[of his or her] attendance at continuing education courses.

Section 6. Audits.

(1) The board shall audit documentation supporting the completion of the appropriate number of continuing education hours for:

(a) Any veterinarian or veterinary technician who was disciplined by the board in the renewal cycle or *if where* an order of the board further specifies a CE audit of that veterinarian or veterinary technician; and

(b) At least one (1) member of the board.

(2) The board may audit any licensee for documentation supporting the completion of the appropriate number of continuing education hours for:

(a) A minimum of ten (10) percent of all veterinarians and veterinary technicians;[-and]

(b) Any licensee who does not renew their license by September 30 of each renewal cycle; or

(c) Any licensee against whom a grievance has been filed pursuant to 201 KAR 16:610.

Section 7.[Section—4.] Continuing Education Requirement Waivers.

(1) Medical disability, illness, or other extenuating circumstances. The board may, in individual cases involving medical disability,[-or] illness, or other extenuating circumstances clearly warranting relief, grant a waiver[waivers] of the continuing education requirements or an extension[extensions] of time within which to fulfill the same or make the required reports.

(a) A written request for an extension or waiver of continuing education requirements for medical disability,[-or] illness, or other extenuating circumstances clearly warranting relief[- reasons waiver or extension of time] shall be submitted by the licensee. The board may require a signed document from a physician or other health care provider to verify the licensee's claimed disability or illness, or verification from an official for other extenuating circumstances.

(b) A waiver of the minimum continuing education requirements or an extension of time within which to fulfill the requirements shall not be granted by the board for a period of time exceeding one (1) renewal cycle[calendar year].

(c) If the medical disability,[-or] illness, or other extenuating circumstances clearly warranting relief upon which a waiver or extension has been granted persists beyond the period of the waiver or extension, the licensee shall have the option to apply for another extension.

(2) Military duty. The board shall grant a waiver to a licensee who is unable to meet the continuing education requirements of this administrative regulation because of obligations arising from military duty.

(a) [A licensee engaged in active military duty and deployed outside the United States for more than eight (8) months shall not be required to complete the continuing education requirement for licensure periods during which that status exists.]

[(b)] A licensee who is called to active duty in the armed forces shall not be required to complete the continuing education requirement for licensure periods during which that status exists.

[(b)] [(e)] The licensee requesting an extension or waiver pursuant to this subsection shall submit with their[his or her] renewal or reinstatement paperwork, the appropriate military assignment form, deployment orders, or a statement from the licensee's unit commander confirming the call-up or deployment.

Section 8.[Section 5.] Incorporation by Reference.

(1) "Request for Continuing Education Approval", 9/2024[2/2020], 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[407 Corporate Drive, Frankfort, Kentucky 40604], Monday through Friday, 8:30 a.m.[8:00 a.m.] to 4:30 p.m. This material may also be obtained at kbve.ky.gov[www.kybve.com].

FILED WITH LRC: January 13, 2025

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.

BOARDS AND COMMISSIONS

Board of Nursing

(As Amended at ARRS, January 13, 2025)

201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses.

RELATES TO: KRS 218A.171, 218A.172, 218A.202, 218A.205(3)(a), (b), 314.011(7), (8), 314.039, 314.042, 314.091, ~~314.193(2)~~, 314.195, 314.475

STATUTORY AUTHORITY: KRS 218A.205(3)(a), (b), 314.042, 314.131(1), ~~314.193(2)~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3)(a) and (b) require the Board of Nursing, in consultation with the Kentucky Office of Drug Control Policy, to establish by administrative regulation mandatory prescribing and dispensing standards for licensees authorized to prescribe or dispense controlled substances, and in accordance with the Centers for Disease Control and Prevention (CDC) guidelines, to establish a prohibition on a practitioner issuing a prescription for a Schedule II controlled substance for more than a three (3) day supply if intended to treat pain as an acute medical condition, unless an exception applies. KRS 314.131(1) authorizes the board to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314 and authorizes the board to require by administrative regulation that licensees and applicants utilize a specific method of submission of documents or information that is required to be provided to the board, including electronic submission. ~~[KRS 314.193(2) authorizes the board to promulgate administrative regulations establishing standards for the performance of advanced practice registered nursing to safeguard the public health and welfare.]~~ This administrative regulation establishes the scope and standards of practice for an advanced practice registered nurse.

Section 1. Definitions.

(1) "Collaboration" means the relationship between the advanced practice registered nurse (APRN) and a physician in the provision of prescription medication, including both autonomous and cooperative decision-making, with the APRN and the physician contributing their respective expertise.

(2) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances" or "CAPA-CS" means the written document pursuant to KRS 314.042(11).

(3) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend

VOLUME 51, NUMBER 8– February 1, 2025

Drugs" or "CAPA-NS" means the written document required by KRS 314.042(12)]~~pursuant to KRS 314.042(8)]~~.

(4) "Good standing" is defined by KRS 314.039.

(5) "Immediate family member" means a spouse, parent, parent-in-law, stepparent, child, stepchild, son-in-law, daughter-in-law, sibling, stepsibling, brother-in-law, sister-in-law, grandparent, grandchild, spouse of grandparent or grandchild, or other person residing in the same residence as the APRN.

(6) "KBML" means the Kentucky Board of Medical Licensure.

(7) "PDMP" means the electronic prescription drug monitoring program system for monitoring scheduled controlled substances and medicinal cannabis currently in use in Kentucky pursuant to KRS 218A.202, including the Kentucky All Schedule Prescription Electronic Reporting (KASPER) System.

Section 2.

(1) The practice of the APRN shall be in accordance with the standards and functions established in scope and standards of practice statements adopted by the board in subsection (2) of this section.

(2) The following scope and standards of practice statements shall be adopted:

(a) AACN Scope and Standards for Adult-Gerontology and Pediatric Acute Care Nurse Practitioner[Practice];

(b) AACN Scope and Standards for Acute Care Clinical Nurse Specialist Practice;

(c) Neonatal Nursing: Scope and Standards of Practice;

(d) Nursing: Scope and Standards of Practice;

(e) Pediatric Nursing: Scope and Standards of Practice;

(f) Psychiatric- Mental Health Nursing: Scope and Standards of Practice;

(g) Scope of Practice for Nurse Practitioners;

(h) Standards of Practice for Nurse Practitioners;

(i) Scope of Nurse Anesthesia Practice;

(j) Standards for Nurse Anesthesia Practice;

(k) ~~Standards for Office Based Anesthesia Practice~~];

~~(l)~~ Standards for the Practice of Midwifery;

~~(m)~~ Oncology Nursing Scope and Standards of Practice;

~~(n)~~ The Women's Health Nurse Practitioner: Guidelines for Practice and Education;

~~(o)~~ Definition of Midwifery and Scope of Practice of Certified Nurse-Midwives and Certified Midwives; and

~~(p)~~ Standards for Professional Nursing Practice in the Care of Women, ~~and~~ Newborns, and People Across the Life Span.

Section 3. CAPA-CS Practice Requirements for APRNs.

(1) In the performance of advanced practice registered nursing, the APRN shall seek consultation or referral in those situations outside the APRN's scope of practice.

(2) An APRN wishing to have a CAPA-CS in the first year of the APRN's licensure shall be employed by a health care entity or provider. If the employing provider is an APRN, the employing APRN shall have been granted an exemption under Section 7 of this administrative regulation.

(3) During the term of the CAPA-CS, the APRN and the collaborating physician shall meet in person or via video conferencing, or by phone[,] if in person or video conferencing is not feasible, to review the APRN's reverse PDMP queries since the last review with the collaborating physician~~report~~. The review may include information from the patient's medical record that relates to the condition or conditions being treated with controlled substances by the APRN.

(a) Both the APRN and the physician shall maintain a written record of:

1. The meeting date;

2. A summary of the discussions; and

3. Any recommendations made ~~that shall be made in writing~~].

(b) The record shall be maintained by both parties for a period of one (1) year past the expiration of the APRN CAPA-CS.

(c) The APRN's meeting records shall be subject to audit by the board and the physician's records shall be subject to audit by the KBML. The sole purpose of the audit shall be to document that the collaboration meetings have taken place to verify compliance with this section.

(4) In the first year of the CAPA-CS, the APRN and a physician shall meet at least quarterly.

(5) In the ensuing three (3) years of the CAPA-CS, the APRN and the physician shall meet at least biannually.

Section 4. Advanced practice registered nursing shall include prescribing and administering medications, as well as ordering treatments, devices, diagnostic tests, and performing certain procedures that shall be consistent with the scope and standards of practice of the APRN.

Section 5. Advanced practice registered nursing shall not preclude the practice by the APRN of registered nursing practice as defined by KRS 314.011(6).

Section 6.

(1)

(a) A CAPA-NS and a CAPA-CS shall include the:

1. Name;

2. Practice address;

3. Phone number;

4. License number of both the APRN and each physician who is a party to the agreement; and

5. Population focus and area of practice of the APRN and each physician.

(b) An APRN shall use a CAPA-NS Agreement Form.

(c) An APRN shall use the Standardized CAPA-CS Agreement Form.

(2)

(a) To notify the board of the existence of a CAPA-NS pursuant to KRS 314.042(8)(b), the APRN shall submit an online notification as established in paragraph (e) of this subsection.

(b) To notify the board that the requirements of KRS 314.042(9) have been met and that the APRN will be prescribing nonscheduled legend drugs without a CAPA-NS, the APRN shall submit an online notification as established in paragraph (e) of this subsection.

(c) To notify the board of the existence of a CAPA-CS pursuant to KRS 314.042(11)(b), the APRN shall submit an online notification as established in paragraph (e) of this subsection.

(d) To notify the board that the requirements of KRS 314.042(14) have been met and request that the APRN be exempt from prescribing scheduled legend drugs under a CAPA-CS, the APRN shall complete the request for APRN exemption from CAPA-CS prescriptive authority and pay the listed fee in 201 KAR 20:240, Section 3(1)(e). Each submitted request shall be subject to the fee, regardless of whether the board grants the exemption after making a determination under Section 7 of this administrative regulation.

(e) Each notification, rescission, and exemption request shall be submitted by the APRN to the board via the online KBN Nurse Portal at www.kbn.ky.gov, and shall include the information and documentation required by subsection (1) of this section and this subsection.

(f) Upon request by the board, the APRN shall furnish to the board a copy of the executed CAPA-NS Agreement Form or Standardized CAPA-CS Agreement Form.

(3) For purposes of the CAPA-NS and the CAPA-CS, in determining whether the APRN and the collaborating physician are qualified in the same or a similar specialty, the board shall consider the facts of each ~~particular~~ situation and the scope of the APRN's and the physician's actual practice.

(4) An APRN with controlled substance prescriptive authority, shall:

(a) Obtain a United States Drug Enforcement Administration (DEA) Controlled Substance Registration Certificate and shall report the APRN's Kentucky DEA number, and any change in the status of a certificate by providing a copy of each registration certificate to the board within thirty (30) days of issuance.

(b) Register for a master account with the PDMP, within thirty (30) days of obtaining a DEA Controlled Substance Registration Certificate, and prior to prescribing controlled substances. A copy of the PDMP master account registration certificate shall be submitted to the board via the online KBN Nurse Portal within thirty (30) days of receipt of confirmation of registration by the PDMP.

(5) An APRN shall report any changes to a CAPA-NS or a CAPA-CS to the board within thirty (30) days.

(6) If an APRN's CAPA-NS or CAPA-CS ends unexpectedly for reasons outside the APRN's control such as being ended by the physician without notice, the physician's license becoming no longer valid in Kentucky, or the death of a physician, the APRN may continue to prescribe for thirty (30) days, after documenting in each patient's medical record the applicant's professional determination that the continued prescribing is justified based on the individual facts applicable to the patient's diagnosis and treatment. This thirty (30) day grace period shall not be extended or occur successively.

(7) An APRN with a CAPA-NS or a CAPA-CS shall report a practice address to the board. A change to the practice address shall be reported to the board within thirty (30) days.

(8) All documents and information required to be reported to the board by this section shall be reported by uploading the document or information through the board's Web site, <https://kbn.ky.gov>. The board shall not accept documents or information sent in any other format.

Section 7. CAPA-CS Exemption Review Request.

(1) An APRN who wishes to request a CAPA-CS exemption pursuant to KRS 314.042(14) shall:

(a) Complete a CAPA-CS exemption review request on the board's Web site as required in Section 6(8) of this administrative regulation;

(b) Submit the fee required by 201 KAR 20:240, Section 3(1)(e); and

(c) Comply with the requirements established in KRS 314.042(14) and this administrative regulation.

(2) Upon receipt of the CAPA-CS exemption review request, the board shall verify the following:

(a) The APRN has had four (4) years of controlled substance prescribing authority;

(b) The APRN's license is in good standing;

(c) The APRN has maintained a DEA registration and a current registration certificate is on file with the board;

(d) The APRN has maintained a PDMP registration and a current registration is on file with the board;

(e) That a current Notification of a CAPA-CS for the APRN is on record with the board; and

(f) The APRN has an active account with the PDMP.

(3) Upon receipt of the CAPA-CS exemption review request, the board shall:

(a) Perform a criminal background check for any unreported misdemeanor or felony convictions in Kentucky; and

(b) Perform a check of the coordinated licensure information system specified in KRS 314.475 for any unreported disciplinary actions in another state.

(4) The APRN submitting the request shall cooperate with supplemental requests for documentation before the board makes a determination that the APRN's license is in good standing pursuant to KRS 314.042(14).

(5) An APRN wishing to practice in Kentucky through licensure by endorsement may request an exemption under this section.

(a) An APRN wishing to practice in Kentucky through licensure by endorsement is exempt from the CAPA-CS requirement if the APRN:

1. Has met the prescribing requirements for controlled substances in a state that grants such prescribing authority to APRNs;

2. Has had authority to prescribe controlled substances for at least four (4) years; and

3. Has a license in good standing.

(b) An APRN wishing to practice in Kentucky through licensure by endorsement who has had the authority to prescribe controlled substances for less than four (4) years and wishes to continue to prescribe controlled substances shall enter into a CAPA-CS with a physician licensed in Kentucky and comply with the provisions of KRS 314.042(11), until the requirements of this section are met.

(6) If the board determines that the APRN is eligible for the exemption after a review and determination of the exemption request under this section, the board shall notify the APRN in writing

that the CAPA-CS is no longer required. The board shall not require the APRN to maintain a CAPA-CS as a condition to prescribe controlled substances unless the board imposes the requirement as part of an action instituted under KRS 314.091(1).

(7) If the board denies the exemption request, the denial shall be in writing and shall state the reasons for the denial. The requestor may request a hearing pursuant to KRS Chapter 13B within twenty (20) days of receiving written notification of the denial. If a hearing is requested and the order of the board is adverse to the advance practice registered nurse, the board may impose costs pursuant to 201 KAR 20:162, Section 7.

(8) The APRN nurse shall not prescribe controlled substances without a CAPA-CS until the board has completed its review and has notified the APRN in writing that the APRN is exempt from the CAPA-CS requirement.

Section 8. Prescribing Medications without Prescriptive Authority. Prescribing nonscheduled legend drugs without a CAPA-NS or prescribing controlled substances without a CAPA-CS shall constitute a violation of KRS 314.091(1), unless:

(1) In the case of nonscheduled legend drugs, the CAPA-NS has been discontinued pursuant to KRS 314.042(9) or if the prescribing occurred within the grace period established in Section 6(6) of this administrative regulation; or

(2) In the case of controlled substances, the APRN was granted an CAPA-CS exemption by the board under KRS 314.042(14)(e) prior to the date the medications were prescribed.

Section 9. The board may make an unannounced visit to an APRN's practice to determine if it is consistent with the requirements established by KRS Chapter 314 and 201 KAR Chapter 20. Patient and prescribing records shall be made available for immediate inspection.

Section 10. Prescribing Standards for Controlled Substances.

(1)

(a) This section shall apply to APRNs with controlled substance prescriptive authority. It also applies to the utilization of the PDMP.

(b) The APRN shall practice according to the applicable scope and standards of practice for the APRN's role and population focus. This section does not alter the prescribing limits established in KRS 314.011(8).

(2) Prior to the initial prescribing of a controlled substance to a patient, the APRN shall:

(a) Obtain the patient's medical history, including history of substance use, and conduct an examination of the patient and document the information in the patient's medical record. An APRN certified in psychiatric-mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query the PDMP for the twelve (12) month period immediately preceding the request for available data on the patient and maintain all PDMP report identification numbers and the date of issuance of each PDMP report in the patient's record;

(c) Develop a written treatment plan stating the objectives of the treatment and further diagnostic examinations required; and

(d) Discuss with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate:

1. The risks and benefits of the use of controlled substances, including the risk of tolerance and drug dependence;

2. That the controlled substance shall be discontinued once the condition requiring its use has resolved; and

3. Document that the discussion occurred and obtain written consent for the treatment.

(3) The treatment plan shall include an exit strategy, if appropriate, including potential discontinuation of the use of controlled substances.

(4) For subsequent or continuing long-term prescriptions of a controlled substance for the same medical complaint, the APRN shall:

(a) Update the patient's medical history and document the information in the patient's medical record;

VOLUME 51, NUMBER 8— February 1, 2025

(b) Modify and document changes to the treatment plan as clinically appropriate; and

(c) Discuss the risks and benefits of any new controlled substances prescribed, including the risk of tolerance and drug dependence with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian or health care surrogate.

(5) During the course of treatment, the APRN shall query the PDMP no less than once every three (3) months for the twelve (12) month period immediately preceding the request for available data on the patient. The APRN shall maintain in the patient's record all PDMP report identification numbers and the date of issuance of each PDMP report or a copy or saved image of the PDMP report. If neither an identification number nor an image can be saved to the patient's record as a result of technical limitations of the APRN's electronic health record system, the APRN shall make a concurrent note in the patient's record documenting the date and time that the APRN reviewed the patient's PDMP report.

(6) These requirements may be satisfied by other licensed practitioners in a single group practice if:

(a) Each licensed practitioner involved has lawful access to the patient's medical record;

(b) Each licensed practitioner performing an action to meet these requirements is acting within the scope of practice of his or her profession; and

(c) There is adequate documentation in the patient's medical record reflecting the actions of each practitioner.

(7) If prescribing a controlled substance for the treatment of chronic, non-cancer pain, the APRN, in addition to the requirements of this section, shall obtain a baseline drug screen and further random drug screens if the APRN:

(a) Finds a drug screen clinically appropriate; or

(b) Believes that it is appropriate to determine whether the controlled substance is being taken by the patient.

(8) If prescribing a controlled substance for the treatment of a mental health condition, the APRN shall meet the requirements of this section and KRS 314.011(8)(a) and (b).

(9) Prior to prescribing a controlled substance for a patient in the emergency department of a hospital that is not an emergency situation, the APRN shall:

(a) Obtain the patient's medical history, conduct an examination of the patient, and document the information in the patient's medical record. An APRN certified in psychiatric - mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query the PDMP for the twelve (12) month period immediately preceding the request for available data on the patient and document the data in the patient's record;

(c) Develop a written treatment plan stating the objectives of the treatment and further diagnostic examinations required; and

(d) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, the patient's legal guardian, or health care surrogate, including the risks of tolerance and drug dependence, and document that the discussion occurred and that the patient consented to that treatment.

(10) For each patient for whom an APRN prescribes a controlled substance, the APRN shall keep accurate, readily accessible, and complete medical records, which include:

(a) Medical history and physical or mental health examination;

(b) Diagnostic, therapeutic, and laboratory results;

(c) Evaluations and consultations;

(d) Treatment objectives;

(e) Discussion of risk, benefits, and limitations of treatments;

(f) Treatments;

(g) Medications, including date, type, dosage, and quantity prescribed;

(h) Instructions and agreements;

(i) Periodic reviews of the patient's file; and

(j) The date and time of the [All PDMP report identification numbers and the date of issuance] request and review of each PDMP query[report].

(11) The requirement to query the PDMP shall not apply to:

(a) An APRN prescribing or administering a controlled substance immediately prior to, during, or within the fourteen (14) days following an operative or invasive procedure or a delivery if the prescribing or administering is medically related to the operative or invasive procedure of the delivery and the medication usage does not extend beyond the fourteen (14) days;

(b) An APRN prescribing or administering a controlled substance necessary to treat a patient in an emergency situation; or

(c) An APRN prescribing a controlled substance:

1. For administration in a hospital or long-term-care facility with an institutional account, or an APRN in a hospital or facility without an institutional account, if the hospital, long-term-care facility, or licensee queries the PDMP for all available data on the patient or resident for the twelve (12) month period immediately preceding the query within twelve (12) hours of the patient's or resident's admission and places a copy of the query in the patient's or resident's medical records during the duration of the patient's stay at the facility;

2. As part of the patient's hospice or end-of-life treatment;

3. For the treatment of pain associated with cancer or with the treatment of cancer;

4. To assist a patient with submitting to a diagnostic test or procedure;

5. Within seven (7) days of an initial prescription pursuant to subsection (1) of this section if the prescriber:

a. Substitutes a controlled substance for the initial prescribing;

b. Cancels any refills for the initial prescription; and

c. Requires the patient to dispose of any remaining unconsumed medication;

6. Within ninety (90) days of an initial prescription pursuant to subsection (1) of this section if the prescribing is done by another licensee in the same practice or in an existing coverage arrangement, if done for the same patient for the same condition;

7. To a research subject enrolled in a research protocol approved by an institutional review board that has an active federal-wide assurance number from the United States Department of Health and Human Services, Office for Human Research Protections if the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health;

8. During the effective period of any disaster or situation with mass casualties that have a direct impact on the APRN's practice;

9. As part of the administering or ordering of controlled substances to prisoners in a state, county, or municipal correctional facility;

10. That is a Schedule IV controlled substance for no longer than three (3) days for an established patient to assist the patient in responding to the anxiety of a nonrecurring event; or

11. That is classified as a Schedule V controlled substance.

(12) In accordance with 21 C.F.R. 1306.12(b)(1)(iv) - (v), federal regulation 21 C.F.R. 1306.12(b) concerning the issuance of multiple prescriptions for Schedule II controlled substances shall not apply to APRNs in this state.

(13) No less than once every six (6) months, an APRN who holds a DEA Controlled Substance Registration Certificate shall query and review the [a-reverse] PDMP [report] for the preceding six (6) months to determine if the information contained in the PDMP is correct. If the information is incorrect, the APRN shall comply with 902 KAR 55:110 and take the necessary steps to seek correction of the information, by:

(a) First contacting the reporting pharmacy;

(b) Contacting law enforcement if suspected fraudulent activity;

or

(c) Contacting the Drug Enforcement Professional Practices Branch, Office of Inspector General, Cabinet for Health and Family Services.

(14) An APRN shall not issue a prescription for hydrocodone combination products for more than a three (3) day supply if the prescription is intended to treat pain as an acute medical condition, except if:

(a) The APRN, in his or her professional judgment, believes that more than a three (3) day supply of hydrocodone combination

VOLUME 51, NUMBER 8– February 1, 2025

products is medically necessary to treat the patient's pain as an acute medical condition and the APRN adequately documents the acute medical condition and lack of alternative treatment options that justifies deviation from the three (3) day supply limit on the patient's medical records;

(b) The prescription for hydrocodone combination products is prescribed to treat chronic pain;

(c) The prescription for hydrocodone combination products is prescribed to treat pain associated with a valid cancer diagnosis;

(d) The prescription for hydrocodone combination products is prescribed to treat pain while the patient is receiving hospice or end-of-life treatment;

(e) ~~["The prescription for hydrocodone combination products is prescribed as part of a narcotic treatment program licensed by the Cabinet for Health and Family Services;"]~~

~~[(f)]~~ The prescription for hydrocodone combination products is prescribed to treat pain following a major surgery, which is any operative or invasive procedure or a delivery, or the treatment of significant trauma; or

~~[(g)]~~ Hydrocodone combination products are administered directly to an ultimate user in an inpatient setting.

(15) Prescriptions written for hydrocodone combination products pursuant to subsection (14)(a) through (g) of this section shall not exceed thirty (30) days without any refill.

(16) An APRN may prescribe electronically. Electronic prescription shall be as established in KRS 218A.171.

(17) For any prescription for a controlled substance, the prescribing APRN shall discuss with the patient the effect the patient's medical condition and medication may have on the patient's ability to safely operate a vehicle in any mode of transportation.

Section 11. Immediate Family Member and Self-prescribing or Administering Medications.

(1) An APRN shall not self-prescribe or administer controlled substances.

(2) An APRN shall not prescribe or administer controlled substances to his or her immediate family member except as established in subsections (3) and (4) of this section.

(3) An APRN may prescribe or administer controlled substances to an immediate family member:

(a) In an emergency situation;

(b) For a single episode of an acute illness through one (1) prescribed course of medication; or

(c) In an isolated setting, if no other qualified practitioner is available.

(4)

(a) An APRN who prescribes or administers controlled substances for an immediate family member pursuant to subsections (3)(a) or (b) of this section shall document all relevant information and notify the appropriate provider.

(b) An APRN who prescribes or administers controlled substances for an immediate family member pursuant to subsection (3)(c) of this section shall maintain a provider-practitioner relationship and appropriate patient records.

Section 12. Incorporation by Reference.

(1) The following material is incorporate by reference:

(a) "AACN Scope and Standards for Adult-Gerontology and Pediatric Acute Care Nurse Practitioners~~[Practitioner Practice]~~", 2021[2047] Edition, American Association of Critical-Care Nurses;

(b) "AACN Scope and Standards for Acute Care Clinical Nurse Specialist Practice", 2022[2044] Edition, American Association of Critical-Care Nurses;

(c) "Neonatal Nursing: Scope and Standards of Practice", 2021, 3rd[2043] Edition, American Nurses Association/ National Association of Neonatal Nurses;

(d) "Nursing: Scope and Standards of Practice", 2021, 4th[2045] Edition, American Nurses Association;

(e) "Pediatric Nursing: Scope and Standards of Practice", 2015, 2nd Edition, American Nurses Association/ Society of Pediatric Nursing/ National Association of Pediatric Nurse Practitioners;

(f) "Psychiatric-Mental Health Nursing: Scope and Standards of Practice", 2022, 3rd Edition[2044], American Nurses Association/ American Psychiatric Nursing Association;

(g) "Scope of Practice for Nurse Practitioners", 2022[2049] Edition, American Association of Nurse Practitioners;

(h) "Standards of Practice for Nurse Practitioners", 2022[2049] Edition, American Association of Nurse Practitioners;

(i) "Scope of Nurse Anesthesia Practice", 2020[2043] Edition, American Association of Nurse Anesthetists;

(j) "Standards for Nurse Anesthesia Practice", 2019 Edition, American Association of Nurse Anesthetists;

(k) ~~["Standards for Office-Based Anesthesia Practice", 2019 Edition, American Association of Nurse Anesthetists;]~~

~~[(l)]~~ "Standards for the Practice of Midwifery", 2022[2044] Edition, American College of Nurse Midwives;

~~[(m)]~~ "Oncology Nursing Scope and Standards of Practice", 2019 Edition, Oncology Nursing Society;

~~[(n)]~~ "The Women's Health Nurse Practitioner: Guidelines for Practice and Education", 2020, 8th[2044] Edition, Association of Women's Health, Obstetric and Neonatal Nurses/Nurse Practitioners in Women's Health;

~~[(o)]~~ "Definition of Midwifery and Scope of Practice of Certified Nurse-Midwives and Certified Midwives", 2021[2042] Edition, American College of Nurse Midwives;

~~[(p)]~~ "Standards for Professional Nursing Practice in the Care of Women, Newborns, and People Across the Life Span~~[and Newborns]~~", 2023, 9th[2049] Edition, Association of Women's Health, Obstetric and Neonatal Nurses;

~~[(q)]~~ "Standardized CAPA-CS Agreement Form", 9/2023; and ~~[(r)]~~ "CAPA-NS Agreement Form", 9/2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the board's Web site at <https://kbn.ky.gov/document-library/Pages/default.aspx>.

FILED WITH LRC: January 13, 2025

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.

**BOARD OF EMERGENCY MEDICAL SERVICES
(As Amended at ARRS, January 13, 2025)**

202 KAR 7:401. Paramedics.

RELATES TO: KRS 12.355, 72.020, 311A.025, 311A.030, 311A.050-311A.100, 311A.120, 311A.135, 311A.142, 311A.170, ~~[311A.185-]~~311A.190, 446.400

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.120, 311A.125, 311A.135, 311A.170

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.025 requires the board to promulgate administrative regulations relating to requirements and procedures for licensure, relicensure, and reciprocity for paramedics. This administrative regulation establishes those requirements and procedures.

Section 1. Paramedic Student Eligibility. Individuals shall be eligible to enroll as a student in a paramedic education and training program if the applicant:

(1) Holds current unrestricted certification as an Emergency Medical Technician or Advanced Emergency Medical Technician in Kentucky or holds current unrestricted certification with the National Registry of Emergency Medical Technicians (NREMT) as an Emergency Medical Technician or Advanced Emergency Medical Technician;

(2) Is not currently subject to disciplinary action pursuant to KRS Chapter 311A that would prevent licensure; and

(3) Meets all additional requirements established by the EMS Training and Educational Institution (EMS-TEI).

Section 2. Licensure Requirements.

~~[(1)]~~ Individuals desiring initial licensure as a paramedic shall:

VOLUME 51, NUMBER 8– February 1, 2025

~~(1)(a)~~ Successfully complete a board approved education and training program that conforms to the curriculum of the United States Department of Transportation, National Highway Traffic Safety Administration, National Emergency Medical Services Education Standards- Paramedic Instructional Guidelines;

~~(2)(b)~~ Successfully complete all EMS-Training and Educational Institute (EMS-TEI) requirements for the education or training program ~~that which~~:

~~(a)[4-]~~ Meet or exceed the National Emergency Medical Services Educational Standards- Paramedic Instructional Guidelines, which shall not be satisfied by the completion of refresher or transition courses alone; and

~~(b)[2-]~~ Meet all educational standards established in 202 KAR 7:601;

~~(c)~~ ~~[Present evidence of completion of education and training regarding determination of death and preservation of evidence as required by KRS 311A.185;]~~

~~(3)(d)~~ Obtain certification as a paramedic by the National Registry of Emergency Medical Technicians;

~~(4)(e)~~ Submit a completed Paramedic Initial Licensure Application in the Kentucky Emergency Medical Services Information System (KEMSIS);

~~(5)(f)~~ Pay the fee pursuant to 202 KAR 7:030;

~~(6)(g)~~ Undergo a background check pursuant to KRS 311A.050 and 311A.100[1-]

~~(a)[4-]~~ The background check shall be:

~~1.[a-]~~ National in scope for an applicant not currently certified at any level in Kentucky;

~~2.[b-]~~ Statewide in scope for an applicant with current certification in Kentucky;

~~3.[c-]~~ Less than six (6) months old when the applicant submits to the board all requirements for licensure; and

~~4.[d-]~~ Provided by a vendor that has been contracted through the board; and

~~(b)[2-]~~ An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check; and

~~(7)(h)~~ Be a citizen of the United States, a permanent resident of the United States, or otherwise lawfully present in the United States, as evidenced by submission to the board of:

~~(a)[1-]~~ A Social Security card;

~~(b)[2-]~~ Birth certificate;

~~(c)[3-]~~ A United States Citizenship and Immigration Services (U.S.C.I.S.) Permanent Resident Card (form I-551/Green Card); or

~~(d)[4-]~~ Other legal authorization to live and work in the United States.

~~(2)~~

~~(a)~~ ~~[A paramedic licensed pursuant to this section shall complete training regarding determination of death and preservation of evidence as required by KRS 311A.185 prior to beginning work for a licensed agency in Kentucky.]~~

~~(b)~~ ~~[Training in determination of death and preservation of evidence as required by KRS 311A.185 shall be provided during employee orientation, or by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.]~~

Section 3. Renewal of Licensure and Continuing Education Requirements.

(1) A paramedic shall be eligible for license renewal if:

(a) The applicant submits a completed Paramedic License Renewal Application in KEMSIS;

(b) The applicant maintains written evidence of:

1. HIV/AIDS training required by KRS 311A.120;

2. Pediatric Abusive Head Trauma as required by KRS 311A.120; and

3. Awareness of Sexual Violence Training required by KRS 311A.120;

(c) The applicant pays the fee pursuant to 202 KAR 7:030; and

(d) The applicant maintains evidence of:

1. Current certification by the NREMT as a paramedic, and if this option is used the board may request, through a continuing

education audit, proof of continuing education to verify compliance with the continuing education requirements of this section; or

2. NREMT Paramedic National Component of the Continued Competency Program Paramedic for Continuing Education.

(2) All continuing education shall be validated by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.

(3) An application for renewal of licensure shall be denied if:

(a) Prior to the licensure expiration date, the paramedic applicant has not met the applicable requirements of this administrative regulation; or

(b) The applicant has been subjected to disciplinary action that prevents relicensure at the time of application.

(4) A licensed paramedic, in good standing, who is a member of a National Guard or a military reserve unit called to active duty by presidential order pursuant to 10 U.S.C. 121 and 12304 shall be renewed in accordance with KRS 12.355 upon submission of the Military Extension Application.

(5) The board office may audit a paramedic's continuing education and continuing education records. The paramedic shall submit the documentation requested within ten (10) business days of receipt of the board's request.

(6) If documentation of continuing education hours consistent with this administrative regulation are not received using the board-approved submission process within ten (10) business days of receipt of the board's request, the paramedic license for the individual shall be summarily revoked and the individual shall reapply for licensure through reinstatement if eligible.

(7) The ten (10) business days for submission shall not apply to investigations pursuant to KRS Chapter 311A.

(8) The paramedic shall maintain documentation of all continuing education for three (3) years from the date of completion.

Section 4. Reinstatement of License.

(1) A paramedic whose Kentucky license has lapsed may reinstate their license if the applicant submits:

(a) A completed Paramedic Reinstatement License Application in KEMSIS;

(b) Evidence of previous licensure as a paramedic in the Commonwealth of Kentucky;

(c) Evidence of current training in:

1. Pediatric Abusive Head Trauma as required by KRS 311A.120;

2. Awareness of Sexual Violence Training required by KRS 311A.120; and

~~[3-]~~ ~~[Training regarding determination of death and preservation of evidence as required by KRS 311A.185; and]~~

3.[4-] HIV/AIDS training required by KRS 311A.120; and

(d) Payment of the fee pursuant to 202 KAR 7:030.

(2)

(a) The applicant for reinstatement of license shall undergo a national background check provided by a vendor that has been contracted through the board.

(b) An applicant shall not directly submit a background check to meet the requirements of this section. The background check shall be submitted to the board by the company that conducts the background check.

(c) Background checks that are older than six (6) months shall not be considered current, and the applicant shall undergo another national background check prior to approval of reinstatement of license.

(3) The applicant for reinstatement of licensure shall bear the burden of proof of previous licensure in Kentucky if the previous paramedic license is in issue or dispute.

(4) An applicant shall provide evidence of successful completion of the NREMT-Paramedic national component of the continued competency program for continuing education within the twelve (12) months preceding application for reinstatement of the paramedic license.

(5) An applicant ineligible for licensure pursuant to KRS 311A.050 through 311A.090 shall be ineligible for reinstatement.

VOLUME 51, NUMBER 8— February 1, 2025

Section 5. Paramedic Reciprocity.

(1) ~~An~~~~[Pursuant to KRS 311A.142, an]~~ individual who is certified or licensed in ~~another~~~~[a contiguous]~~ state ~~[to the Commonwealth of Kentucky]~~ or by the NREMT as a paramedic or any member of the United States Armed Forces, or veteran who has transitioned within the past six (6) years from the United States Armed Forces, and has been registered by the National Registry as a paramedic or has obtained National Registry as a paramedic by successfully completing a board-approved United States Armed Forces medical training course that meets the National Emergency Medical Services Education Standards for Paramedic, shall be eligible for reciprocity for Kentucky licensure as a paramedic if the applicant submits:

(a) A completed Paramedic Reciprocity Licensure Application in KEMSIS;

(b) Proof of the applicant's current unrestricted certification as a NREMT-Paramedic, or current paramedic license in ~~another~~~~[a contiguous]~~ state~~[to the Commonwealth of Kentucky]~~, or proof of completing a board-approved United States Armed Forces medical training course which included NREMT-Emergency Medical Technician certification and completion of a board-approved bridge course; and

(c) Completion of current training in:

1. HIV/AIDS training required by KRS 311A.120;
2. Pediatric Abusive Head Trauma training required by KRS 311A.120; ~~and~~
3. Awareness of Sexual Violence Training required by KRS 311A.120~~[, and]~~

~~[4.] [Training regarding determination of death and preservation of evidence as required by KRS 311A.185.]~~

(2) An applicant shall pay the fee required for licensure through reciprocity pursuant to 202 KAR 7:030.

(3) An applicant for paramedic reciprocity shall undergo a national background check provided by a vendor that has been contracted through the board. An applicant shall not directly submit a background check. The background check shall be submitted to the board by the company that conducts the background check. Background checks that are older than six (6) months shall not be considered current, and the applicant shall undergo another national background check prior to approval of licensure through reciprocity.

(4) An applicant shall not have been convicted of offenses described in KRS 311A.050.

(5) An applicant shall not have been subjected to discipline that would prevent reciprocity at the time of application.

(6) A paramedic licensed pursuant to this section shall not perform any procedures or skill on which the paramedic has not been trained. A paramedic who performs a skill for which the paramedic does not have documented training shall have exceeded the scope of practice and shall be in violation of KRS 311A.050.

~~[(7)] [A paramedic licensed pursuant to this section shall complete training regarding determination of death and preservation of evidence as required by KRS 311A.185 prior to beginning work for a licensed agency in Kentucky.]~~

~~[(a)] [Training in determination of death and preservation of evidence as required by KRS 311A.185 shall be provided during employee orientation, or by entities authorized to conduct continuing education pursuant to 202 KAR 7:604.]~~

~~[(b)] [Kentucky supplemental paramedic curricula consistent with 202 KAR 7:701 shall be provided during employee orientation, or by entities authorized to conduct continuing education pursuant to 202 KAR 7:604.]~~

~~[(c)] [Verification of competency on the supplemental curricula procedures in 202 KAR 7:701 shall be maintained by the paramedic for a minimum of three (3) years. Failure to submit the Paramedic Supplemental Curriculum Training Verification Report upon request shall result in revocation of the paramedic license.]~~

~~[(8)] [If a paramedic licensed pursuant to this section fails to supply verification of competency as required by subsection (7) of this section, the paramedic shall be ineligible to apply for and receive paramedic reciprocity license until the applicant has submitted the Paramedic Supplemental Curriculum Training Verification Report as required by 202 KAR 7:701 and shall reapply for reciprocity through the process listed in this section.]~~

Section 6. Scope of Practice. A paramedic shall provide emergency medical services consistent with the skills and procedures in the National EMS Scope of Practice Model and 202 KAR 7:701.

Section 7. Expiration of Licensure.

(1) Licensure periods and expiration dates shall be pursuant to KRS 311A.095.

(2) If a paramedic license lapses or expires, the paramedic shall cease provision of emergency medical services.

(3) A paramedic who has allowed his or her license to lapse or expire shall be required to reinstate his or her licensure pursuant to Section 4 of this administrative regulation.

Section 8. Downgrading Licensure.

(1) A paramedic currently licensed as a paramedic by the board shall be eligible for licensure downgrade if:

(a) The license is in good standing with no pending disciplinary action;

(b) The applicant submits a completed Paramedic License Downgrade Application in KEMSIS; and

(c) The applicant pays the fee pursuant to 202 KAR 7:030;

(2) A paramedic shall only be eligible to downgrade his or her license to an Advanced Emergency Medical Technician, Emergency Medical Technician, or Emergency Medical Responder certification.

(3) Certification periods and expiration dates shall be pursuant to KRS 311A.095.

(4) The applicant shall undergo a background check pursuant to KRS 311A.050 and 311A.100. The background check shall be:

(a) Statewide in scope for an applicant with current certification in Kentucky;

(b) Less than six (6) months old when the applicant submits to the board all requirements for certification; and

(c) Provided by a vendor that has been contracted through the board.

(5) Downgrade shall be denied if the applicant has not met the requirements of this section or has been subject to disciplinary action that prevents certification at the time of application.

(6) The applicant shall be responsible for meeting the renewal requirements of the downgraded certification level issued prior to expiration of that certification.

(7) To reinstate the certification or license that was previously held, the applicant shall meet the regulatory requirements for that level of certification or licensure.

(8) The applicant shall notify the board's licensed service director with whom the applicant is affiliated immediately upon downgrading his or her license.

(9) Once the applicant has downgraded his or her certification or license, the applicant shall not provide emergency medical services at the previous certification or license level held.

(10) An applicant applying for downgrade that does not comply with this section shall be subject to disciplinary action pursuant to KRS Chapter 311A.

(11) All endorsements, certifications, or licenses held at the previous certification or license level shall be void at the completion of the downgrade.

Section 9. Surrender of License.

(1) A paramedic surrendering licensure shall:

(a) Submit a completed Paramedic License Surrender Application in KEMSIS; and

(b) Pay the fee pursuant to 202 KAR 7:030.

(2) The applicant shall notify the board's licensed service director with whom the applicant is affiliated immediately upon surrendering his or her license.

Section 10. Reporting Requirements.

(1) A paramedic shall maintain current demographic information in KEMSIS including:

(a) Legal name;

1. Any changes to the paramedic's legal name shall be submitted using the Name Change application in KEMSIS; and

VOLUME 51, NUMBER 8– February 1, 2025

2. One (1) of the following documents as verification of name change:

- a. Social Security card;
- b. Driver's license; or
- c. Passport;
- (b) Mailing address;
- (c) Email address; and
- (d) Phone number.

(2) A paramedic that does not comply with this section shall be subject to disciplinary action pursuant to KRS Chapter 311A.

[Section 11:] [Determination of Death Protocol.]

[1] [The paramedic shall determine and document that the following signs of death are present:]

- (a) [Unresponsiveness;]
- (b) [Apnea;]
- (c) [Absence of a palpable pulse at the carotid site;]
- (d) [Bilaterally fixed and dilated pupils; and]
- (e) [Except in a case of trauma, asystole determined in two (2) leads on an electrocardiograph.]

[2] [The paramedic shall determine that one (1) of the following factors or conditions exist:]

- (a) [Lividity of any degree;]
- (b) [Rigor mortis of any degree;]
- (c) [Presence of venous pooling in the body;]
- (d) [Damage or destruction of the body which is incompatible with life;]
- (e) [A copy of the Kentucky Emergency Medical Services Do Not Resuscitate (DNR) Order or identification bracelet or other means of identification evidencing a patient's desire not to be resuscitated in accordance with KRS 311A.170; or]
- (f) [A properly executed Kentucky Medical Orders for Scope of Treatment (MOST) form.]

[3] [If a paramedic has determined and documented that the conditions of subsections (1) and (2) of this section exist, the paramedic may, subject to the provisions of this administrative regulation, declare the patient dead.]

[4] [The paramedic may contact medical control or other licensed physician, if authorized in writing by the medical director, for advice and assistance in making a determination required by this administrative regulation.]

[5] [If a paramedic determines a patient to be dead, the paramedic shall remain on the scene unless the paramedic's personal safety is jeopardized, until the arrival of the coroner, deputy coroner, or law enforcement officer from that jurisdiction.]

[5] [If a paramedic determines a patient to be dead, the paramedic shall remain on the scene unless the paramedic's personal safety is jeopardized, until the arrival of the coroner, deputy coroner, or law enforcement officer from that jurisdiction.]

Section 11.[Section 12.] Discontinuance of Resuscitative Efforts.

[1] [A paramedic may discontinue resuscitation if:]

(a) [The patient has suffered cardiac arrest prior to arrival at the hospital;]

(b) [The paramedic has performed the resuscitative efforts required in the resuscitation protocol of the ambulance service medical director;]

(c) [The resuscitative efforts were unsuccessful; and]

(d) [The patient meets the criteria established in Section 11(1) of this administrative regulation.]

[2] [A paramedic may also discontinue resuscitation:]

(a) [If the safety of the paramedic is at risk; or]

(b) [At mass casualty incidents.]

[3] [A paramedic may discontinue resuscitation initiated by someone other than a paramedic if:]

(a) [The patient has suffered cardiac arrest;]

(b) [The resuscitative efforts required in the resuscitation protocol of the ambulance service medical director have been performed and documented;]

(c) [The resuscitative efforts were unsuccessful; and]

(d) [The patient meets the criteria established in Section 11(1) of this administrative regulation.]

[4] [If a paramedic discontinues resuscitation on a patient prior to transport of the patient to a medical facility, the paramedic shall make the notifications required by KRS 72.020 and at least one (1) member of the ambulance crew shall remain on the scene until the arrival of a coroner, deputy coroner, or law enforcement officer.]

[5] [If a paramedic discontinues resuscitation on a patient during transport to a medical facility, the paramedic shall make the notifications required by KRS 72.020 to the officials of the county in which the paramedic discontinued resuscitation. Upon making the notification, the paramedic shall determine from the coroner whether to remain at that location, to return the deceased to a facility within the primary service area of the ambulance provider, or to continue on to the medical facility with the deceased.]

[6] A paramedic shall discontinue resuscitation efforts if presented with a properly executed Kentucky Emergency Medical Services Do Not Resuscitate (DNR) Order, or properly executed Kentucky Medical Orders for Scope of Treatment (MOST) form.

[Section 13.] [Training of Paramedics in Determination of Death and Preservation of Evidence.]

[1] [The training program shall not be less than one (1) hour in length and, at a minimum, shall include:]

- (a) [Information on and a copy of KRS 311A.170;]
- (b) [Information on and a copy of this administrative regulation;]
- (c) [Information on and a copy of KRS 72.020;]
- (d) [Information on and a copy of KRS 446.400;]
- (e) [Information on the duties of and role of the coroner and state medical examiner; and]
- (f) [Information on preservation of evidence at the scene of a death.]

[2] [The training shall be:]

(a) [Provided as part of a paramedic training course conducted by an approved EMS-TEI via:]

- 1. [Classroom instruction;]
- 2. [Video conferencing or other distance learning media; or]
- 3. [Video presentation or computer-based learning; and]
- (b) [Conducted under the supervision of a medical director.]

[3] [The medical director of the ambulance service or EMS provider conducting the training shall request the coroner of the county in which the training is provided to attend and participate in the training.]

[4] [The EMS-TEI or the medical director providing the training shall maintain the following records:]

(a) [A copy of the course outline used in the training to verify that the training has been conducted in accordance with the requirements of this administrative regulation;]

(b) [A sign-in sheet with the printed and signed names and certification or license numbers and state of license of all paramedics who successfully completed the training, including the signature of the educator supervising the education program; and]

(c) [Curriculum vitae for each member of the course faculty;]

[5] [A certificate or letter of certification shall be provided to each participant in the program at the conclusion of the training.]

[6] [The board office shall maintain an approved curriculum, Prehospital Determination of Death, that may be used by entities providing training specified by this administrative regulation.]

Section 12.[Section 14.] Critical Care Endorsement.

(1) A paramedic licensed by the board may be granted a critical care endorsement upon completion of the Application for Paramedic Critical Care Endorsement, payment of the fee pursuant to 202 KAR 7:030, and completion of a board-approved training program that minimally meets the objectives of the University of Maryland Baltimore Campus CCEMTP Program.

(2) The critical care endorsement shall be valid if the paramedic maintains current licensure as a paramedic by the board.

(3) A paramedic with a critical care endorsement may perform the skills and procedures included in the paramedic's education and training subject to authorization by the medical director through established protocols.

(4) Notwithstanding subsection (1) of this section, applications for critical care endorsements shall no longer be accepted after June 30, 2025.

(5) Notwithstanding subsections (1) through (3) of this section, on and after January 1, 2027[2026], critical care endorsements shall not be valid. Paramedics wishing to provide critical care on and after January 1, 2027[2026], shall obtain an advanced practice paramedic license and certification as a critical care paramedic in accordance with 202 KAR 7:410.

VOLUME 51, NUMBER 8– February 1, 2025

Section 13.~~[Section 15.]~~ Exemptions from Paramedic Administrative Regulations. The Kentucky licensure requirements for a paramedic shall not apply to:

(1) United States military members, National Guard personnel, or employees of the United States government if the individual provides emergency medical services:

- (a) On land owned by the United States government;
- (b) In facilities owned by the United States government;
- (c) In the performance of official duties under federal law; or
- (d) As part of assistance for a mass casualty or disaster incident pursuant to federal law or official state assistance request; or

(2) A paramedic licensed in another state or territory of the United States who:

- (a) Enters Kentucky with a patient being transported to a medical facility or other final destination in Kentucky; or
- (b) Travels through Kentucky during the course of a patient transport from an out-of-state location to a destination outside of Kentucky.

Section 14.~~[Section 16.]~~ Public Notice of Negative Action. The board office shall cause to be published on the board website the name of a paramedic that:

- (1) Is fined;
- (2) Is placed on probationary status;
- (3) Is placed on restricted status;
- (4) Is suspended; or
- (5) Has had his or her certification revoked.

Section 15.~~[Section 17.]~~ The paramedic shall document all items required by Sections 11 and 12 of this administrative regulation on the Patient Care Report required by KRS 311A.190.

Section 16.~~[Section 18.]~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "National Emergency Medical Services Education Standards-Paramedic Instructional Guidelines", The United States Department of Transportation, National Highway Traffic Safety Administration, DOT HS 811 077E, January 2009;

(b) "Paramedic Initial Licensure Application" in KEMSIS, April 2021;

(c) "Paramedic License Renewal Application" in KEMSIS, April 2021;

(d) "Paramedic Reciprocity Licensure Application" in KEMSIS, April 2021;

(e) ~~[Kentucky Board of Emergency Medical Services, Prehospital Determination of Death Training Curriculum (05-02);]~~

~~[(f)]~~ "Paramedic Reinstatement License Application" in KEMSIS, April 2021;

~~[(g)]~~ "Kentucky Emergency Medical Services Do Not Resuscitate (DNR) Order", April 2021;

~~[(h)]~~ "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 810 657, February 2007;

~~[(i)]~~ "National EMS Scope of Practice Model", National Highway Traffic Safety Administration, DOT HS 812 666, February 2019;

~~[(j)]~~ "Kentucky Medical Orders for Scope of Treatment (MOST) Form", April 2021;

~~[(k)]~~ "Application for Paramedic Critical Care Endorsement" in KEMSIS, April 2021;

~~[(l)]~~ "Paramedic License Downgrade Application" in KEMSIS, April 2021;

~~[(m)]~~ "Paramedic License Surrender Application", in KEMSIS April 2021;

~~[(n)]~~ "National Registry of Emergency Medical Technicians National Continued Competency Program Paramedic", October 2016;

~~[(o)]~~ "National Registry of Emergency Medical Technicians Advanced Level Examination Coordinator Manual", November 1, 2016;

~~[(p)]~~ "Name Change Application" in KEMSIS, April 2021;

~~[(q)]~~ "Military Extension Application" in KEMSIS, April 2021; and

~~[(r)]~~ "United States Citizenship and Immigration Services (U.S.C.I.S) Permanent Resident Card (form I-551/Green Card)", April 2021.

(2) This material may be inspected, obtained, or copied, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 500 Mero Street, 5th Floor 5SE32, Frankfort, Kentucky 40601, by appointment, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on the board's Web site at: kyems.com.

FILED WITH LRC: January 13, 2025

CONTACT PERSON: John K. Wood, Board Counsel, 163 East Main Street, Suite 200, Lexington, Kentucky 40507, phone (859) 225-4714, email administrativeregulations@wgmfirm.com.

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (As Amended at ARRS, January 13, 2025)

301 KAR 2:081. Transportation and holding of live native wildlife.

RELATES TO: KRS 150.010, 150.015, 150.183, 150.190, 150.195, 150.235, 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" ~~means~~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, Perry, 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*);

VOLUME 51, NUMBER 8— February 1, 2025

- (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.

(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 not be ~~a~~ 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 shall 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~~ 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 noncommercial 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

VOLUME 51, NUMBER 8— February 1, 2025

(b) Allow records to be inspected by a department representative upon request.

Section 4. Transportation Permits and Certificates of Veterinary Inspection.

(1) Unless otherwise exempted by this or another administrative regulation, 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;

(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, any 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 by via mail to the address listed on the annual transportation permit application or by 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*);

VOLUME 51, NUMBER 8— February 1, 2025

- 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);~~
- [(12)] Wild turkey (*Meleagris gallopavo*); or
- [(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 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 of this administrative regulation 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.

VOLUME 51, NUMBER 8— February 1, 2025

(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.

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) **of this administrative regulation**;

(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;

VOLUME 51, NUMBER 8– February 1, 2025

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) **of this administrative regulation**;

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) **of this administrative regulation** 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) **Upon being presented with a written order by the commissioner, a person, entity, or facility shall surrender 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".

FILED WITH LRC: January 13, 2025

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

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (As Amended at ARRS, January 13, 2025)

301 KAR 2:082. Transportation and holding of live exotic wildlife.

RELATES TO: KRS 13B, 150.010, 150.015, **150.183**, 150.186, **150.195, 150.235**, 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 **requires[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 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 **establishes[requires]** federal standards for holding migratory birds, including raptors. 50 C.F.R. 17 **establishes[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) **Unless otherwise exempted or prohibited by this or another administrative regulation**, a person shall apply for and

VOLUME 51, NUMBER 8– February 1, 2025

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 ~~by~~^{by via} mail to the address listed on the Annual Transportation Permit Application or ~~by~~^{by 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.

~~(5)~~⁽⁶⁾ 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)~~⁽⁷⁾ 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)~~⁽⁸⁾ An applicant possessing, importing, or transporting into Kentucky from outside the state ~~any~~ 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)~~⁽⁹⁾ 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) Gavials (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*);

(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

VOLUME 51, NUMBER 8– February 1, 2025

(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) **Without an exemption pursuant to Section 5 of this administrative regulation**, 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 (*Serinius 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 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:

VOLUME 51, NUMBER 8— February 1, 2025

(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 of this administrative regulation; 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) of this administrative regulation; 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 if 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 of this administrative regulation.

(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; and

(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"; and

(b) <https://fw.ky.gov/Wildlife/Documents/indtransportapp.pdf> for the "Individual Transportation Permit Application".

FILED WITH LRC: January 13, 2025

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

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, January 13, 2025)

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.

VOLUME 51, NUMBER 8– February 1, 2025

~~(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:

- (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;

VOLUME 51, NUMBER 8— February 1, 2025

- (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.

Section 10. Incorporation by Reference.

- (1) "Dove Quota Post-hunt Hunter Survey", First Edition, 2022[²], 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.

FILED WITH LRC: January 13, 2025

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.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, January 13, 2025)**

501 KAR 6:410. Corrections policies and procedures: inmate life and issues.

RELATES TO: KRS Chapters 196, 197, KRS 402.050, 402.080, 510.120(1)(b)

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, cleanliness of the persons of the prisoners, general sanitary government of the penitentiary and prisoners, character of the labor, and quantity of clothing. KRS 197.020(1)(c) further authorizes the Department of Corrections to promulgate administrative regulations for the disposition of abandoned, lost, or confiscated property of 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 life and issues for the Department of Corrections.

VOLUME 51, NUMBER 8– February 1, 2025

Section 1. Incorporation by Reference.

(1) "Department of Corrections Policies and Procedures, Chapter 14", ~~January 13, 2025~~ ~~May 15, 2024~~, are incorporated by reference. Department of Corrections Policies and Procedures Chapter 14 includes:

14.1	Investigation of Missing Inmate Property (1/13/25) (5/15/24)
14.2	Personal Hygiene Items (1/13/25) (8/20/13)
14.3	Marriage of Inmates (1/13/25) (1/12/17)
14.4	Legal Services Program (1/13/25) (3/14/14)
14.5	Board of Claims (1/13/25) (5/15/24)
14.6	Inmate Grievance Procedure (5/15/24)
14.7	Sexual Abuse Prevention and Intervention Programs (1/13/25) (5/15/24)
14.8	Lesbian, Gay, Bisexual, Transgender, and Intersex Inmates (6/1/2018; 1/8/25) (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: January 13, 2025

CONTACT PERSON: Nathan Goens, Staff Attorney III, 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 Criminal Justice Training
(As Amended at ARRS, January 13, 2025)**

503 KAR 3:140. Telecommunications (Public Safety Dispatch) Academy trainee requirements; misconduct; penalties; discipline procedures.

RELATES TO: KRS Chapter 13B, 15.530-15.590, 61.870-61.884

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, Applicant Confirmation, 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 shall attend ~~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 required by ~~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) For 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) For 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

VOLUME 51, NUMBER 8– February 1, 2025

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.~~[-]~~

(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;~~and [-]~~

(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 ten (10) or 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 a "deadly ~~weapon~~["~~weapons~~] (as defined by~~in~~) KRS 500.080), ammunition, a "destructive ~~device~~["~~devices~~] (as defined by~~in~~) KRS 237.030), a "booby trap ~~device~~["~~devices~~] (as defined by~~in~~) KRS 237.030), a "hazardous ~~substance~~["~~substances~~] (as defined by~~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.

VOLUME 51, NUMBER 8– February 1, 2025

(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.

Section 17. Obscene Material. A trainee shall not possess "obscene" material as defined by[~~it~~] 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 shall/will be promptly investigated, and all trainees shall be free from any and all reprisal or retaliation for the filing of these[~~such~~] complaints.

(3) [~~Further,~~]All trainees are assured that they shall/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 shall/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

VOLUME 51, NUMBER 8– February 1, 2025

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 ~~established~~ ~~defined~~ in Section ~~23~~~~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 ~~24~~~~22~~ through ~~28~~~~26~~ of this administrative regulation.

(3) To have the authority to impose summary discipline, the staff 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 ~~shall~~~~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; ~~and~~[-]

(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.

FILED WITH LRC: January 13, 2025

CONTACT PERSON: Nathan Goens, Staff Attorney III, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8216, fax (502) 564-6686, Justice.RegContact@ky.gov.

EDUCATION AND LABOR CABINET
 Kentucky Board of Education
 Department of Education
 (As Amended at ARRS, January 13, 2025)

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 ~~being 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 ~~if 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) of this section. 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) of this section. The request for reconsideration shall [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) of this section, the Commissioner, or his designee, shall reconsider the specific findings of fact, conclusions of law, and corrective actions contained in~~the~~ department's decision pursuant to~~[in]~~ subsection (6) of this section and identified in the request~~[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]~~;

VOLUME 51, NUMBER 8– February 1, 2025

(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 [if 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 shall [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 shall [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.

FILED WITH LRC: January 13, 2025

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

EDUCATION AND LABOR CABINET
Office of Unemployment Insurance
(As Amended at ARRS, January 13, 2025)

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(f)(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)[(4)] UI-1S, Supplemental Application for Unemployment Insurance Employer Reserve Account;

(3)[(2)] UI-3.2, Account Status Information; and

(4)[(3)] 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:

VOLUME 51, NUMBER 8– February 1, 2025

- (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", Rev. 2024;
- (c)(b) UI-1S, "Supplemental Application for Unemployment Insurance Employer Reserve Account", Rev. 2021;
- (d)(e) UI-3, "Employer's Quarterly Unemployment Wage and Tax Report", Rev. 11/20;
- (e)(d) UI-3.2, "Account Status Information", Rev. 2021;
- (f)(e) UI-21, "Report of Change in Ownership or Discontinuance of Business in Whole or Part", Rev. 2021;
- (g)(f) UI-74, "Application for Partial Payment Agreement", Rev. 5/11;
- (h)(g) UI-203, "Overpayment and Fraud Detection", Rev. 01/2021; and
- (i)(h) 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>.

FILED WITH LRC: January 13, 2025

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.

**EDUCATION AND LABOR CABINET
Office of Unemployment Insurance
(As Amended at ARRS, January 13, 2025)**

787 KAR 1:370. Professional Employer Organizations.

RELATES TO: ~~KRS 336.232~~ **Professional Employer Organizations reporting and contribution obligations.**

STATUTORY AUTHORITY: KRS ~~336.248~~, 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" **or "PEO"** 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 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(f)~~, per KRS 336.248(1)(b).

(2)

(a) For each PEO having one (1) or more covered employees with a client in this state, ~~the~~ **such** PEO shall file an electronic application titled, UI-1P, "Professional Employer Organization Application for Unemployment Insurance Employer Reserve Account", **incorporated in 787 KAR 1:010**, using the Unemployment Insurance Self-Service Web Portal located at <https://kewes.ky.gov>.

(b) 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.

(c)(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 **a change occurs** ~~such changes occur~~. Written notifications shall be submitted to the OUI via the methods listed at <https://kewes.ky.gov>.

(d)(e) 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>.

FILED WITH LRC: January 13, 2025

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.

**EDUCATION AND LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, January 13, 2025)**

803 KAR 2:110. Employer and employee representatives.

RELATES TO: KRS 338.111, **338.171**

STATUTORY AUTHORITY: KRS 338.051, 338.061, **29 C.F.R. 1903.8(a), (c)**

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, in accordance with 29 C.F.R. 1903.8(c), 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 in accordance with ~~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.

FILED WITH LRC: January 13, 2025

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.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Electrical
(As Amended at ARRS, January 13, 2025)

815 KAR 35:060. Licensing of electrical contractors, master electricians, and electricians.

RELATES TO: KRS Chapter 13B, 164.772(3), 227.480, 227A.010, ~~[227A.060,]~~227A.100, 227A.140, 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~~ \$100 for a biennial ~~twelve (12) month~~ license; and

3. Proof of the applicant's experience as required ~~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 required ~~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; and

(b) The general application requirements in Section 1 ~~(2)~~ of this administrative regulation;

VOLUME 51, NUMBER 8– February 1, 2025

(2) Provide:

(a) A copy of the applicant's license from the participating jurisdiction[state]; and

(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, provide 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; or]

(d) A completed [form ELM-1,] Military Experience for Electrical Licensure, Form ELM-1, 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, Form DHBC L-1;

(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;

(c) Proof of [~~annual~~] continuing education in accordance with KRS 227A.100(7) and 815 KAR 2:010; and

VOLUME 51, NUMBER 8– February 1, 2025

(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 ~~Electrician's~~~~[Electrical]~~ License Application, Form~~[s]~~ 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 ~~required~~~~[established]~~ by KRS ~~227A.060(5)(a)~~~~[227A.060(4)(a)2]~~, ~~which~~~~[-]~~

~~[(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) ~~Upon termination~~, 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)]~~ [{"Licensing Renewal Application", Form DHBC L-1, ~~October 2024~~~~[April-2023]~~]

~~[(d)]~~ [{"Military Experience for Electrical Licensure", Form ELM-1, ~~October 2024~~; and

~~[(e)]~~~~[(f)]~~ [{"Provisional ~~Electrician's~~~~[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>.

FILED WITH LRC: January 13, 2025

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.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (As Amended at ARRS, January 13, 2025)

902 KAR 10:120. Kentucky public swimming and bathing facility operations~~[facilities]~~.

RELATES TO: KRS Chapter 13B, 211.015, ~~211.205~~~~[211.090, 211.210, 211.220]~~; 211.990(2), ~~15 U.S.C. 8003~~~~[322.110, 323.020, 29 C.F.R. 1940.119, 15 U.S.C. 8003]~~

STATUTORY AUTHORITY: KRS 194A.050~~[(1)]~~, 211.180(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) ~~requires~~~~[authorizes]~~ the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. ~~KRS 194A.050(2) authorizes the secretary to promulgate regulations to establish a fee schedule for permitting and annual inspection of efforts regarding compliance with program standards administered by the cabinet. KRS 211.180~~ ~~requires~~~~[authorizes]~~ the cabinet to adopt administrative regulations relating to public facilities and their operation and maintenance in a safe and sanitary manner to protect public health and prevent health hazards. This administrative regulation establishes uniform standards for public swimming pools and bathing facilities.

Section 1. Definitions.

(1) ["Accessible" means having access to a fixture, connection, appliance or equipment, even if it is necessary to remove an access panel, door, or similar obstruction.]

~~[(2)] ["Agitation" means the mechanical or manual movement to dislodge the filter aid and dirt from the filter element.]~~

~~[(3)] ["Air gap" means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or~~

VOLUME 51, NUMBER 8– February 1, 2025

faucet conveying water or waste to a tank, plumbing fixture, receptor, or other device, and the flood level rim of the receptacle.]

(4) "Alkalinity" or "total alkalinity" means the amount of carbonates or bicarbonate present in water solution as expressed in parts per million (ppm).

(2)(5) "Approved" means that which is acceptable to the cabinet.

(3)(6) "Backwash" means the flow of water through the filter element or media in the reverse direction sufficient to dislodge the accumulated dirt and filter aid and remove them from the filter tank.

(4)(7) ["Backwash cycle" means the time required to backwash the filter system thoroughly.]

(8) ["Backwash rate" means the rate of application of water through a filter during the backwash cycle expressed in gallons per minute per square foot of effective filter area.]

(9) "Bather" means a person using a public swimming and bathing facility.

(5)(40) "Cabinet" is defined by KRS 211.015(1)(a).

(6)(44) ["Cartridge filter" means a filter that utilizes a porous cartridge as its filter media.]

(12) "Diatomaceous earth (DE) filter" means a filter that utilizes a thin layer of diatomaceous earth as its filter media that will need to be periodically replaced.

(7)(13) "Disinfectant" means an approved chemical compound designed for the destruction of pathogenic organisms in bathing facilities and includes chlorine and bromine.

(8)(14) ["Equalizer line" means the connection from the skimmer housing to the pool, spa, or hot tub below the weir box, which:]

(a) Is sized to satisfy pump demand and prevent air lock or loss of prime; and

(b) Contains a float valve assembly and pop-up valve.]

(15) "Facility operator" means a person or employee of that person who is responsible for the proper operation and maintenance of the facility.

(9)(16) "Filter" means a device that separates solid particles from water by recirculating it through a porous substance.

(10)(17) "Filter aid" means an enhancement to the efficiency of the filter media.

(11)(18) "Filter cycle" means the operating time between cleaning or replacing the filter media or backwash cycles.

(12)(19) "Filter element" means a device within a filter tank designed to entrap solids and conduct water to a manifold, collection header, pipe, or similar conduit.

(13)(20) ["Filtration rate" means the rate of water flow through a filter while in operation.]

(21) ["Float valve assembly" means a mechanism designed to disengage the skimmer in order to prevent air from entering the pump if the water level drops below the skimmer level.]

(22) "Flow meter" means a device that measures the flow of water through piping.

(14)(23) ["Head loss" means the total pressure drop between the inlet and the outlet of a component.]

(24) "Holding tank" means a storage vessel to retain water for a spray pad recirculation system.

(15)(25) ["Hydrojet" means a fitting which blends air and water, creating a high velocity, turbulent stream of air enriched water.]

(26) "Inlet" means a fitting or fixture through which filtered water returns to a pool or spa.

(16)(27) "Main outlet" means an outlet fitting at the deepest point of the horizontal bottom of a pool through which water passes to a recirculating pump or surge tank, and is often referred to as a "main drain".

(17)(28) ["Modulating valve" means a valve that automatically regulates the flow of water from the main drain through the use of a float ball.]

(29) "Perimeter overflow system" means a channel at normal water level that extends completely around the pool perimeter and is used to remove surface debris, also known as an overflow or scum gutter.

(18)(30) ["Perlite filter" means a filter that utilizes a thin layer of perlite as its filter media deposited on a septum that must be periodically replaced.]

(31) "Play feature" means a structure or feature that is added to a pool for the purpose of entertainment.

(19)(32) "Plunge pool" means a pool or area within a pool designed as the termination point for a water slide or water ride.

(20)(33) ["Pop-up valve" means a mechanism located under the float valve assembly that opens to allow water to reach the pump when the float valve is activated.]

(34) ["Positive shutoff valve" means a valve that completely stops the flow of water.]

(35) "Precoat" means the process of depositing a layer of diatomaceous earth or perlite on the filter element at the start of a filter cycle.

(21)(36) "Public swimming and bathing facility" or "facility" means a natural or artificial body or basin of water that is modified, improved, constructed, or installed for the purpose of swimming or bathing, except for a pool at a private single family residence intended only for the use of the occupant[owner] and guests.

(22) "Public swimming and bathing facility enclosure" means an enclosure that surrounds and secures the public swimming and bathing facility which includes decking and pool.

(23)(37) "Readily accessible" means direct access without the necessity of removing any panel, door, or similar obstruction.

(24)(38) ["Septum" means that part of the filter element consisting of cloth, closely woven fabric, or other porous material on which the filter media cake is deposited.]

(25)(39) "Skimmer" means a device designed to continuously remove surface film and water and return it through the filter.

(25)(26) (40) "Splash pad" means a public swimming and bathing facility that ["Spray pad" means an area that:]

(a) Has aquatic play features that spray or drop water for the purpose of wetting people;

(b) Is designed so that there is no accumulation or ponding of water on the ground; [and]

(c) Includes both recirculating and non-recirculating water systems; and

(d) Includes splash pads operated by local governments as defined in KRS 211.205.

(26)(27) (41) ["State Building Code" means the requirements established in 845 KAR Chapter 7.]

(42) ["State Plumbing Code" means the requirements established in 845 KAR Chapter 20.]

(43) "Strainer" means a device used to remove hair, lint, leaves, or other coarse material on the suction side of a pump.

(27)(28) (44) ["Suction piping" means that portion of the circulation piping located between the facility structure and the inlet side of a pump.]

(45) "Superchlorinate" means the addition to the public swimming and bathing facility water of an amount of chlorine sufficient to produce a free available chlorine that is at least equal to ten (10) times the amount of combined chlorine plus the required minimum level of free available chlorine in order to oxidize the ammonia and nitrogenous materials which may be dissolved in the facility water.

(28)(29) (46) ["Surge tank" means a storage vessel within the pool recirculation system used to retain the water displaced by bathers.]

(47) ["Total discharge head" means the amount of water that a pump will raise water above its center line.]

(48) ["Total dynamic head" means the arithmetical difference between the total discharge head and total suction head (a vacuum reading is considered as a negative pressure). This value is used to develop the published performance curve.]

(49) "Total residual chlorine" means the arithmetical sum of free available chlorine and combined chlorine, which is composed of the following components:

(a) Free available chlorine, which is the amount of chlorine available to inactivate microorganisms and that has not reacted with ammonia, nitrogenous material, and other contaminants in facility water; and

(b) Combined chlorine (also called "chloramine"), which is the amount of chlorine that has reacted and combined with ammonia and other nitrogenous material to form chloro-ammonia compounds.

VOLUME 51, NUMBER 8– February 1, 2025

~~(29)(30)~~ [(50)]["Total suction head" means the amount of water that a pump will lift by suction.]

[(51)] ["Turnover rate" means the time requirements, in hours or minutes, for the circulation system to filter and recirculate a volume of water equal to the facility volume.]

[(52)] "Wading pool" means a pool or area within a pool where the water depth is twenty-four (24) inches or less.

[(53)] ["Weir box" means an overflow system placed at normal operating water surface level to remove surface debris and does not form a continuous loop around the pool perimeter.]

Section 2. Submission of Plans, Annual Permit Fee, and Inspection Fees.

(1) Submission of Plans.

(a) All new construction, changes in construction, and equipment shall be in accordance with the requirements set forth in 902 KAR 10:123.

(b) New facilities shall receive final construction approval inspections by the cabinet, and other affected state and local regulatory agencies, prior to placing the facility in operation. It shall be the owner or operator's responsibility to notify the cabinet and other involved agencies of construction completion and call for inspection.

(2) Annual Permit Fee.

(a) An annual permit fee of \$110 for all public swimming and bathing facilities shall be:

1. Paid no later than May 1 each year; and

2. Paid to the Kentucky Department for Public Health by check or money order made payable to the Kentucky State Treasurer.

(b) A late payment fee of fifty-five (55) dollars shall be assessed on all annual permits not received by May 1 each year.

(c) Permits shall not be transferable.

(3) A fee shall be required for inspections conducted by the cabinet or the local health department to determine compliance with this administrative regulation for public swimming and bathing facilities.

(4) For public swimming and bathing facilities the annual inspection fee shall be:

(a) Assessed according to the total square footage of the water surface area;

(b) Calculated as established in this paragraph:

1. 1,000 square feet or less, the fee shall be ninety-nine (99) dollars;

2. 1,001 to 1,500 square feet, the fee shall be \$165;

3. 1,501 to 2,000 square feet, the fee shall be \$220; and

4. 2,001 and above, the fee shall be \$220 plus fifty-five (55) dollars for each additional 500 square feet of water surface area; and

(c) Include ~~\$[eighty-two (82.50)] dollars and fifty cents~~ for interactive water features.

(5) For splash pads, the annual inspection fee shall be \$275 per year.

(6) For spas and hot tubs, the annual inspection fee shall be \$165 per year.

(7) The inspection fee required by this section shall be:

(a) Paid to the local health department having jurisdiction by check or money order made payable to the Kentucky State Treasurer;

(b) Deposited in the environmental fee account; and

(c) Sent to the Department for Public Health for deposit with the Kentucky State Treasury [and Specifications for Approval.]

[(1)] [A person shall not construct, alter, or reconstruct a public swimming and bathing facility until approval of detailed plans and specifications, with supporting design data as required in this administrative regulation, is granted in writing by the state or local agency having jurisdiction.]

[(2)] [The original plans and five (5) copies shall be submitted to the local health department with payment pursuant to 902 KAR 10:124.]

[(3)] [The front page of the plans submitted for review and approval shall contain the:]

[(a)] [Name of the swimming and bathing facility;]

[(b)] [Location by city and county;]

[(c)] [Name and contact information for the facility owner;]

[(d)] [Name of the installer; and]

[(e)] [Name of the engineer, architect, or person preparing the plans;]

[(4)] [Plans submitted by an engineer or architect shall bear the individual's official seal.]

[(5)] [Plans and specifications on public swimming and bathing facilities constructed by the state or local government, or for a facility with surface area greater than 1,600 square feet, shall be prepared by an engineer or architect registered in the State of Kentucky.]

[(6)] [The plans shall be:]

[(a)] [Drawn to scale;]

[(b)] [Accompanied by proper specifications to permit a comprehensive review of the plans, including the piping and hydraulic details; and]

[(c)] [Include:]

[1.] [A site plan of the general area with a plan and sectional view of the facility complex with all necessary dimensions;]

[2.] [A piping diagram showing all appurtenances including treatment facilities in sufficient detail, as well as pertinent elevation data, to permit a hydraulic analysis of the system;]

[3.] [The specifications on all treatment equipment, including performance ranges of pumps, disinfecting equipment, chemical feeders, filters, strainers, lights, skimmers, suction outlets or return inlets, diving boards, safety equipment, and other related equipment; and]

[4.] [Drawing of equipment room showing placement of equipment.]

[(7)] [One (1) set of approved plans shall be kept at the job site and available for inspection.]

[(8)] [Upon completion of recirculation piping system construction and prior to the piping being tested for air pressure at ten (10) pounds per square inch of pressure for fifteen (15) minutes and covered, the owner or builder shall contact the cabinet for inspection.]

[(9)] [Upon completion of construction, a notarized statement certifying the facility was constructed in accordance with the approved plans and this administrative regulation shall be submitted to the cabinet.]

[(10)] [The facility shall not be used before receiving a final inspection and written approval from the cabinet.]

[(11)] [Unless construction is begun within one (1) year from the date of approval, the approval shall expire. Extension of approval may be considered upon written request to the cabinet.]

[(12)] [No change in location, construction, design, materials, or equipment shall be made to approved plans or the facility without the written approval of the cabinet.]

Section 3. Water Supplies.

(1) Potable water from an approved municipal water system or water district shall be supplied to all public swimming and bathing facilities. If these supplies are not available, a potable water supply meeting the approval of the Energy and Environment Cabinet shall be provided.

(2) The water supply shall be capable of providing:

(a) Sufficient quantities of water under pressure to all water-using fixtures and equipment at the facility; and

(b) Enough water to raise the water level by at least one (1) inch in three (3) hours in:

1. Swimming, diving, or wave pools; and

2. Water slide plunge pools.

Section 4. [Water Quality and Sanitary Requirements for Bathing Beaches.]

[(1)] [Prior to the issuance of plan and construction approval, the cabinet shall conduct a sanitary survey of the proposed beach. This survey shall include an evaluation of the physical, chemical, and bacteriological characteristics of the bathing beach area and the watershed.]

[(2)] [Physical quality. The following characteristics shall not be present in the beach area or watershed:]

[(a)] [Sludge deposits, solid refuse, floating waste solids, oils, grease, and scum; or]

VOLUME 51, NUMBER 8– February 1, 2025

~~[(b)] [Hazardous substances being discharged into bathing beach water or watershed.]~~

~~[(3)] [Bacteriological quality. The bacteriological quality of water at bathing beaches shall comply with the following criteria:]~~

~~[(a)] [It shall meet the requirements of 401 KAR 10:031. Satisfactory bacteriological results shall be obtained before approval for construction is considered; and]~~

~~[(b)] [There shall not be any sanitary or combined sewer discharges or other raw or partially treated sewage discharges to the bathing beach area or immediate watershed.]~~

~~[(4)] [Chemical quality. There shall not be any discharges of chemical substances, other than disinfecting agents, capable of creating toxic reactions, or irritations to the skin or mucous membranes of a bather.]~~

~~[Section 5.] Sewage and Wastewater Disposal.~~

~~(1) Sewage or wastewater generated from the operation of a public swimming and bathing facility shall discharge to a public sanitary sewer.~~

~~(2) If a public sanitary sewer is not available, sewage or wastewater shall be discharged to a system which complies with 902 KAR 10:085.~~

~~(3) Outdoor deck or surface area drainage water may be discharged directly to storm sewers, natural drainage areas, or to the ground surface without additional treatment. This drainage shall not result in nuisance conditions that create an offensive odor, a stagnant wet area, or an environment **that allows** for the breeding of insects.~~

~~(4) Filter backwash shall be discharged to public sanitary sewers, or if unavailable, to a system approved by the cabinet.~~

~~Section 5. [Section 6.] Refuse Disposal.~~

~~(1) All refuse at a public swimming and bathing facility shall be disposed of in a manner approved by the Energy and Environment Cabinet in KAR Title 401.~~

~~(2) An adequate number of refuse containers with tight fitting lids shall be provided at readily accessible locations at all public swimming and bathing facilities.~~

~~(3) Refuse containers in women's restrooms shall be kept covered.~~

~~(4) Bulk refuse storage areas shall be designed and maintained to prevent rodent harborage.~~

~~(5) Bulk refuse containers shall be:~~

- ~~(a) Of approved design and construction;~~
- ~~(b) Kept closed; and~~
- ~~(c) Placed upon an impervious surface within a suitable enclosure to prevent access by animals.~~

~~Section 6. [Section 7.] Facility Design and Construction.~~

~~(1) All public swimming and bathing facilities, and attendant structures, such as bathhouses, dressing rooms, or restrooms[, except for beach areas at bathing beaches,] shall meet the design, materials, fixture, and construction requirements of 815 KAR 7:120 and 815 KAR Chapter 20.~~

~~(2) Bathhouses, restrooms, and drinking fountains shall not be required for the design and construction of splash pads. [The wading and swimming areas at beaches where the water is less than five (5) feet deep shall be separated from swimming and diving areas by lines securely anchored and buoyed. Safe limits of swimming shall be marked by buoys, poles, or other markers located not over 100 feet apart and visible to bathers from a distance of at least 100 feet. Within these limits of safe swimming there shall not be any boating, underwater obstructions, or other hazards that may be dangerous or cause injury to swimmers. Signs shall be provided on the beach describing these markers and stating that they indicate the limits of safe bathing. The bottom of the swimming area shall consist of sand or gravel and be of a uniform slope.]~~

~~[(3)] [If diving facilities are provided at beaches, the design and layout of the facilities and associated unobstructed water depths shall be in accordance with the State Building Code requirements for swimming and diving pools. The water surrounding any floats or inflatable features where diving is permitted shall be at least nine (9) and one-half (1/2) feet deep.]~~

~~[(4)] [Depth markings and lane lines.]~~

~~[(a)] [On all facilities other than beaches, the depth of the water shall be marked plainly at or above the water surface on the vertical wall of the facility, if possible, and on the edge of the deck next to the facility. Depth markers shall be placed at the following locations:]~~

~~[1.] [At the points of maximum and minimum depths;]~~

~~[2.] [At the point of change of slope between deep and shallow portions or transition point;]~~

~~[3.] [At intermediate two (2) feet increments of water depth; and]~~

~~[4.] [If the facility is designed for diving, at appropriate points to denote the water depths in the diving area.]~~

~~[(b)] [Depth markers shall be spaced so that the distance between adjacent markers is not greater than twenty-five (25) feet as measured peripherally.]~~

~~[(c)] [Depth markers shall be in Arabic numerals at least four (4) inches high and of a color contrasting with the background. If depth markers cannot be placed on the vertical walls at or above the water level, other means shall be used, so that markings shall be plainly visible to persons in the facility.]~~

~~[(d)] [Lane lines or other markings on the bottom of the facility shall be a minimum of ten (10) inches in width and be of a contrasting color.]~~

~~[(e)] [A safety line supported by buoys shall be provided across the section of the pool where the break between the shallow and deep water occurs (five (5) feet) except when the pool is being used for organized activities or during operation as a wave pool. The line shall be placed one (1) foot toward the shallow end from where the break occurs.]~~

~~Section 7. [Section 8.] Facility Water Treatment Systems.~~

~~(1)~~

~~[(a)] A recirculation system, consisting of pumps, piping, filters, water conditioning, disinfection equipment, and other accessory equipment shall be provided to clarify, chemically balance, and disinfect the water for all swimming and bathing facilities[, except bathing beaches].~~

~~[(2)] [(b)] The recirculation system shall comply with the requirements set forth in 902 KAR 10:123. [All system components, including piping, shall bear the NSF International (NSF) potable water (NSF-pw) mark.]~~

~~[(c)] [Pumps greater than seven and five-tenths (7.5) horse power that are not required to meet NSF testing standards shall be considered on a case-by-case basis.]~~

~~[(2)] [Pumping equipment.]~~

~~[(a)] [The recirculation pump and motor shall deliver the flow necessary to obtain the turnover required in the table below. A valve for flow control and a flow meter shall be provided in the recirculation pump discharge piping.]~~

~~[(b)] [The turnover rate shall be:]~~

[Type of Facility]	[Turnover Required]
[Diving pools]	[8 hours or less]
[Wading pools, Spas, Therapy pools, Spray pad holding tanks, Facility equipped with a spray feature not providing additional filtered and disinfected water to the spray feature]	[30 minutes or less]
[Wave pools, Lazy rivers, Water rides]	[2 hours or less]
[Vortex pools, Plunge pools]	[1 hour or less]
[All other pools]	[6 hours or less]

~~[(c)] [Higher flow rates may be necessary in pools with skimmers so that each skimmer will have a minimum flow rate of thirty (30) gallons per minute.]~~

~~[(d)] [The pump shall be of sufficient capacity to provide a minimum backwash rate of fifteen (15) gallons per square foot of filter area per minute in sand filter systems.]~~

VOLUME 51, NUMBER 8– February 1, 2025

[(e)] [The pump or pumps shall supply the required recirculation rate of flow to obtain the turnover rate required at a total dynamic head of at least:]

[1.] [Fifty (50) feet for all vacuum filters;]

[2.] [Seventy (70) feet for pressure sand or cartridge filters; or]

[3.] [Eighty (80) feet for pressure diatomaceous earth filters and perlite filters.]

[(f)] [If the pump is located at an elevation higher than the facility water line, it shall be self-priming.]

[(g)] [If vacuum filters are used, a vacuum limit control shall be provided on the pump suction line. The vacuum limit switch shall be set for a maximum vacuum of eighteen (18) inches of mercury.]

[(h)] [A compound vacuum pressure gauge or vacuum gauge shall be installed on the suction side of the pump.]

[(i)] [A pressure gauge shall be installed on the pump discharge line adjacent to the pump.]

[(j)] [Valves shall be installed to allow the flow to be shut off during cleaning, switching baskets, or inspection of hair and lint strainers.]

[(k)] [A hair or lint strainer with openings no more than one-eighth (1/8) inch is required except for pumps that are used with vacuum filter systems.]

[(3)] [Water heaters shall be installed at all indoor swimming and bathing facilities, and shall comply with the following:]

[(a)] [A water heater piping system shall be equipped with a bypass. A valve shall be provided at the bypass and on the influent and effluent heater piping. The influent and effluent heater piping shall be metallic and installed in accordance with heater manufacturer's recommendations;]

[(b)] [A heating coil, pipe, or steam hose shall not be installed in any swimming and bathing facility;]

[(c)] [Thermometers shall be provided in the piping to check the temperature of the water returning from the facility and the temperature of the blended water returning to the facility;]

[(d)] [An automatic temperature limiting device with thermostatic control that prevents the introduction of water in excess of 100 degrees Fahrenheit to swimming and diving pools and in excess of 104 degrees Fahrenheit for spas shall be provided and shall be accessible only to the facility operator;]

[(e)] [A pressure relief valve shall be provided and shall be piped to within six (6) inches of the floor;]

[(f)] [Venting of gas or other fuel burning water heaters shall be provided in accordance with the State Building Code;]

[(g)] [Heaters for indoor swimming and diving pools shall be capable of maintaining an overall pool water temperature between seventy-six (76) degrees Fahrenheit and eighty-four (84) degrees Fahrenheit;]

[(h)] [Combustion and ventilation air shall be provided for fuel burning water heaters in accordance with manufacturer recommendations or the State Building Code;]

[(i)] [Heaters for indoor swimming and diving pools shall be sized on a basis of 150 British Thermal Units per hour input per square foot of pool water surface area; and]

[(j)] [All heaters shall meet the latest standards of applicable recognized testing agencies;]

[(4)] [A flow meter shall be:]

[(a)] [Located so that the rate of recirculation may be easily read;]

[(b)] [Installed on a straight length of pipe at a distance of at least ten (10) pipe diameters downstream, and five (5) pipe diameters upstream from any valve, elbow, or other source of turbulence, except for those specifically designed without separation parameters; and]

[(c)] [Installed on each recirculation system, spray pad feature, waterslide, any other type of spray feature, and on multiple filtration units.]

[(5)] [Vacuum cleaning system.]

[(a)] [A vacuum cleaning system shall be:]

[1.] [Provided for all facilities except beaches; and]

[2.] [Capable of reaching all parts of the facility bottom.]

[(b)] [A vacuum system that utilizes the attachment of a vacuum hose to the suction piping through the skimmer may be provided.]

[(c)]

[1.] [If the vacuum cleaning system is an integral part of the facility recirculation system, a wall fitting shall be provided:]

[a.] [Eight (8) to twelve (12) inches below the normal water level; and]

[b.] [With a cap or plug that is not removable by bathers.]

[2.] [Piping from this connection shall be:]

[a.] [To the suction side of the pump ahead of the hair and lint strainer;]

[b.] [At least one and one-half (1 1/2) inches in diameter; and]

[c.] [Equipped with a control valve near the junction with the pump suction line.]

[3.] [The size of the vacuum hose shall be at least one and one-half (1 1/2) inches in diameter and be of sufficient strength to prevent collapsing and allow adequate flow for proper cleaning.]

[(d)] [Automatic vacuum systems may be used to supplement the built-in vacuum system provided they are capable of removing all debris from the facility bottom.]

[(e)] [Vacuum systems shall only be used when the facility is closed to bathers;]

[(6)] [Piping, skimmer, and overflow system.]

[(a)] [Piping shall comply with the material specifications listed in the Kentucky State Plumbing Code for potable water.]

[(b)] [All piping, valves, and fittings shall be color coded, suitably labeled, or marked to denote its purpose within the facility water treatment system.]

[(c)] [The piping shall be designed to carry the required quantities of water at velocities not exceeding five (5) feet per second in suction piping and ten (10) feet per second in pressure piping.]

[(d)] [Gravity piping shall be sized so that the head loss in piping, fittings, and valves does not exceed the difference in water levels between the facility and the maximum operating level in the surge or filter tank.]

[(e)] [The following waste lines shall be provided with six (6) inch air gaps at their points of discharge to the waste pump or sewer:]

[1.] [Main outlet bypass or other connections to waste;]

[2.] [Surge tank drain and overflow lines;]

[3.] [Pump discharge to waste lines; and]

[4.] [Gutter bypass to waste lines.]

[(7)] [Inlets.]

[(a)] [Each inlet shall be directionally adjustable.]

[(b)] [The velocity of flow through any inlet orifice shall be in the range of five (5) to twenty (20) feet per second, except that facilities equipped with skimmers shall have a velocity of flow in the range of ten (10) to twenty (20) feet per second.]

[(c)] [Inlets shall be located and directed to produce uniform circulation of water to facilitate the maintenance of a uniform disinfectant residual throughout the entire facility without the existence of dead spots;]

[(d)] [Inlets in facilities with skimmers shall be twelve (12) inches below the midpoint on the skimmer throat.]

[(e)] [Inlets in facilities with a prefabricated perimeter overflow system shall be eight (8) inches or more below the lip of the gutter.]

[(f)] [Inlets shall be placed completely around the pool with each serving a linear distance of not more than fifteen (15) feet on center. The pipe serving the inlets shall form a loop completely around the pool.]

[(g)] [The number of inlets shall be determined by dividing the perimeter of the pool measured in feet, by fifteen (15). Any fraction thereof would represent one (1) additional inlet.]

[(h)] [Pools greater than forty-five (45) feet wide shall be equipped with floor inlets in a grid pattern located no more than seven and five-tenths (7.5) feet from a wall and no more than fifteen (15) feet apart. The grid shall form a continuous loop with no reduction in loop pipe sizing.]

[(i)] [A minimum of two (2) inlets is required on all pools, holding tanks, and bathing facilities, regardless of size.]

[(j)] [At least one (1) inlet shall be located in each recessed stairwell or other space where water circulation might be impaired.]

[(k)] [Prefabricated perimeter overflow systems shall be approved on a case-by-case basis by the cabinet.]

[(8)] [Outlets.]

VOLUME 51, NUMBER 8– February 1, 2025

[(a)] [All facilities, including holding tanks, shall be provided with a minimum of two (2) main outlets at the deepest horizontal point plumbed in parallel to permit the facility to be completely and easily drained;]

[(b)] [Openings and grates shall:]

[1.] [Conform to 15 U.S.C. 8003;]

[2.] [Be covered by a proper grating that is not removable by bathers;]

[3.] [Be at least four (4) times the area of the main outlet pipe;]

[4.] [Have sufficient area so that the maximum velocity of the water passing through the grate does not exceed one and one-half (1 1/2) feet per second at maximum flow; and]

[5.] [Have a maximum grate opening width of one-fourth (1/4) inch.]

[(c)] [Additional outlets shall be provided in all facilities where the width of the facility is more than sixty (60) feet. In these cases, outlets shall be spaced not more than thirty (30) feet apart, nor more than fifteen (15) feet from side walls, and shall be connected in parallel, not series;]

[(d)] [A hydrostatic relief valve may be provided for in-ground swimming and diving pools. Subsurface drainage, if provided, shall not be directly connected to a sanitary sewer.]

[(e)] [Main outlet piping shall be sized for water removal at a rate of at least 100 percent of the design recirculation flow rate and at velocities specified in subsection (6)(c) of this section. It shall function as a part of the recirculation system. The piping system shall be valved to permit adjustment of flow through it.]

[(9)] [Perimeter overflow systems:]

[(a)] [Swimming and bathing facilities with a water surface area greater than 1,600 square feet shall have a continuous perimeter overflow system.]

[(b)] [A perimeter overflow system shall:]

[1.] [Extend completely around the facility;]

[2.] [Permit inspection, cleaning, and repair;]

[3.] [Be designed so that no ponding or retention of water occurs within any portion of the system;]

[4.] [Be designed to prevent entrapment of bathers or the passage of small children into an enclosed chamber;]

[5.] [Have an overflow lip which is rounded, provides a good handhold, and is level within two tenths (0.2) inch;]

[6.] [Provide for the rapid removal of all water and debris skimmed from the pool's surface;]

[7.] [Be designed for removal of water from the pool's upper surface at a rate equal to 100 percent of the design turnover flow rate;]

[8.] [Discharge to the recirculation system;]

[9.] [Be provided with a minimum of two (2) outlet pipes that will not allow the overflow channel to become flooded when the facility is in normal use;]

[10.] [Require additional outlet pipes provided at one (1) per 150 lineal feet of perimeter overflow system or fraction thereof; and]

[11.] [Have drain gratings with surface area at least equal to two (2) times the area of the outlet pipe.]

[(10)] [All facilities that have perimeter overflow systems shall have a net surge capacity of at least one (1.0) gallon per square foot of water surface area. Surge capacity shall be provided either in a vacuum filter tank, surge tank, or a combination of these. Main drain piping shall terminate eighteen (18) inches above the surge tank floor and be equipped with a modulating valve and a positive shutoff valve. Surge capacity for a diatomaceous earth (DE) filter is measured eighteen (18) inches above the filter media and the bottom of the gutter pipe.]

[(11)] [Skimmers are permitted on facilities whose width does not exceed thirty (30) feet and whose water surface area is 1,600 square feet or less. If skimmers are used, the following shall be met:]

[(a)] [At least one (1) skimmer shall be provided for each 500 square feet of water surface area or fraction thereof with a minimum of two (2) skimmers provided, except for spas, holding tanks, or wading pools with a water surface area of 144 square feet or less, where a minimum of one (1) skimmer shall be required.]

[(b)] [Skimmers shall be located to minimize interference with each other.]

[(c)] [The rate of flow per skimmer shall not be less than thirty (30) gallons per minute, and all skimmers shall be capable of handling at least eighty (80) percent of required flow rate.]

[(d)] [Surface skimmer piping shall have a separate valve in the equipment room to permit adjustment of flow.]

[(e)] [Each skimmer shall be provided with an equalizer line at least one and one-half (1 1/2) inches in diameter, located at least one (1) foot below the lowest overflow level of the skimmer, and be provided with a self-closing valve and cover that conforms to 15 U.S.C. 8003.]

[(f)] [All overflow water shall pass through a basket that can be removed without the use of tools.]

[(g)] [All pools not equipped with a perimeter overflow system shall have a smoothly contoured handhold coping not over two and one-half (2 1/2) inches thick for the outer two (2) inches or an equivalent approved handhold. The handhold shall be no more than nine (9) inches above the normal water line.]

[(12)] [All facilities shall be equipped for the addition of make-up water from a potable water source pursuant to the following:]

[(a)] [Discharge through an air gap of at least six (6) inches to a surge tank or a vacuum filter tank. If make-up water is added directly to the facility, the fill spout shall be located under or immediately adjacent to a ladder rail, grab rail, or lifeguard platform. If added to a surge tank or vacuum filter tank, the six (6) inch air gap shall be measured above the top lip of the tank; and]

[(b)] [Through piping with vacuum breaker, antisiphon, or other protection as specified by the State Plumbing Code.]

[(13)] [Filtration:]

[(a)] [Filters shall comply with the following:]

[1.] [Pressure filters shall have:]

[a.] [Pressure gauges;]

[b.] [An observable free fall, or a sight glass installed on the backwash discharge line; and]

[c.] [A manual air relief valve at the high point;]

[2.] [The filter backwash disposal facility shall have sufficient capacity to prevent flooding during the backwash cycle;]

[3.] [All filters shall be designed so that they can be completely pumped. Filters shall be drained through a six (6) inch air gap to a pump or sanitary sewer; and]

[4.] [Filter media shall be listed as NSF approved.]

[(b)] [Each facility shall have separate filtration and treatment systems.]

[(c)] [Filter equipment and treatment systems shall operate continuously twenty-four (24) hours per day, except if the facility is closed for repairs or at the end of the swimming season.]

[(d)] [Rapid sand or gravity sand filters shall be designed for a filter rate not to exceed three (3) gallons per minute per square foot of bed area at time of maximum head loss with sufficient area to meet the design rate of flow required by the prescribed turnover.]

[(e)] [At least eighteen (18) inches of freeboard shall be provided between the upper surface of the filter media and the lowest portion of the pipes or drains that serve as overflows during backwashing.]

[(f)] [The filter system shall be designed with necessary valves and piping to permit filtering to the pool.]

[(g)] [High rate sand filters. The design filtration rate shall be a minimum of five (5) gallons per minute per square foot of filter area. The maximum design filtration rate shall be the lesser of fifteen (15) gallons per minute per square foot of filter area or seventy-five (75) percent of the NSF listed filtration rate. The backwash rate shall be fifteen (15) gallons per minute per square foot of filter area.]

[(h)] [Diatomaceous earth filters shall comply with the following requirements:]

[1.] [The design filtration rate shall not exceed one and one-half (1 1/2) gallons per minute per square foot of filter area on diatomaceous earth filters, except that the rate of filtration may be increased to two (2) gallons per minute per square foot of filter area if continuous feeding of diatomaceous earth is employed;]

[2.] [A precoat pot shall be provided on the pump suction line for pressure diatomaceous earth systems. All diatomaceous earth filter systems shall have piping arranged to allow recycling of the filter effluent during precoating;]

[3.] [If equipment is provided for the continuous feeding of diatomaceous earth to the filter influent, the equipment shall have a

capacity to feed at least one and one-half (1 1/2) ounces of this material per square foot of filter area per day;]

[4.] [Overflow piping on vacuum diatomaceous earth filters shall be provided on the filter tank to discharge overflow water;]

[5.] [All filters shall be equipped for cleaning by one (1) or more of the following methods:]

[a.] [Backwashing;]

[b.] [Air pump assist backwashing;]

[c.] [Spray wash;]

[d.] [Water pressure to wash vacuum filter; or]

[e.] [Agitation; and]

[6.] [Perlite may be used in filters listed by NSF for perlite, but it may not be substituted for diatomaceous earth without NSF listing.]

[(4)] [Vacuum sand filters shall comply with the following requirements:]

[1.] [The design filtration rate shall be seventy-five (75) percent of that listed by NSF or fifteen (15) gallons per minute, whichever is lesser. The backwash rate shall be at fifteen (15) gallons per minute per square foot of filter area; and]

[2.] [Overflow piping shall be provided in order to drain overflow water.]

[(j)] [Cartridge filters shall comply with the following requirements:]

[1.] [Cartridge filters shall not be used on facilities with a capacity larger than 80,000 gallons;]

[2.] [Cartridge filters shall only be used on indoor pools;]

[3.] [The design filtration rate shall not exceed fifteen hundredths (0.15) gallons per minute per square foot of filter surface area; and]

[4.] [A clean duplicate set of cartridges shall be maintained at the facility.]

[(14)] [Disinfectant and chemical feeders.]

[(a)] [The minimum chemical feed equipment required at any facility shall include a unit for feed of a disinfectant and a unit for feed of a chemical for pH control.]

[(b)] [Equipment capacity.]

[1.] [Equipment for supplying chlorine or compounds of chlorine shall be of sufficient capacity to feed the chlorine at a rate of:]

[a.] [Eight (8) ppm or two and seven-tenths (2.7) pounds per day chlorine gas or its equivalent for each 10,000 gallons of pool volume for outdoor facilities; or]

[b.] [Three (3) ppm or one (1) pound per day for chlorine gas or its equivalent for each 10,000 gallons of pool volume for indoor facilities based on the turnover rates specified in subsection (2)(b) of this section.]

[2.] [The equipment for supplying chlorine shall not be controlled by a day-date clock.]

[3.] [The injection point for chlorine shall be placed on the discharge side of the pump and downstream of the flow meter unless the chlorine injection point is located within the surge tank.]

[4.] [Pot feeders for supplying bromochlorodimethylhydantoin sticks shall contain at least five tenths (0.50) a pound of bromochlorodimethylhydantoin per thousand gallons of facility capacity, or fraction thereof. The feeder shall have a method of feed rate adjustment.]

[5.] [Supplemental NSF-listed ultraviolet (UV) light disinfection systems:]

[a.] [Shall be provided on all splash pads with a recirculating water system;]

[b.] [Shall be installed on a bypass line; and]

[c.] [Shall be equipped with a flow indicator; and]

[d.] [May be used on other facilities as supplemental disinfection.]

[6.] [Ozone may be used as a supplement to chlorination or bromination. Ozonation equipment will be considered by the cabinet on a case-by-case basis.]

[7.] [No more than one (1) gram per day of ozone per ten (10) gallons per minute of flow rate will be allowed. The ambient air ozone concentration shall be less than five hundredths (.05) ppm at all times either in the vicinity of the ozonator or at the pool water surface.]

[(e)] [If positive displacement pumps, or hypochlorinators, are used to inject the disinfectant solution into the recirculation line, they shall be of variable flow type and shall be of sufficient capacity to

feed the amount of disinfectant required by paragraph (b)1 of this subsection. If calcium hypochlorite is used, the concentration of calcium hypochlorite in the solution shall not exceed five (5) percent. The solution container shall have a minimum capacity equal to the volume of solution required per day at the feed rate required in paragraph (b)1 of this subsection.]

[(d)] [Gas chlorinators shall only be used in a pre-existing facility and shall comply with applicable sections of 29 C.F.R. 1910.119.]

[(e)] [pH control feeders. All facilities shall install a chemical feeder of positive displacement type for the purpose of applying chemicals to maintain pH of facility water within the range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). A solution tank of adequate capacity shall be provided.]

[(15)]

[(a)] [Testing equipment shall be provided at all swimming and bathing facilities, maintained with fresh reagents, and consist of a DPD (Diethyl P-Phenylene-Diamine) colorimetric test kit used to determine free disinfectant residual, combined disinfectant residual, total alkalinity, and pH of the facility water. Test kits using orthotolidine reagents shall not be acceptable.]

[(b)] [Test kits shall be used to determine the total residual chlorine either directly or by summation of free chlorine and combined chlorine test results. Chlorine standards shall range from one-tenth (0.1) to five (5.0) ppm.]

[(c)] [pH standards shall range from six and eight-tenths (6.8) to eight and four-tenths (8.4).]

[(d)] [Both tests shall be accurate to within two-tenths (0.2) units.]

[(e)] [Facilities using cyanurates for stabilization shall have a test kit to measure the cyanuric acid concentration. The cyanuric acid test kit shall permit readings up to 100 ppm.]

Section 8. [Section 9.] Operational Water Quality Standards.

(1) Disinfectant residuals for swimming and diving pools, holding tanks, wading pools, water slides, and wave pools:

(a) Chlorine residual shall be maintained between one (1) and five (5) ppm as free available chlorine.

(b) Bromine residual shall be maintained between two (2) and six (6) ppm as free available disinfectant.

(c) Pools stabilized with cyanuric acid shall meet the following criteria:

1. Be an outdoor facility;

2. Maintain one and five-tenths (1.5) to five (5) ppm free available chlorine residual; and

3. Cyanuric acid concentration not to exceed fifty (50) ppm.

(d) If the presence of chloramines is determined, superchlorination is required, and the chloramine level shall not exceed two-tenths (0.2) ppm.

(2) Disinfectant residuals for spas:

(a) Chlorine residual shall be maintained between two (2) [one (1)] and five (5) ppm as free available chlorine;

(b) Bromine residual shall be maintained between two (2) and six (6) ppm as free available disinfectant; and

(c) If the level of chloramines exceeds two-tenths (0.2) ppm, superchlorination is required. During the superchlorination process and until the time that free chlorine levels return to five (5) ppm or less, the facility shall be closed.

(3) The pH of the facility water shall be maintained in a range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). For corrosive water supplies, the alkalinity level shall be suitably adjusted to allow maintenance of the pH level.

(4) Turbidity. Facility water shall have sufficient clarity at all times so that:

(a) A black disc, six (6) inches in diameter, is readily visible if/when placed on a white field at the deepest point of the pool; and

(b) The openings of the main outlet grate are clearly visible by an observer on the deck.

(5) Total alkalinity. The alkalinity of the facility water shall not be less than fifty (50) nor more than 180 ppm, as determined by suitable test kits.

(6) Temperature.

(a) The water temperature for indoor swimming and bathing facilities other than spas shall not be less than seventy-six (76)

VOLUME 51, NUMBER 8— February 1, 2025

degrees Fahrenheit nor more than eighty-four (84) degrees Fahrenheit. The cabinet may allow variances from the above temperature limits for special use purposes as competition, physical therapy, or instruction of children. Variances may be approved if proof is presented showing that a variance from the temperature requirements is necessary for the special uses stated and that the variance shall/will not jeopardize public health.

(b) Air temperature at an indoor facility shall be higher than the water temperature, except for spas.

(c) Water temperatures for any facility including spas shall not exceed 104 degrees Fahrenheit.

(d) All facilities with heated water shall have at least one (1) break proof thermometer located within the facility water in a conspicuous location. The thermometer shall be securely mounted to prevent tampering by bathers.

(7) Testing Equipment.

(a) Testing equipment shall be provided at all swimming and bathing facilities, maintained with fresh reagents, and consist of a DPD (Diethyl-P-Phenylene-Diamine) colorimetric test kit used to determine free disinfectant residual, combined disinfectant residual, total alkalinity, and pH of the facility water. Test kits using orthotolidine reagents shall be prohibited.

(b) Test kits shall be used to determine the total residual chlorine either directly or by summation of free chlorine and combined chlorine test results. Chlorine standards shall range from one-tenth (0.1) to five (5.0) ppm.

(c) pH standards shall range from six and eight-tenths (6.8) to eight and four-tenths (8.4).

(d) Both tests shall be accurate to within two-tenths (0.2) units.

(e) Facilities using cyanurates for stabilization shall have a test kit to measure the cyanuric acid concentration. The cyanuric acid test kit shall permit readings up to 100 ppm.

(8) The facility operator shall perform tests for each of the above water quality characteristics before opening and during all hours of operation based on the frequency schedule listed in paragraphs (a) through (c) of this subsection below, and record all test results on a daily operational log sheet:

(a) Disinfectant residual, temperature, and pH shall be checked at least three (3) times daily with a greater frequency if bather load or climatic conditions warrant.

(b) Turbidity shall be checked daily, or more often as needed.

(c) The following shall be checked weekly, or more often as needed:

1. Alkalinity; and
2. Cyanuric acid, if used.

~~(9)~~ All spas shall be completely drained, thoroughly cleaned, and refilled with potable water at least once per week. Cleaners used shall be compatible with facility wall and bottom finishes.

Section 9. ~~Section 10.~~ General Facility Operation and Maintenance.

(1) All facilities shall be maintained:

- (a) Free from sediment and debris; and
- (b) In good repair.

(2) Decks shall be kept clean. Indoor decks shall be disinfected at least weekly.

(3) Perimeter overflow and skimmers. The perimeter overflow system or automatic surface skimmers shall be clean and free of leaves or other debris. The strainer baskets for skimmers shall be cleaned daily. The flow through each skimmer shall be adjusted as often as necessary to maintain a vigorous skimming action. The facility water shall be maintained at an elevation so that effective surface skimming is accomplished. The flow returning from the facility shall be balanced or valved so that the majority of flow is returned through the perimeter overflow or skimmer system.

(4) Inlet fittings. Inlets shall be checked frequently to ensure that the rate of flow through each inlet is correct so that a uniform distribution pattern is established.

(5) Bather preparation facilities.

(a) The floors of dressing rooms, shower stalls, and other interior rooms shall be cleaned and disinfected daily.

(b) Toilet rooms and fixtures shall be kept clean, free of dirt and debris, and in good repair.

(c) Floors shall be maintained in a nonslip condition.

(d) Soap dispensers shall be filled and operable.

(e) Adequate supplies of toilet tissue, disposable hand drying towels, or suitable hand drying devices shall be maintained.

(6) Street attire. Street shoes shall not be worn on the facility decks or wet areas of the bather preparation facilities, except for those persons engaged in official duties.

(7) Safety.

All public swimming and bathing facility enclosures shall meet the specifications of Department of Housing, Buildings and Construction. Doors or gates in the facility enclosure shall be kept closed and locked if the facility is closed.

Facility enclosures shall not be required for splash pads.

(8) Electrical systems. Repairs to any electrical system shall be made by an electrician. All repairs shall be in accordance with the National Electrical Code and shall be approved by a certified electrical inspector.

(9) Diving equipment, ladders, hand rails, and other similar equipment, shall be maintained in good repair, be securely anchored, and have a nonslip surface.

(10) Operation of mechanical equipment.

(a) Manufacturers' instructions for operation and maintenance of mechanical and electrical equipment, as well as pump performance curves, shall be kept available at the facility.

(b) Pumps, filters, disinfectant feeders, pH controls, flow indicators, gauges, and all related components of the facility water recirculation system shall be kept in continuous operation twenty-four (24) hours a day.

(c) Recirculation pumps. The pump shall not be throttled on the suction side during normal operation, except for the main drain ~~bottom drain valve~~, and shall be kept in good repair and condition. The flow control valve on the discharge side shall be adjusted as necessary to maintain the design flow rate.

(11) Filtration.

(a) Sand filters.

1. The filter air release valve shall be opened, as necessary, to remove air which collects in the filter and following each backwash.

2. The filter shall be backwashed if the design flow rate can no longer be achieved, or as specified by the filter manufacturer, whichever occurs first.

(b) Diatomaceous earth filters.

1. The dosage of diatomaceous earth precoat shall be at least one and one-half (1 1/2) ounces per square foot of element surface area. Pressure diatomaceous earth filters shall be backwashed if the design flow rate can no longer be achieved or as specified by the filter manufacturer, whichever occurs first. If the recirculation pump stops or is shut off, the filter shall be thoroughly backwashed and the elements shall be precoated before placing the pump back into operation. Vacuum diatomaceous earth filters shall be washed if the design flow rate can no longer be achieved or as specified by the filter manufacturer, whichever occurs first;

2. Following the precoating operation, the initial filter effluent shall be either recirculated through the filter until the filter effluent is clear, or the initial filter effluent shall be discharged to waste until properly clarified water is produced; and

3. If continuous diatomaceous earth feed is required (filter loading rate exceeds one and five-tenths (1.5) gallons per minute per square foot of filter surface area), it shall be applied at a rate of one-half (1/2) to one and one-half (1 1/2) ounces per square foot of surface area per day, or as needed to extend filter cycles.

(12) Hair and lint strainers. Hair and lint strainers shall be cleaned to prevent clogging of the suction line and cavitation. The pump shall be stopped before the strainer is opened. In all cases, the hair strainer basket shall be cleaned during the time the filter is being backwashed.

(13) Flow meters. Flow meters shall be maintained in an accurate operating condition and readily accessible. The glass and the connecting tubes shall be kept clean.

(14) Vacuum and pressure gauges. The lines leading to the gauges shall be bled occasionally to prevent blockage.

(15) Positive displacement feeders.

VOLUME 51, NUMBER 8— February 1, 2025

(a) Positive displacement feeders shall be periodically inspected and serviced;

(b) To minimize sludge accumulation in the unit, the lowest practicable concentration of solution shall be used. If liquid chlorine solution is used, the dilution with water is not critical to the operation of the unit; and

(c) Sludge accumulations shall be cleaned periodically from the unit.

(16) Chlorinated cyanurates. The use of chlorinated cyanurates shall be prohibited.

(17) pH adjustment.

(a) Soda ash or caustic soda may be used to raise the facility water pH.

(b) Caustic soda shall only be used in accordance with the manufacturer's instructions. If caustic soda is intended for use, the cabinet shall be notified in writing. Protective equipment and clothing, including rubber gloves and goggles, shall be available for the handling and use of this chemical.

(c) Sodium bisulfate or muriatic acid may be used to lower pool water pH.

(d) Hydrochloric (muriatic) acid may only be used with proper supervision and care. Protective equipment and clothing, including rubber gloves and goggles, shall be available for handling this chemical.

(e) The cabinet shall be consulted if there are unusual pH problems including corrosion, scaling, or wide fluctuations in pH.

(18) Algae control.

(a) The development of algae shall be eliminated by superchlorinating. The facility shall not be open for use during this treatment. If superchlorination fails to eliminate the algae, the cabinet shall be consulted for further advice.

(b) Treated algae which cling to the bottom and sides of the facility shall be brushed loose and removed by the suction cleaner and filtration system.

(19) Miscellaneous chemicals.

(a) Chemicals other than approved disinfectants shall be used only with the advice and under the supervision of the cabinet.

(b) Chemicals shall be kept covered and stored in the original container, away from flammables and heat, and in a clean, dry, and well-ventilated place that prevents unauthorized access to the chemicals.

(c) The chemicals used in controlling the quality of water shall be used only in accordance with the manufacturer's instructions.

(d) If polyphosphates are used for sequestering iron, the concentration of polyphosphates shall not exceed ten (10) ppm.

(20) Equipment rooms shall comply with the following requirements:

(a) Equipment necessary for facility operation shall be housed in a lighted, ventilated room that affords protection from the weather and prevents unauthorized access.

(b) [; has ceilings of at least seven (7) feet in height, and is of sufficient size for operation and inspection;]

[(b)] [The equipment room floor shall slope toward drains and shall have a nonslip finish;]

[(c)] [A hose bib with a vacuum breaker shall be installed in the equipment room;]

[(d)] Suitable space, if not provided in the equipment room, shall be provided for storage of chemicals, tools, equipment, supplies, and records where they ~~may~~ can be acquired by the facility operator without leaving the premises. The storage space shall be dry and protected from unauthorized access. [; and]

[(e)] The equipment room and all other storage areas shall be maintained in a clean, uncluttered condition, and shall not be used for storage of materials not essential to operation and maintenance of the facility.

[(21)] [Maintenance of bathing beaches.]

[(a)] [Beach areas shall be maintained free of litter and water borne debris. Beverage containers of glass or metal containers with detachable pull tabs shall be prohibited.]

[(b)] [A layer of sand or gravel of sufficient depth to prevent the creation of mud holes or slicks and to reduce shallow water turbidity shall be maintained on all beach areas and shall extend beneath the water of all wading and swimming areas.]

[(c)] [Wading, swimming, and diving areas shall be examined by the facility operator on a routine basis and immediately after high water conditions for floating or sunken debris, obstructions at diving areas, and high water turbidity, which may present safety hazards to bathers.]

Section 10. [Section 11.] Facility Records.

(1) The operator of each facility shall keep a daily record of information regarding operation of the facility on the DFS-352, Swimming Pool Log Sheet. This data shall be kept on file by the operator and submitted to the cabinet as requested. Proper operating records shall be kept showing daily or weekly results, as applicable, for:

(a) Disinfectant residuals;

(b) pH readings, total alkalinity, cyanuric acid level, if applicable; and

(c) Equipment malfunctions.

(2) If two (2) or more facilities are operated on the same site, separate records shall be maintained for each facility.

Section 11. [Section 12.] Safety. [Personnel.]

(1) Operator. A facility operator shall be responsible for the operation and maintenance of all swimming and bathing facilities. The operator shall be available at all times ~~if~~ when the facility is open for use.

(2) Lifeguards shall comply with the requirements set forth in 902 KAR 10:125 Section 2.

(3) Safety equipment shall comply with the requirements set forth in 902 KAR 10:125 Section 3. [Lifeguards.]

[(a)] [Lifeguards shall be on duty at a facility that has 2,000 square feet or greater of water surface area at a rate of one (1) per 2,000 square feet or fraction thereof.]

[(b)] [Lifeguards shall be provided at all facilities, regardless of water surface area, that allow bathers seventeen (17) years of age or under to enter the facility area without a responsible adult present at a rate of one (1) lifeguard per 2,000 square feet of water surface area or fraction thereof.]

[(c)] [All facilities that are not required to provide lifeguards shall post and enforce the following rules at all entrance points: "No Lifeguard on Duty" and "No person may enter the facility area alone or swim alone."]

[(d)] [Additional lifeguards shall be provided if necessary depending on bather load, bather activities, size, and configuration of the facility, and the amount of surface area for shallow and deep water areas, emergencies, and the lifeguard's ability to see bathers.]

[(e)] [A facility may submit an alternative lifeguard staffing plan that:]

[1.] [Has been certified by an independent third-party compliance specialist;]

[2.] [Designates the number of lifeguards necessary to ensure each lifeguard is capable of viewing the entire area of the assigned zone of patron surveillance; and]

[3.] [Ensures the lifeguard is able to reach the furthest extent of the assigned zone of patron surveillance within twenty (20) seconds.]

[(f)] [The alternative lifeguard staffing plan shall be:]

[1.] [On file with the Public Safety Branch within the Department for Public Health;]

[2.] [Submitted to the local health department of jurisdiction; and]

[3.] [Resubmitted if there is a change in;]

[a.] [The shape or size of the swimming pool;]

[b.] [The surrounding areas that would obstruct the lifeguard's view of the bottom of the pool; or]

[c.] [Ownership of the facility.]

[(g)] [Lifeguards shall be provided at all bathing beaches that allow bathers seventeen (17) years of age or younger without a responsible adult at a rate of one (1) per 100 linear feet of beach front or a fraction thereof. Bathing beaches that do not provide lifeguards shall post the following warnings: "No lifeguard on duty. Swim at your own risk. No person seventeen (17) years of age or younger may swim without a responsible adult present."]

[(h)] [A bathing beach that has an inflatable water attraction shall have a minimum of one (1) lifeguard per attraction, with additional

VOLUME 51, NUMBER 8– February 1, 2025

lifeguards provided to ensure all areas surrounding the attraction are clearly visible at all times.]

[(3)] [Lifeguards shall comply with the following:]

[(a)] [Lifeguards shall have a current lifesaving certificate. Current training as a lifesaver or water safety instructor by the American Red Cross or equivalent shall satisfy this requirement. The certificate of competency shall be prominently posted:]

[(b)] [Lifeguards shall be dressed in swimming attire; and]

[(c)] [Lifeguards assigned to the supervision of the facility shall not be subject to duties that would:]

[1.] [Distract their attention from proper observation of persons in the facility area; or]

[2.] [Prevent immediate assistance to persons in distress in the water.]

[Section 13.] [Safety Equipment.]

[(1)] [Facilities requiring lifeguards shall have a minimum of one (1) elevated lifeguard chair per on-duty lifeguard. A lifeguard chair shall be provided for each 2,000 square feet of water surface area or major fraction more than half thereof. They shall be located to provide a clear view of the facility bottom in the area under surveillance.]

[(2)] [Beaches requiring lifeguards shall provide an elevated lifeguard chair for each 100 linear feet of beach front, with an additional lifeguard chair for each additional 100 linear feet of beach front or fraction thereof. The chairs shall be located on the beach to provide a clear view of all areas under surveillance and to provide the quickest response time.]

[(3)] [One (1) unit consisting of the following lifesaving equipment shall be provided for 2,000 square feet of water surface area and an additional unit for each additional 2,000 square feet or fraction thereof:]

[(a)] [A U.S. Coast Guard approved ring buoy no more than fifteen (15) inches in diameter with a three-sixteenths (3/16) inch rope attached that measures one and one-half (1 1/2) times the maximum pool width:]

[(b)] [Rescue tubes may be used when lifeguards are present;]

[(c)] [A shepherd's hook securely attached to a one (1) piece pole not less than twelve (12) feet in length; and]

[(d)] [One (1) backboard with head immobilizer and at least three (3) straps, for back and neck injuries.]

[(4)] [Facilities limited to small spas, with less than 144 square feet of water surface area, shall not be required to provide the equipment listed in subsection (3) of this section, but shall meet the requirements of subsections (7), (10), and (11) of this section.]

[(5)] [In addition to subsection (3) of this section, a beach shall provide the following lifesaving equipment:]

[(a)] [Paddle board or surfboard;]

[(b)] [At least one (1) lifeboat and one (1) unit of lifesaving equipment; and]

[(c)] [A torpedo shaped buoy.]

[(6)] [All facilities shall be equipped with a minimum of one (1) standard twenty-four (24) unit first aid kit or its equivalent that is kept filled and ready for use. Additional units shall be provided for each additional 2,000 square feet of facility area or major fraction thereof.]

[(7)] [Lifesaving equipment shall be mounted in conspicuous places at lifeguard chairs or other readily accessible locations. Its function shall be plainly marked, and this equipment shall be kept in repair and ready condition. Bathers or other persons shall not be permitted to tamper with, use for any purpose other than its intended use, or remove this equipment from its established location. This equipment at beaches shall be centrally located in a conspicuous place that is readily accessible, with the lifeboat required by subsection (5)(b) of this section being located in the most central location.]

[(8)] [The hydrojet auxiliary air or water pump for a spa shall be controlled by an on-off switch with a fifteen (15) minute timer located and labeled at least five (5) feet away from the spa:]

[(9)] [All facilities shall provide an emergency automatic pump shut off located adjacent to the telephone.]

[(10)]

[(a)] [All facilities shall have a non-pay landline telephone, continuously connected to a power source and operational at all times, capable of direct dialing 911 without going through a switchboard located on the deck that is readily accessible and conspicuously located. A cordless telephone shall be prohibited.]

[(b)] [A two (2) way radio communication system to a manned telephone system may be substituted at an isolated beach facility.]

[(c)] [The address of the facility and the telephone number of the police department, fire department, emergency medical service, or a hospital shall be posted in a conspicuous place near the telephone.]

[(11)] [All drownings and injuries requiring hospitalization shall be immediately reported to the local health department and the Department for Public Health.]

[(12)]

[(a)] [A facility submitting an alternative lifeguard staffing plan pursuant to Section 12(2)(e) of this administrative regulation may submit a request for a variance to the safety equipment requirements of this section to the Environmental Management Branch in the Department for Public Health.]

[(b)] [The variance requested shall not affect the safe and healthful operation of the facility.]

[(c)] [Before granting a variance, the cabinet shall require adequate proof from the applicant that the requested variance will comply with the basic intent of this section and that no safety or health hazard would be created if the variance is granted.]

Section 12.[Section 14.] Spectator and Bather Administrative Regulations.

(1) Management of each facility shall adopt rules for controlling of food, drink, and smoking in the facility and surrounding areas.

(2) Rules governing the use of the facility and instructions to bathers shall be displayed on placards at the entrance to dressing rooms and enforced by the facility operator. Posting of rules and other instructions shall provide that:

(a) Admission to the facility shall be refused to a person:

1. Having any contagious disease or infectious conditions, such as colds, fever, ringworm, foot infections, skin lesions, carbuncles, boils, inflamed eyes, ear discharges, or any other condition that has the appearance of being infectious;

2. Having excessive sunburn, abrasions that have not healed, corn plasters, bunion pads, adhesive tape, rubber bandages, or other bandages of any kind; and

3. Under the influence of alcohol, illegal substances, or exhibiting erratic behavior;

(b) Food, drink, gum, tobacco, or vapor producing products shall not be allowed, other than in specially designated and controlled sections of the facility area;

(c) Personal conduct within the facility shall **ensure**[~~assure~~] that the safety of self and others is not jeopardized;

(d) Running and boisterous or rough play shall not be permitted, except for supervised water sports;

(e) Spitting, spouting of water, blowing the nose, or otherwise introducing contaminants into the facility water shall not be permitted;

(f) Glass, soap, or other material that creates hazardous conditions or interferes with efficient operation of the facility shall not be permitted in the facility or on the deck;

(g) All apparel worn in the facility shall be clean;

(h) Diving in shallow water shall not be permitted;

(i) Caution shall be exercised in the use of diving boards; and

(j) Service animals may be allowed in the deck area, but shall be excluded from the water.

(3) Due to the nature of splash pads, animals shall be excluded from the splash pad and deck area[bathing beaches, subsection (2)(c), and (f) of this section shall not apply].

(4) In addition to the requirements of subsection (2) of this section, a caution sign shall be mounted adjacent to all spas and contain the following warnings:

VOLUME 51, NUMBER 8– February 1, 2025

"CAUTION
Pregnant women, elderly persons, and persons suffering from any heart condition or disease, diabetes, or high or low blood pressure shall should not enter the spa without prior medical consultation and permission from their doctor.
Do not use the spa while under the influence of alcohol, tranquilizers, or other drugs that cause drowsiness, or that raise or lower blood pressure.
Do not use at water temperatures greater than 104 degrees Fahrenheit.
Do not use alone.
Unsupervised use by children is prohibited.
Enter and exit slowly.
Observe reasonable time limits (that is, ten (10) to fifteen (15) minutes), then leave the water and cool down before returning for another brief stay.
Long exposure may result in nausea, dizziness, fainting, or death.
Keep all breakable objects out of the area.
Shower before entering the spa."

(5) A sign shall be posted in the immediate vicinity of the spa stating the location of the nearest telephone and indicating that emergency telephone numbers are posted at that location.

Section 13.~~[Section 15.]~~ Swimming Suits and Towels Furnished by Management. All swimming suits and towels used by swimmers and maintained for public use shall be cleaned after each use. These items shall be handled in a sanitary manner.

Section 14.~~[Section 16.]~~ Facility Inspection.

(1) Seasonal facilities.

(a) All owners or operators of seasonal facilities, prior to opening to the public, shall certify to the cabinet, in writing, that the facility is in compliance with the requirements of this administrative regulation, except ~~if in instances where~~ the cabinet has made an inspection prior to its opening. For seasonal facilities, the cabinet shall make at least two (2) full facility inspections during the operating season. The cabinet may require one (1) of the full facility inspections to be performed prior to a facility's opening.

(b) The facility owner or operator shall be responsible for notifying the cabinet of the proposed opening date.

(2) Continuous operation indoor facilities shall receive a full facility inspection by the cabinet at least once each six (6) months.

(3) ~~Facilities~~~~[New facilities shall receive final construction approval inspections by the cabinet, and other affected state and local regulatory agencies, prior to placing the facility in operation. It shall be the owner or operator's responsibility to notify the cabinet and other involved agencies of construction completion and call for inspection.]~~

~~[(4)]~~ ~~[Facilities other than beaches]~~ shall be inspected at a minimum of once each thirty (30) day period by the cabinet on a monitoring basis. The monitoring inspection shall consist of:

- (a) Disinfectant residual testing and combined disinfectant in ppm;
- (b) pH testing;
- (c) Total alkalinity testing;
- (d) Cyanuric acid testing, if cyanuric acid stabilizers are used;
- (e) Turbidity assessment;
- (f) Temperature testing, if heated water facility;
- (g) Review of operator's daily log;
- (h) Visual scanning for algae or debris; and
- (i) Other checks as necessary.

~~[(4)]~~~~[(5)]~~ ~~[Beaches shall be monitored once each month or anytime immediately after periods of heavy rainfall. Monitoring inspections for beaches shall include general sanitation, bacteriological water sampling, and safety checks as necessary.]~~

~~[(6)]~~ The cabinet may make as many additional inspections and reinspections as necessary for the enforcement of this administrative regulation.

~~[(5)]~~~~[(7)]~~ ~~[If When]~~ an agent of the cabinet makes an inspection of a public swimming and bathing facility, the findings shall be recorded

on the DFS-349, Public Swimming and Bathing Facilities Inspection Report~~[-or DFS-350, Public Swimming and Bathing Facilities Beach Inspection Report,]~~ and a copy provided to the facility owner or operator. The inspection report shall:

- (a) Set forth any violation observed;
- (b) Establish a specific and reasonable period of time for the correction of the violation observed; and
- (c) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in closure of the facility.

Section 15.~~[Section 17.]~~ Water Sampling and Testing.

(1) A water sample may be collected from facilities if inspections or monitoring indicates water quality standards are not being maintained, or there is a suspected water borne disease outbreak. These samples shall be submitted to the Division of Laboratory Services in an approved container and by approved sampling procedures for analysis.

(2) Samples shall be collected and analyzed for any of the following or other contaminants:

- (a) Total coliform;
- (b) E. coli; and
- (c) Pseudomonad organisms.

~~(3) [Multiple samples shall be collected at beaches to assure adequate representation of the entire facility water area.]~~

~~[(4)]~~ If a sample tests positive for a contaminant, the test shall be repeated within one (1) to seven (7) days.

~~[(4)]~~~~[(5)]~~ For a facility~~[other than a bathing beach]~~, no more than two (2) consecutive samples shall be positive for:

- (a) More than two (2) coliform organisms per 100 milliliter (mL);
- (b) Pseudomonas organisms; or
- (c) E. coli.

~~[(5)]~~~~[(6)]~~ ~~[Beaches shall comply with the requirements of Section 4 of this administrative regulation prior to opening for the season and during the operating season.]~~

~~[(7)]~~ Additional samples may be requested to ensure compliance with this administrative regulation.

Section 16.~~[Section 18.]~~ Bacteriological Quality of Facility Water.

~~[(4)]~~ ~~[For facilities other than beaches,]~~ No more than two (2) consecutive samples shall:

- ~~(1)~~~~[(a)]~~ Contain more than 200 bacteria per mL;
- ~~(2)~~~~[(b)]~~ Have a positive confirmatory test for coliform organisms in any of the five (5) ten (10) mL portions of a sample or more than two (2) coliform organisms per 100 mL ~~if when~~ the membrane filter test is used;
- ~~(3)~~~~[(c)]~~ Have a positive confirmatory test for pseudomonas organisms; or
- ~~(4)~~~~[(d)]~~ Have a positive test for fecal coliform organisms.

~~[(2)]~~ ~~[Beaches shall comply with the standards established in Section 4(3)(a) of this administrative regulation.]~~

Section 17.~~[Section 19.]~~ Conditions requiring Closure of a Facility and Enforcement Provisions.

(1) The cabinet shall immediately order the closure of a facility and prohibit any person from using the facility by written notice to the facility owner or operator if:

- (a) There is an immediate danger to health or safety;
- (b) **There are** violations of the Virginia **Graeme Graham** Baker **Pool and Spa Safety Act, 15 U.S.C. 8001 et seq.;**

(c) The water does not conform to the bacteriological standards contained in this administrative regulation;

(d) ~~[An environmental survey of the area shows evidence of sewage, other pollutants, or toxic materials being discharged to waters tributary to a beach;]~~

~~[(e)]~~ Turbidity levels of facility water do not meet the requirements of Section ~~8~~~~9~~(4) of this administrative regulation;

~~[(e)]~~~~[(f)]~~ The disinfectant residual is outside the range prescribed in this administrative regulation;

~~[(f)]~~~~[(g)]~~ The pH is outside the range prescribed by this administrative regulation;

~~[(g)]~~~~[(h)]~~ The cyanuric acid level exceeds fifty (50) ppm;

~~[(h)]~~~~[(i)]~~ There is no pool operator available;

~~[(i)]~~~~[(j)]~~ There has been a fecal accident in the pool;

VOLUME 51, NUMBER 8– February 1, 2025

~~(i)(k)~~ The owner, operator, an employee, or representative of the owner interferes with duly authorized agents of the cabinet who bear proper identification, in the performance of their duties;

~~(k)(h)~~ If recirculation systems, filtration systems, or disinfectant systems are not in operation, with exceptions for maintenance and seasonal shut down, **or replaced without prior approval**; or

~~(l)(m)~~ If serious or repeated violations of any of the requirements of **902 KAR 10:120 or 902 KAR 10:125**~~[the administrative regulations]~~ are found.

(2) The notice shall state the reasons prompting the closing of the facility, and a copy of the notice shall be posted conspicuously at the facility by the owner or operator.

(3) Any owner or operator affected by an order may request an administrative conference in accordance with 902 KAR 1:400.

(4) If the conditions rendering closure are abated or further analyses prove to not render closure, the cabinet may authorize reopening the facility.

~~(5) [If a source of sewage, pollution, or toxic material discovered as a result of an environmental survey is eliminated, the cabinet may authorize the reopening of a beach.]~~

~~(6)~~ In all other instances of a violation of the provisions of this administrative regulation~~[- or 902 KAR 10:121 for the nonpayment of fees,]~~ the cabinet shall serve upon the owner or operator a written notice specifying the violation in question and afford a reasonable opportunity to correct the violation. An owner or operator who fails to comply with any written notice issued under the provisions of this administrative regulation ~~[or 902 KAR 10:121]~~ shall be notified in writing that the facility shall be closed at the end of ten (10) days following service of the notice, unless a written request for a conference pursuant to 902 KAR 1:400 is filed with the cabinet by the owner or operator within the ten (10) day period.

~~(6)(7)~~ All administrative hearings shall be conducted in accordance with KRS Chapter 13B.

~~(7)(8)~~ Any person whose facility has been closed may, at any time, make application for a reinspection for the purpose of reopening the facility. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his or her opinion the conditions causing closure of the facility have been corrected, the cabinet shall make a reinspection. If the facility is found to be in compliance with the requirements of this administrative regulation, the facility shall be reopened.

~~(8)(9)~~

(a) For serious or repeated violations of any of the requirements of this administrative regulation, or for interference with the agents of the cabinet in the performance of their duties, the facility may be permanently closed after an opportunity for a conference has been provided in accordance with 902 KAR 1:400.

(b) Prior to the action, the cabinet shall notify the owner or operator, in writing, stating the reasons for which the facility is subject to closure and advising that the facility shall be permanently closed at the end of ten (10) days following service of the notice unless a request for a conference is filed with the cabinet by the owner or operator, within the ten (10) day period.

~~Section 18.~~~~[Section 20.]~~ Existing Facilities and Equipment.

~~(1)~~ Existing facilities and equipment being used prior to the effective date of this administrative regulation~~[August 1, 1996,]~~ that do not fully meet the design, construction, and materials requirements of this administrative regulation, may continue to be used if the facilities and equipment:

~~(1)(a)~~ Are in good repair;

~~(2)(b)~~ Are capable of being maintained in a sanitary condition;

~~(3)(c)~~ Meet facility water quality standards; and

~~(4)(d)~~ Create no health or safety hazard.

~~(2)~~ ~~[If existing equipment, components, piping, or fittings involved in the facility water treatment system are replaced to effect repairs, the replacement equipment, components, piping, or fittings shall meet the requirements of this administrative regulation. If replacement occurs, it shall be the owner's or operator's responsibility to notify the cabinet as to what was replaced and what was used for a replacement.]~~

~~Section 19.~~~~[Section 24.]~~ Effect on Local Administrative Regulations. Compliance with this administrative regulation shall not

relieve any person from compliance with any other state or local laws dealing with pool operation and maintenance matters or zoning requirements that may also be applicable.

~~[Section 22.]~~ ~~[Variances for Construction Requirements.]~~

~~(1)~~ ~~[All facilities shall be constructed or remodeled in compliance with the provisions of this administrative regulation, except that an applicant may request a variance if the cabinet determines that the variance would not affect seriously the safe and healthful operation of the facility.]~~

~~(2)~~ ~~[Before granting a variance, the cabinet shall require proof from the applicant documenting that the requested variance will comply with the basic intent of these administrative regulations and that no safety or health hazard would be created if the variance is granted.]~~

~~Section 20.~~~~[Section 23.]~~ Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) "DFS-349, Public Swimming and Bathing Facilities Inspection Report", ~~12/2024~~~~11/2024~~~~[3/2024]~~; and

(b) ~~5/2024;~~

~~(b)~~ ~~["DFS-350 Public Swimming and Bathing Facilities Beach Inspection Report", 5/2021; and]~~

~~(c)~~ ~~["DFS-352 Swimming Pool Log Sheet", 5/2021.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Public Health Protection and Safety, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. and online at <https://chfs.ky.gov/agencies/dph/dphps/emb/Pages/pools.aspx>.

FILED WITH LRC: January 13, 2025

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

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (As Amended at ARRS, January 13, 2025)

902 KAR 10:122. Repeal of 902 KAR 10:121 and 902 KAR 10:190.

RELATES TO: KRS 211.180

STATUTORY AUTHORITY: KRS 13A.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 13A.310

allows a promulgating agency to repeal an existing administrative regulation. This administrative regulation repeals 902 KAR 10:121 as the fees for plan review, annual permitting and inspection of public swimming and bathing facilities, including bathing beaches, have been **relocated**~~[incorporated]~~ into **902 KAR 10:120, 902 KAR 10:123, and 902 KAR 10:127**~~[new subject matter related administrative regulations]~~. This administrative regulation repeals 902 KAR 10:190 as the requirements for splash pads have been **relocated**~~[incorporated]~~ into **902 KAR 10:120 and 902 KAR 10:123**~~[other administrative regulations]~~.

Section 1. The following administrative regulations are hereby repealed:

(1) 902 KAR 10:121, Plan review, annual permitting, and inspection fees for public swimming and bathing facilities, including splash pads operated by local governments; and

(2) 902 KAR 10:190, Splash pads operated by local governments.

FILED WITH LRC: January 13, 2025

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, January 13, 2025)

902 KAR 10:123. Kentucky public swimming and bathing facilities construction requirements.

RELATES TO: KRS 211.015, 211.090, 211.205, 211.210, 211.220, 211.990(2), 29 C.F.R. 1910.119, 15 U.S.C. 8003
 STATUTORY AUTHORITY: KRS 194A.050, 211.180
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires[authorizes] the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.180 requires[authorizes] the cabinet to adopt administrative regulations relating to public facilities and their operation and maintenance in a safe and sanitary manner to protect public health and prevent health hazards. This administrative regulation establishes uniform standards for construction of public swimming pools and bathing facilities.

Section 1. Definitions.

- (1) "Accessible" means having access to a fixture, connection, appliance or equipment, even if it is necessary to remove an access panel, door, or similar obstruction.
- (2) "Agitation" means the mechanical or manual movement to dislodge the filter aid and dirt from the filter element.
- (3) "Air gap" means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet conveying water or waste to a tank, plumbing fixture, receptor, or other device, and the flood level rim of the receptacle.
- (4) "Approved" means that which is acceptable to the cabinet.
- (5) "Backwash" means the flow of water through the filter element or media in the reverse direction sufficient to dislodge the accumulated dirt and filter aid and remove them from the filter tank.
- (6) "Backwash cycle" means the time required to backwash the filter system thoroughly.
- (7) "Backwash rate" means the rate of application of water through a filter during the backwash cycle expressed in gallons per minute per square foot of effective filter area.
- (8) "Bather" means a person using a public swimming and bathing facility.
- (9) "Cabinet" is defined by KRS 211.015(1)(a).
- (10) "Cartridge filter" means a filter that utilizes a porous cartridge as its filter media.
- (11) "Diatomaceous earth (DE) filter" means a filter that utilizes a thin layer of diatomaceous earth as its filter media that will need to be periodically replaced.
- (12) "Disinfectant" means an approved chemical compound designed for the destruction of pathogenic organisms in bathing facilities and includes chlorine and bromine.
- (13) "Equalizer line" means the connection from the skimmer housing to the pool, spa, or hot tub below the weir box that, which:
 - (a) Is sized to satisfy pump demand and prevent air lock or loss of prime; and
 - (b) Contains a float valve assembly and pop-up valve.
- (14) "Facility operator" means a person or employee of that person who is responsible for the proper operation and maintenance of the facility.
- (15) "Filter" means a device that separates solid particles from water by recirculating it through a porous substance.
- (16) "Filtration rate" means the rate of water flow through a filter while in operation.
- (17) "Flow meter" means a device that measures the flow of water through piping.
- (18) "Head loss" means the total pressure drop between the inlet and the outlet of a component.
- (19) "Holding tank" means a storage vessel to retain water for a spray pad recirculation system.
- (20) "Hydrojet" means a fitting which blends air and water, creating a high velocity, turbulent stream of air enriched water.

- (21) "Inlet" means a fitting or fixture through which filtered water returns to a pool or spa.
- (22) "Main outlet" means an outlet fitting at the deepest point of the horizontal bottom of a pool through which water passes to a recirculating pump or surge tank, and is often referred to as a "main drain".
- (23) "Modulating valve" means a valve that automatically regulates the flow of water from the main drain through the use of a float ball.
- (24) "Perimeter overflow system" means a channel at normal water level that extends completely around the pool perimeter and is used to remove surface debris, also known as an overflow or scum gutter.
- (25) "Perlite filter" means a filter that utilizes a thin layer of perlite as its filter media deposited on a septum that needs to[must] be periodically replaced.
- (26) "Play feature" means a structure or feature that is added to a pool for the purpose of entertainment.
- (27) "Plunge pool" means a pool or area within a pool designed as the termination point for a water slide or water ride.
- (28) "Positive shutoff valve" means a valve that completely stops the flow of water.
- (29) "Precoat" means the process of depositing a layer of diatomaceous earth or perlite on the filter element at the start of a filter cycle.
- (30) "Public swimming and bathing facility" means a natural or artificial body or basin of water that is modified, improved, constructed, or installed for the purpose of swimming or bathing, except for a pool at a private single family residence intended only for the use of the occupant[owner] and guests.
- (31) "Readily accessible" means direct access without the necessity of removing any panel, door, or similar obstruction.
- (32) "Skimmer" means a device designed to continuously remove surface film and water and return it through the filter.
- (33) "Splash pad" means an area that:
 - (a) Has aquatic play features that spray or drop water for the purpose of wetting people;
 - (b) Is designed so that there is no accumulation or ponding of water on the ground;
 - (c) Includes both recirculating and non-recirculating water systems; and
 - (d) Includes splash pads operated by local governments as defined in KRS 211.205.
- (34) "State Building Code" means the requirements established in 815 KAR [~~Chapter~~]7:120.
- (35) "State Plumbing Code" means the requirements established in 815 KAR Chapter 20.
- (36) "Strainer" means a device used to remove hair, lint, leaves, or other coarse material on the suction side of a pump.
- (37) "Suction piping" means that portion of the circulation piping located between the facility structure and the inlet side of a pump.
- (38) "Surge tank" means a storage vessel within the pool recirculation system used to retain the water displaced by bathers.
- (39) "Total discharge head" means the amount of water that a pump will raise water above its center line.
- (40) "Total dynamic head" means the arithmetical difference between the total discharge head and total suction head (a vacuum reading is considered as a negative pressure). This value is used to develop the published performance curve.
- (41) "Total suction head" means the amount of water that a pump will lift by suction.
- (42) "Turnover rate" means the time requirements, in hours or minutes, for the circulation system to filter and recirculate a volume of water equal to the facility volume.
- (43) "Wading pool" means a pool or area within a pool where the water depth is twenty- four (24) inches or less.

Section 2. Submission of Plans and Specifications for Approval.

- (1) A person shall not construct, alter, or reconstruct a public swimming and bathing facility until approval of detailed plans and specifications, with supporting design data as required in this administrative regulation, is granted in writing by the state or local agency having jurisdiction.

VOLUME 51, NUMBER 8— February 1, 2025

(2) The original plans and five (5) copies shall be submitted to the local health department with payment pursuant to Section 3 of this administrative regulation.

(3) The front page of the plans submitted for review and approval shall contain the:

- (a) Name of the swimming and bathing facility;
- (b) Location by city and county;
- (c) Name and contact information for the facility owner;
- (d) Name of the installer; and
- (e) Name of the engineer, architect, or person preparing the plans.

(4) Plans ~~[shall be]~~ submitted by an engineer or architect licensed in the state of Kentucky ~~shall~~**[and]** bear the individual's official seal.

(5) Plans and specifications on public swimming and bathing facilities constructed by the state or local government, or for a facility with surface area greater than 1,600 square feet, shall be prepared by an engineer or architect registered in the State of Kentucky.

(6) The plans shall be:

- (a) Drawn to scale;
- (b) Accompanied by proper specifications to permit a comprehensive review of the plans, including the piping and hydraulic details; and
- (c) Include:

1. A site plan of the general area with a plan and sectional view of the facility complex with all necessary dimensions;

2. A piping diagram showing all appurtenances including treatment facilities in sufficient detail, as well as pertinent elevation data, to permit a hydraulic analysis of the system;

3. The specifications on all treatment equipment, including performance ranges of pumps, disinfecting equipment, chemical feeders, filters, strainers, lights, skimmers, suction outlets or return inlets, diving boards, safety equipment, and other related equipment;

4. A drawing of the equipment room showing the placement of equipment; and

5. Appropriate fees required by Section 3 of this administrative regulation.

(7) One (1) set of approved plans shall be kept at the job site and available for inspection.

(8) Upon completion of recirculation piping system construction and prior to the piping being tested for air pressure at ten (10) pounds per square inch of pressure for fifteen (15) minutes and covered, the owner or builder shall contact the cabinet for an inspection.

(9) Upon completion of construction, a notarized statement certifying the facility was constructed in accordance with the approved plans and this administrative regulation shall be submitted to the cabinet.

(10) The facility shall not be used before receiving a final inspection and written approval from the cabinet, as well as any other affected state and local regulatory agencies. It shall be the owner or operator's responsibility to notify the cabinet and other involved agencies of construction completion and call for inspection.

(11) Unless construction is begun within one (1) year from the date of approval, the approval shall expire. Extension of approval may be considered upon written request to the cabinet.

(12) ~~A~~**[No]** change in location, construction, design, materials, or equipment shall not be made to approved plans or the facility without the written approval of the cabinet.

Section 3. Fees for Plan Review and Construction Inspection.

(1) A fee shall be required for all plan reviews and construction inspections by the cabinet or the local health department to determine compliance with this administrative regulation.

(2) The fee for plan review shall be calculated as follows:

(a) Swimming and bathing facility plan review for gutter pools, the fee shall be \$346.50;

(b) Swimming and bathing facility plan review for skimmer pools, the fee shall be \$173.25; **and**

(c) Swimming and bathing facility plan review for minor reconstruction, the fee shall be \$115.50;

(3) The fee required shall include \$82.50 for interactive water features.

(4) The fee for swimming and bathing facility construction inspection shall be calculated as follows:

(a) Pre-renovation evaluation/consultation, the fee shall be \$231.00;

(b) Rough-in construction inspection, the fee shall be \$115.50; **and**

(c) Final construction inspection, the fee shall be \$173.25.

(5) The plan review and construction inspection fees required by this section shall be paid to the Kentucky Department for Public Health by check or money order made payable to the Kentucky State Treasurer.

Section 4. Water Supplies.

(1) Potable water from an approved municipal water system or water district shall be supplied to all public swimming and bathing facilities. If these supplies are not available, a potable water supply meeting the approval of the Energy and Environment Cabinet shall be provided.

(2) The water supply shall be capable of providing:

(a) Sufficient quantities of water under pressure to all water-using fixtures and equipment at the facility; and

(b) Enough water to raise the water level by at least one (1) inch in three (3) hours in:

- 1. Swimming, diving, or wave pools; and
- 2. Water slide plunge pools.

Section 5. Sewage and Wastewater Disposal.

(1) Sewage or wastewater generated from the operation of a public swimming and bathing facility shall discharge to a public sanitary sewer.

(2) If a public sanitary sewer is not available, sewage or wastewater shall be discharged to a system that complies with 902 KAR 10:085.

(3) Outdoor deck or surface area drainage water may be discharged directly to storm sewers, natural drainage areas, or to the ground surface without additional treatment. This drainage shall not result in nuisance conditions that create an offensive odor, a stagnant wet area, or an environment that allows for the breeding of insects.

(4) Filter backwash shall be discharged to public sanitary sewers, or if unavailable, to a system approved by the cabinet.

Section 6. Facility Design and Construction.

(1) All public swimming and bathing facilities, and attendant structures, such as bathhouses, dressing rooms, or restrooms, except for beach areas at bathing beaches, shall meet the design, materials, fixture, and construction requirements of 815 KAR 7:120 and 815 KAR Chapter 20.

(2) Depth markings and lane lines.

(a) On all facilities other than beaches, the depth of the water shall be marked plainly at or above the water surface on the vertical wall of the facility, if possible, and on the edge of the deck next to the facility. Depth markers shall be placed at the following locations:

- 1. At the points of maximum and minimum depths;
- 2. At the point of change of slope between deep and shallow portions or transition point;
- 3. At intermediate two (2) feet increments of water depth; and
- 4. If the facility is designed for diving, at appropriate points to denote the water depths in the diving area.

(b) Depth markers shall be spaced so that the distance between adjacent markers is not greater than twenty-five (25) feet as measured peripherally.

(c) Depth markers shall be in Arabic numerals at least four (4) inches high and of a color contrasting with the background. If depth markers cannot be placed on the vertical walls at or above the water level, other means shall be used, so that markings shall be plainly visible to persons in the facility.

(d) Lane lines or other markings on the bottom of the facility shall be a minimum of ten (10) inches in width and be of a contrasting color.

(3) A safety line supported by buoys shall be provided across the section of the pool where the break between the shallow and

VOLUME 51, NUMBER 8– February 1, 2025

deep water occurs (five (5) feet) except if/when the pool is being used for organized activities or during operation as a wave pool. The line shall be placed one (1) foot toward the shallow end from where the break occurs.

(4) The hydrojet auxiliary air or water pump for a spa shall be controlled by an on-off switch with a fifteen (15) minute timer located and labeled at least five (5) feet away from the spa.

(5) All facilities shall provide an emergency automatic pump shut off located adjacent to the telephone.

Section 7. Facility Water Treatment Systems.

(1)

(a) A recirculation system, consisting of pumps, piping, filters, water conditioning, disinfection equipment, and other accessory equipment shall be provided to clarify, chemically balance, and disinfect the water for all swimming and bathing facilities, except bathing beaches.

(b) All system components, including piping, shall bear the NSF International (NSF) potable water (NSF-pw) mark.

(c) **All pool equipment systems shall be certified to NSF or American National Standards Institute (ANSI) 50 standards by an ANSI accredited certification body.**

(d) Pumps greater than seven and five-tenths (7.5) horse power that are not required to meet NSF testing standards shall be considered on a case-by-case basis.

(2) Pumping equipment.

(a) The recirculation pump and motor shall deliver the flow necessary to obtain the turnover required in the table in paragraph (b) of this subsection below. A valve for flow control and a flow meter shall be provided in the recirculation pump discharge piping.

(b) The turnover rate shall be:

Type of Facility	Turnover Required
Diving pools	8 hours or less
Wading pools, Spas, Therapy pools, Splash pad holding tanks, Facility equipped with a spray feature not providing additional filtered and disinfected water to the spray feature	30 minutes or less
Wave pools, Lazy rivers, Water rides	2 hours or less
Vortex pools, Plunge pools	1 hour or less
All other pools	6 hours or less

(c) Higher flow rates may be necessary in pools with skimmers so that each skimmer shall/will have a minimum flow rate of thirty (30) gallons per minute.

(d) The pump shall be of sufficient capacity to provide a minimum backwash rate of fifteen (15) gallons per square foot of filter area per minute in sand filter systems.

(e) The pump or pumps shall supply the required recirculation rate of flow to obtain the turnover rate required at a total dynamic head of at least:

1. Fifty (50) feet for all vacuum filters;
2. Seventy (70) feet for pressure sand or cartridge filters; or
3. Eighty (80) feet for pressure diatomaceous earth filters and perlite filters.

(f) If the pump is located at an elevation higher than the facility water line, it shall be self-priming.

(g) If vacuum filters are used, a vacuum limit control shall be provided on the pump suction line. The vacuum limit switch shall be set for a maximum vacuum of eighteen (18) inches of mercury.

(h) A compound vacuum-pressure gauge or vacuum gauge shall be installed on the suction side of the pump.

(i) A pressure gauge shall be installed on the pump discharge line adjacent to the pump.

(j) Valves shall be installed to allow the flow to be shut off during cleaning, switching baskets, or inspection of hair and lint strainers.

(k) A hair or lint strainer with openings no more than one-eighth (1/8) inch is required except for pumps that are used with vacuum filter systems.

(3) Water heaters shall be installed at all indoor swimming and bathing facilities, and shall comply with the following:

(a) A water heater piping system shall be equipped with a bypass. A valve shall be provided at the bypass and on the influent and effluent heater piping. The influent and effluent heater piping shall be metallic and installed in accordance with heater manufacturer's recommendations;

(b) A heating coil, pipe, or steam hose shall not be installed in any swimming and bathing facility;

(c) Thermometers shall be provided in the piping to check the temperature of the water returning from the facility and the temperature of the blended water returning to the facility;

(d) An automatic temperature limiting device with thermostatic control that prevents the introduction of water in excess of 100 degrees Fahrenheit to swimming and diving pools and in excess of 104 degrees Fahrenheit for spas shall be provided and shall be accessible only to the facility operator;

(e) A pressure relief valve shall be provided and shall be piped to within six (6) inches of the floor;

(f) Venting of gas or other fuel burning water heaters shall be provided in accordance with the State Building Code;

(g) Heaters for indoor swimming and diving pools shall be capable of maintaining an overall pool water temperature between seventy-six (76) degrees Fahrenheit and eighty-four (84) degrees Fahrenheit;

(h) Combustion and ventilation air shall be provided for fuel burning water heaters in accordance with manufacturer recommendations or the State Building Code;

(i) Heaters for indoor swimming and diving pools shall be sized on a basis of 150 British Thermal Units per hour input per square foot of pool water surface area; and

(j) All heaters shall meet the latest standards of applicable recognized testing agencies.

(4) A flow meter shall be:

(a) Located so that the rate of recirculation may be easily read;

(b) Installed on a straight length of pipe at a distance of at least ten (10) pipe diameters downstream, and five (5) pipe diameters upstream from any valve, elbow, or other source of turbulence, except for those specifically designed without separation parameters; and

(c) Installed on each recirculation system, splash pad feature, waterslide, any other type of spray feature, and on multiple filtration units, except at government-owned, non-recirculating splash pads.

(5) Vacuum cleaning system.

(a) A vacuum cleaning system shall be:

1. Provided for all facilities except beaches; and
2. Capable of reaching all parts of the facility bottom.

(b) A vacuum system that utilizes the attachment of a vacuum hose to the suction piping through the skimmer may be provided.

(c)

1. If the vacuum cleaning system is an integral part of the facility recirculation system, a wall fitting shall be provided:

a. Eight (8) to twelve (12) inches below the normal water level; and

b. With a cap or plug that is not removable by bathers.

2. Piping from this connection shall be:

a. To the suction side of the pump ahead of the hair and lint strainer;

b. At least one and one-half (1.5) inches in diameter; and

c. Equipped with a control valve near the junction with the pump suction line.

3. The size of the vacuum hose shall be at least one and one-half (1.5) inches in diameter and be of sufficient strength to prevent collapsing and allow adequate flow for proper cleaning.

(d) Automatic vacuum systems may be used to supplement the built-in vacuum system provided they are capable of removing all debris from the facility bottom.

(e) Vacuum systems shall only be used if/when the facility is closed to bathers.

(6) Piping, skimmer, and overflow system.

(a) Piping shall comply with the material specifications listed in the Kentucky State Plumbing Code for potable water.

(b) All piping, valves, and fittings shall be color coded, suitably labeled, or marked to denote its purpose within the facility water treatment system.

VOLUME 51, NUMBER 8— February 1, 2025

(c) The piping shall be designed to carry the required quantities of water at velocities not exceeding five (5) feet per second in suction piping and ten (10) feet per second in pressure piping.

(d) Gravity piping shall be sized so that the head loss in piping, fittings, and valves does not exceed the difference in water levels between the facility and the maximum operating level in the surge or filter tank.

(e) The following waste lines shall be provided with six (6) inch air gaps at their points of discharge to the waste pump or sewer:

1. Main outlet bypass or other connections to waste;
2. Surge tank drain and overflow lines;
3. Pump discharge to waste lines; and
4. Gutter bypass to waste lines.

(7) Inlets.

(a) Each inlet shall be directionally adjustable.

(b) The velocity of flow through any inlet orifice shall be in the range of five (5) to twenty (20) feet per second, except that facilities equipped with skimmers shall have a velocity of flow in the range of ten (10) to twenty (20) feet per second.

(c) Inlets shall be located and directed to produce uniform circulation of water to facilitate the maintenance of a uniform disinfectant residual throughout the entire facility without the existence of dead spots.

(d) Inlets in facilities with skimmers shall be twelve (12) inches below the midpoint on the skimmer throat.

(e) Inlets in facilities with a prefabricated perimeter overflow system shall be eight (8) inches or more below the lip of the gutter.

(f) Inlets shall be placed completely around the pool with each serving a linear distance of not more than fifteen (15) feet on center. The pipe serving the inlets shall form a loop completely around the pool, **with no reduction in loop pipe sizing.**

(g) The number of inlets shall be determined by dividing the perimeter of the pool measured in feet, by fifteen (15). Any fraction thereof ~~may/would~~ represent one (1) additional inlet.

(h) Pools greater than forty-five (45) feet wide shall be equipped with floor inlets in a grid pattern located no more than seven and five-tenths (7.5) feet from a wall and no more than fifteen (15) feet apart. The grid shall form a continuous loop with no reduction in loop pipe sizing.

(i) A minimum of two (2) inlets is required on all pools, holding tanks, and bathing facilities, regardless of size.

(j) At least one (1) inlet shall be located in each recessed stairwell or other space ~~if/where~~ water circulation ~~may/might~~ be impaired.

(k) Prefabricated perimeter overflow systems shall be approved on a case-by-case basis by the cabinet.

(8) Outlets.

(a) All facilities, including holding tanks, shall be provided with a minimum of two (2) main outlets at the deepest horizontal point plumbed in parallel to permit the facility to be completely and easily drained.

(b) Openings and grates shall:

1. Conform to 15 U.S.C. 8003;
2. Be covered by a proper grating that is not removable by bathers;
3. Be at least four (4) times the area of the main outlet pipe;
4. Have sufficient area so that the maximum velocity of the water passing through the grate does not exceed one and one-half (1.5) feet per second at maximum flow; and
5. Have a maximum grate opening width of one-fourth (1/4) inch.

(c) Additional outlets shall be provided in all facilities where the width of the facility is more than sixty (60) feet. In these cases, outlets shall be spaced not more than thirty (30) feet apart, nor more than fifteen (15) feet from side walls, and shall be connected in parallel, not series.

(d) A hydrostatic relief valve may be provided for in-ground swimming and diving pools. Subsurface drainage, if provided, shall not be directly connected to a sanitary sewer.

(e) Main outlet piping shall be sized for water removal at a rate of at least 100 percent of the design recirculation flow rate and at velocities specified in subsection (6)(c) of this section. It shall function as a part of the recirculation system. The piping system shall be valved to permit adjustment of flow through it.

(9) Perimeter overflow systems.

(a) Swimming and bathing facilities with a water surface area greater than 1,600 square feet shall have a continuous perimeter overflow system.

(b) A perimeter overflow system shall:

1. Extend completely around the facility;
2. Permit inspection, cleaning, and repair;
3. Be designed so that no ponding or retention of water occurs within any portion of the system;
4. Be designed to prevent entrapment of bathers or the passage of small children into an enclosed chamber;
5. Have an overflow lip which is rounded, provides a good handhold, and is level within two-tenths (0.2) inch;
6. Provide for the rapid removal of all water and debris skimmed from the pool's surface;
7. Be designed for removal of water from the pool's upper surface at a rate equal to 100 percent of the design turnover flow rate;
8. Discharge to the recirculation system;
9. Be provided with a minimum of two (2) outlet pipes that **shall/will** not allow the overflow channel to become flooded **if/when** the facility is in normal use;

10. Require additional outlet pipes provided at one (1) per 150 lineal feet of perimeter overflow system or fraction thereof; and

11. Have drain gratings with surface area at least equal to two (2) times the area of the outlet pipe.

(10) All facilities that have perimeter overflow systems shall have a net surge capacity of at least one (1.0) gallon per square foot of water surface area. Surge capacity shall be provided either in a vacuum filter tank, surge tank, or a combination of these. Main drain piping shall terminate eighteen (18) inches above the surge tank floor and be equipped with a modulating valve and a positive shutoff valve. Surge capacity for a diatomaceous earth (DE) filter is measured eighteen (18) inches above the filter media and the bottom of the gutter pipe.

(11) Skimmers are permitted on facilities whose width does not exceed thirty (30) feet and whose water surface area is 1,600 square feet or less. If skimmers are used, the following shall be met:

(a) At least one (1) skimmer shall be provided for each 500 square feet of water surface area or fraction thereof with a minimum of two (2) skimmers provided, except for spas, holding tanks, or wading pools with a water surface area of 144 square feet or less, **which shall require/where** a minimum of one (1) skimmer ~~shall be required~~.

(b) Skimmers shall be located to minimize interference with each other.

(c) The rate of flow per skimmer shall not be less than thirty (30) gallons per minute, and all skimmers shall be capable of handling at least eighty (80) percent of required flow rate.

(d) Surface skimmer piping shall have a separate valve in the equipment room to permit adjustment of flow.

(e) Each skimmer shall be provided with an equalizer line at least one and one-half (1.5) inches in diameter, located at least one (1) foot below the lowest overflow level of the skimmer, and be provided with a self-closing valve and cover that conforms to 15 U.S.C. 8003.

(f) All overflow water shall pass through a basket that ~~may/can~~ be removed without the use of tools.

(g) All pools not equipped with a perimeter overflow system shall have a smoothly contoured handhold coping not over two and one-half (2.5) inches thick for the outer two (2) inches or an equivalent approved handhold. The handhold shall be no more than nine (9) inches above the normal water line.

(12) All facilities shall be equipped for the addition of make-up water from a potable water source pursuant to the following:

(a) Discharge through an air gap of at least six (6) inches to a surge tank or a vacuum filter tank. If make-up water is added directly to the facility, the fill-spout shall be located under or immediately adjacent to a ladder rail, grab rail, or lifeguard platform. If added to a surge tank or vacuum filter tank, the six (6) inch air gap shall be measured above the top lip of the tank; and

(b) Through piping with vacuum breaker, antisiphon, or other protection as specified by the State Plumbing Code.

(13) Filtration.

(a) Filters shall comply with the following:

1. Pressure filters shall have:

- a. Pressure gauges;
- b. An observable free fall, or a sight glass installed on the backwash discharge line; and
- c. A manual air-relief valve at the high point;

2. The filter backwash disposal facility shall have sufficient capacity to prevent flooding during the backwash cycle;

3. All filters shall be designed so that they ~~may~~**can** be completely drained. Filters shall be drained through a six (6) inch air gap to a pump or sanitary sewer; and

4. Filter media shall be listed as NSF approved.

(b) Each facility shall have separate filtration and treatment systems.

(c) Filter equipment and treatment systems shall operate continuously twenty-four (24) hours per day, except if the facility is closed for repairs or at the end of the swimming season.

(d) Rapid sand or gravity sand filters shall be designed for a filter rate not to exceed three (3) gallons per minute per square foot of bed area at time of maximum head loss with sufficient area to meet the design rate of flow required by the prescribed turnover.

(e) At least eighteen (18) inches of freeboard shall be provided between the upper surface of the filter media and the lowest portion of the pipes or drains that serve as overflows during backwashing.

(f) The filter system shall be designed with necessary valves and piping to permit filtering to the pool.

(g) High rate sand filters. The design filtration rate shall be a minimum of five (5) gallons per minute per square foot of filter area. The maximum design filtration rate shall be the lesser of fifteen (15) gallons per minute per square foot of filter area or seventy-five (75) percent of the NSF listed filtration rate. The backwash rate shall be fifteen (15) gallons per minute per square foot of filter area.

(h) Diatomaceous earth filters shall comply with the following requirements:

1. The design filtration rate shall not exceed one and one-half (1.5) gallons per minute per square foot of filter area on diatomaceous earth filters, except that the rate of filtration may be increased to two (2) gallons per minute per square foot of filter area if continuous feeding of diatomaceous earth is employed;

2. A precoat pot shall be provided on the pump suction line for pressure diatomaceous earth systems. All diatomaceous earth filter systems shall have piping arranged to allow recycling of the filter effluent during precoat;

3. If equipment is provided for the continuous feeding of diatomaceous earth to the filter influent, the equipment shall have a capacity to feed at least one and one-half (1.5) ounces of this material per square foot of filter area per day;

4. Overflow piping on vacuum diatomaceous earth filters shall be provided on the filter tank to discharge overflow water;

5. All filters shall be equipped for cleaning by one (1) or more of the following methods:

- a. Backwashing;
- b. Air-pump assist backwashing;
- c. Spray wash;
- d. Water pressure to wash vacuum filter; or
- e. Agitation; and

6. Perlite may be used in filters listed by NSF for perlite, but it may not be substituted for diatomaceous earth without NSF listing.

(i) Vacuum sand filters shall comply with the following requirements:

1. The design filtration rate shall be seventy-five (75) percent of that listed by NSF or fifteen (15) gallons per minute, whichever is lesser. The backwash rate shall be at fifteen (15) gallons per minute per square foot of filter area; and

2. Overflow piping shall be provided in order to drain overflow water.

(j) Cartridge filters shall comply with the following requirements:

1. Cartridge filters shall not be used on facilities with a capacity larger than 80,000 gallons;

2. Cartridge filters shall only be used on indoor pools;

3. The design filtration rate shall not exceed fifteen hundredths (0.15) gallons per minute per square foot of filter surface area; and

4. A clean duplicate set of cartridges shall be maintained at the facility.

(14) Disinfectant and chemical feeders.

(a) The minimum chemical feed equipment required at any facility shall include a unit for feed of a disinfectant and a unit for feed of a chemical for pH control.

(b) Equipment capacity.

1. Equipment for supplying chlorine or compounds of chlorine shall be of sufficient capacity to feed the chlorine at a rate of:

a. Eight (8) ppm or two and seven-tenths (2.7) pounds per day chlorine gas or its equivalent for each 10,000 gallons of pool volume for outdoor facilities; or

b. Three (3) ppm or one (1) pound per day for chlorine gas or its equivalent for each 10,000 gallons of pool volume for indoor facilities based on the turnover rates specified in subsection (2)(b) of this section.

2. The equipment for supplying chlorine shall not be controlled by a day-date clock.

3. The injection point for chlorine shall be placed on the discharge side of the pump and downstream of the flow meter unless the chlorine injection point is located within the surge tank.

4. Pot feeders for supplying bromochlorodimethylhydantoin sticks shall contain at least five tenths (0.50) a pound of bromochlorodimethylhydantoin per thousand gallons of facility capacity, or fraction thereof. The feeder shall have a method of feed rate adjustment.

5. Supplemental NSF listed ultraviolet (UV) light disinfection systems:

a. Shall be:

(i) Provided on all splash pads with a recirculating water system;

(ii) ~~b.~~ **[Shall be]** Installed on a bypass line; and

(iii) ~~c.~~ **[Shall be]** Equipped with a flow indicator; and

b. **d. May be used on other facilities as supplemental disinfection.**

6. Ozone may be used as a supplement to chlorination or bromination. Ozonation equipment ~~shall~~**will** be considered by the cabinet on a case-by-case basis.

7. ~~[No]~~ More than one (1) gram per day of ozone per ten (10) gallons per minute of flow rate ~~shall not~~**will** be allowed. The ambient air ozone concentration shall be less than five hundredths (.05) ppm at all times either in the vicinity of the ozonator or at the pool water surface.

(c) If positive displacement pumps, or hypochlorinators, are used to inject the disinfectant solution into the recirculation line, they shall be of variable flow type and shall be of sufficient capacity to feed the amount of disinfectant required by paragraph (b)1 of this subsection. If calcium hypochlorite is used, the concentration of calcium hypochlorite in the solution shall not exceed five (5) percent. The solution container shall have a minimum capacity equal to the volume of solution required per day at the feed rate required in paragraph (b)1 of this subsection.

(d) Gas chlorinators shall only be used in a pre-existing facility and shall comply with applicable sections of 29 C.F.R. 1910.119.

(e) pH control feeders. All facilities shall install a chemical feeder of positive displacement type for the purpose of applying chemicals to maintain pH of facility water within the range of seven and two-tenths (7.2) to seven and eight-tenths (7.8). A solution tank of adequate capacity shall be provided.

Section 8. Operational Water Quality Standards. Operational water quality shall comply with 902 KAR 10:120.

Section 9. Equipment Rooms. Equipment rooms shall comply with the following requirements:

(1) Equipment necessary for facility operation shall be housed in a lighted, ventilated room that affords protection from the weather, prevents unauthorized access, has ceilings of at least seven (7) feet in height, and is of sufficient size for operation and inspection.

(2) The equipment room floor shall slope toward drains and shall have a nonslip finish.

(3) A hose bib with a vacuum breaker shall be installed in the equipment room.

(4) Suitable space, if not provided in the equipment room, shall be provided for storage of chemicals, tools, equipment, supplies,

VOLUME 51, NUMBER 8– February 1, 2025

and records where they ~~may~~**can** be acquired by the facility operator without leaving the premises. The storage space shall be dry and protected from unauthorized access.

(5) The equipment room and all other storage areas shall be maintained in a clean, uncluttered condition, and shall not be used for storage of materials not essential to operation and maintenance of the facility.

Section 10. Telephones.

(1) All facilities shall have a non-pay landline telephone, or Voice over Internet Protocol (VoIP) telephone, continuously connected to a power source and operational at all times, capable of direct dialing 911 without going through a switchboard located on the deck that is readily accessible and conspicuously located. A cordless telephone shall be prohibited.

(2) All facilities utilizing VoIP telephones shall only use fixed VoIP services.

(3) Instructions for dialing shall be posted if necessary.

(4) The address of the facility and the telephone number of the police department, fire department, emergency medical service, or a hospital shall be posted in a conspicuous place near the telephone.

Section 11. Existing Facilities and Equipment.

(1) Existing facilities and equipment being used prior to the effective date of this administrative regulation that do not fully meet the design, construction, and materials requirements of this administrative regulation, may continue to be used if the facilities and equipment:

- (a) Are in good repair;
(b) Are capable of being maintained in a sanitary condition;
(c) Meet facility water quality standards; and
(d) Create no health or safety hazard.

(2) If existing equipment, components, piping, or fittings involved in the facility water treatment system are replaced to effect repairs, the replacement equipment, components, piping, or fittings shall meet the requirements of this administrative regulation. If replacement occurs, it shall be the owner's or operator's responsibility to notify the cabinet as to what was replaced and what was used for a replacement.

Section 12. Effect on Local Administrative Regulations.

Compliance with this administrative regulation shall not relieve any person from compliance with any other state or local laws dealing with pool operation and maintenance matters or zoning requirements that may also be applicable.

Section 13. Variances for Construction Requirements.

(1) All facilities shall be constructed or remodeled in compliance with the provisions of this administrative regulation, except that an applicant may request a variance if the cabinet determines that the variance ~~shall~~**would** not ~~not~~**seriously affect** the safe and healthful operation of the facility.

(2) Before granting a variance, the cabinet shall require ~~documentation~~**proof** from the applicant [~~documenting~~] that the requested variance ~~shall~~**will** comply with the basic intent of ~~this~~**these** administrative ~~regulation~~**regulations** and that ~~a~~**no** safety or health hazard ~~shall not~~**would** be created if the variance is granted.

FILED WITH LRC: January 13, 2025

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, January 13, 2025)

902 KAR 10:125. Kentucky public swimming and bathing facility safety requirements.

RELATES TO: KRS 211.015, 211.205
STATUTORY AUTHORITY: KRS 194A.050, 211.180,
211.203[2024 Ky Acts ch. 116]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) ~~requires~~**authorizes** the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.180 ~~requires~~**authorizes** the cabinet to adopt administrative regulations relating to public facilities, and their operation and maintenance in a safe and sanitary manner to protect public health and prevent health hazards. This administrative regulation establishes uniform safety standards for public swimming pools and bathing facilities.

Section 1. Definitions.

(1) "Bather" means a person using a public swimming and bathing facility.

(2) "Bather load" means all bathers within the public swimming and bathing facility enclosure.

(3) "Cabinet" is defined by KRS 211.015(1)(a).

(4) "Class A" is defined by ~~KRS 211.203~~**2024 Ky Acts ch. 116 Section 1**(1)(a).

(5) "Class B" is defined by ~~KRS 211.203~~**2024 Ky Acts ch. 116 Section 1**(1)(b).

(6) "Play feature" means a structure or feature that is added to a pool for the purpose of entertainment.

(7) "Public swimming and bathing facility" or "facility" means a natural or artificial body or basin of water that is modified, improved, constructed, or installed for the purpose of swimming or bathing, except for a pool at a private single-family residence intended only for the use of the ~~occupant~~**owner** and guests.

(8) "Public swimming and bathing facility enclosure" means an enclosure that surrounds and secures the public swimming and bathing facility that includes decking and pool.

(9) "Readily accessible" means direct access without the necessity of removing any panel, door, or similar obstruction.

(10) "Splash pad" means a public swimming and bathing facility that:

(a) Has aquatic play features that spray or drop water for the purpose of wetting people;

(b) Is designed so that there is no accumulation or ponding of water on the ground;

(c) Includes both recirculating and non-recirculating water systems; and

(d) Includes splash pads operated by local governments as defined in KRS 211.205.

(11) "Third-party compliance specialist":

~~a~~ Means a person who is a representative of an incorporated organization that provides lifeguard training and pool safety analysis; and

~~b~~ ~~Does~~**is** not ~~include~~:

~~1~~ A representative of state and local governments; ~~and~~ ~~nor is~~

~~2~~ An associate of the establishment seeking use of an alternative lifeguard plan.

Section 2. Lifeguards.

(1) Class A and Class B pools that meet the criteria specified in ~~KRS 211.203~~**2024 Ky Acts ch. 116 Section 1**(2)~~a~~ shall have lifeguards on duty at a rate of one (1) per 100 bathers.

(2) All Class A pools over 2,000 square feet shall have a minimum of one (1) lifeguard on duty at all times the pool is open to bathers.

(3) Additional lifeguards shall be provided at a rate of:

(a) One ~~1~~ per 2,000 square feet or major fraction more than half thereof according to the following table:

Table with 2 columns: Water Surface Square Footage, Number of Lifeguards Required. Rows: 2,000-3,000 (1 lifeguard required), 3,001-5,000 (2 lifeguards required), 5,001-7,000 (3 lifeguards required).

VOLUME 51, NUMBER 8— February 1, 2025

7,001-9,000	4 lifeguards required
9,001-11,000	5 lifeguards required
11,001 and above	6 lifeguards required plus 1 [one] additional lifeguard for each additional 2,000 square feet over 11,000 square feet;

or

(b) One (1) per 100 bathers according to the following table:

Number of Bathers	Number of Lifeguards Required
1-100	1 lifeguard required
101-200	2 lifeguards required
201-300	3 lifeguards required
301-400	4 lifeguards required
401-500	5 lifeguards required
501-600	6 lifeguards required
601 and above	7 lifeguards required plus 1 [one] additional lifeguard for each additional 100 bathers.

(4) All Class A and B pools using number of bathers for the lifeguard application rate shall:

- (a) Establish a method for tracking bathers entering the facility;
- (b) Continuously monitor fluctuating bather load and staff lifeguards accordingly; and

(c) Upon inspection, provide accurate bather load logs to the cabinet.

(5) In accordance with ~~KRS 211.203~~**2024 Ky Acts ch. 116 Section 1**(4), a swimming coach or instructor may count as a required lifeguard. The swimming coach or instructor shall comply with the requirements of subsection (10)(a) of this section ~~if when~~ acting as a required lifeguard.

(6) All facilities that are not required to provide lifeguards shall post and enforce the following rules at all entrance points: "No Lifeguard on Duty" and "~~A~~**[No]** person ~~shall not~~**[may]** enter the facility area alone or swim alone."

(7) In accordance with ~~KRS 211.203~~**2024 Ky Acts ch. 116 Section 1**(2), ~~if at all times when~~ a lifeguard is not on duty, features such as induced waves, slides, diving boards, platforms, climbing walls, or other similar features shall not be used. These features shall be either roped off or otherwise blocked for usage, and signage shall clearly indicate that the features ~~shall~~**[may]** not be used.

(8) Splash pads shall not be required to provide lifeguards.

(9) A facility may submit an alternative lifeguard staffing plan that:

(a) Has been certified by an independent third-party compliance specialist who witnessed the initial testing to ensure the plan is sufficient to protect patrons;

(b) Designates the number of lifeguards necessary to ensure each lifeguard is capable of viewing the entire area of the assigned zone of patron surveillance;

(c) Ensures the lifeguard is able to reach the farthest extent of the assigned zone of patron surveillance within twenty (20) seconds; and

(d) Includes the following:

1. A description of study methods and calculations used to determine lifeguard zones and placement;

2. Methods and frequency of testing that ~~shall~~**[will]** be performed to ensure the plan protects patrons;

3. A complete layout of the pool surface diagrammed with lifeguard placement and assigned zone of surveillance; and

4. A minimum baseline of lifeguards required for safe operation;

(e) The alternative lifeguard staffing plan shall be:

1. On file with the Public Safety Branch within the Department for Public Health;

2. Submitted to the local health department of jurisdiction; and

3. Resubmitted if there is a change in:

a. The shape or size of the swimming pool;

b. The surrounding areas that ~~may~~**[would]** obstruct the lifeguard's view of the bottom of the pool; or

c. Ownership of the facility.

(10) Lifeguards shall comply with the following:

(a) Lifeguards, including coaches or instructors serving as lifeguards as described in ~~KRS 211.203~~**2024 Ky Acts ch. 116 Section 1**(4), shall have a current lifesaving certificate. Current training as a lifesaver or water safety instructor shall be an American Red Cross or equivalent training and include an in-water training component. The certificate of competency shall be onsite and available for inspection upon request;

(b) Lifeguards shall be dressed in swimming attire; and

(c) Lifeguards assigned to the supervision of the facility shall not be subject to duties that ~~may~~**[would]**:

1. Distract their attention from proper observation of persons in the facility area; or

2. Prevent immediate assistance to persons in distress in the water.

Section 3. Safety Equipment.

(1) One (1) unit consisting of the following lifesaving equipment shall be provided for 2,000 square feet of water surface area and an additional unit for each additional 2,000 square feet or major fraction more than half thereof:

(a) A U.S. Coast Guard approved ring buoy no more than twenty (20) inches in diameter with a three-sixteenths (3/16) inch rope attached that measures one and one-half (1 1/2) times the maximum pool width;

(b) Rescue tubes ~~that~~ may be used ~~if when~~ lifeguards are present; ~~and~~

(c) A shepherd's hook securely attached to a one (1) piece pole not less than twelve (12) feet in length; ~~and~~

(2) One (1) backboard with head immobilizer and at least three (3) straps for back and neck injuries shall be provided per facility.

(3) All facilities shall be equipped with a minimum of one (1) standard twenty-four (24) unit first aid kit or its equivalent that is kept filled and ready for use. Additional units shall be provided for each additional 2,000 square feet of facility area or major fraction more than half thereof.

(4) Spas with less than 144 square feet of water surface areas shall be exempt from the requirements of subsection (1) and (2) of this section.

(5) Splash pads shall be exempt from the requirements of subsection (1) through (3) of this section.

(6) Lifesaving equipment shall be mounted in conspicuous places at lifeguard chairs or other readily accessible locations. Its function shall be plainly marked, and this equipment shall be kept in repair and ready condition. Bathers or other persons shall not be permitted to tamper with, use for any purpose other than its intended use, or remove this equipment from its established location.

(7) The hydrojet auxiliary air or water pump for a spa shall be controlled by an on-off switch with a fifteen (15) minute timer located and labeled at least five (5) feet away from the spa.

(8) All facilities shall provide an emergency automatic pump shut off readily accessible by facility staff.

Section 4. Emergency Telephones.

(1) All facilities shall have a non-pay landline or Voice over Internet Protocol (VoIP) telephone, continuously connected to a power source and operational at all times, capable of direct dialing 911 without going through a switchboard, and located ~~on the deck~~ in a conspicuous, readily accessible location. A cordless telephone shall be prohibited. Instructions for dialing shall be posted if necessary.

(2) All facilities utilizing VoIP telephones shall only use fixed VoIP services. Non-fixed VoIP services shall be prohibited.

(3) The address of the facility and the telephone number of the police department, fire department, emergency medical service, or a hospital shall be posted in a conspicuous place near the telephone.

Section 5. Reporting Requirements. All drownings, near drownings, and injuries requiring hospitalization shall be immediately reported to the local health department and the Department for Public Health on form ~~["~~DFHS-354, Kentucky Public Swimming and Bathing Facilities Drowning and Injury Report~~"]~~.

VOLUME 51, NUMBER 8– February 1, 2025

Section 6. Existing Facilities and Equipment. Existing facilities and equipment being used prior to the effective date of this administrative regulation that do not fully meet the design, construction, and materials requirements of this administrative regulation, may continue to be used if the facilities and equipment:

- (1) Are in good repair;
(2) Are capable of being maintained in a sanitary condition; and
(3) Create no health or safety hazard.

Section 7. Variances.

(1) A facility submitting an alternative lifeguard staffing plan pursuant to Section 2(9)(7) of this administrative regulation may submit a request for a variance to the safety equipment requirements of [this] Section 3 of this administrative regulation to the Environmental Management Branch in the Department for Public Health.

(2) The variance requested shall not affect the safe and healthful operation of the facility.

(3) Before granting a variance, the cabinet shall require documentation [adequate proof] from the applicant that the requested variance shall [will] comply with the basic intent of [this] Section 3 of this administrative regulation and that a [no] safety or health hazard shall [not would] be created if the variance is granted.

Section 8. Incorporated by Reference.

(1) The "DFS-354, Kentucky Public Swimming and Bathing Facilities Drowning and Injury Report", 3/2024, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Public Health Protection and Safety, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. and online at https://chfs.ky.gov/agencies/dph/dphps/emb/Pages/pools.aspx.

FILED WITH LRC: January 13, 2025

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, January 13, 2025)

902 KAR 10:127. Kentucky public beach requirements.

RELATES TO: KRS 211.015, 211.090, 211.210, 211.220, 211.990(2)

STATUTORY AUTHORITY: KRS 194A.050, 211.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires [authorizes] the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.180 requires [authorizes] the cabinet to adopt administrative regulations relating to public facilities and their operation and maintenance in a safe and sanitary manner to protect public health and prevent health hazards. This administrative regulation establishes uniform requirements for public swimming and bathing beaches.

Section 1. Definitions.

- (1) "Approved" means that which is acceptable to the cabinet.
(2) "Bather" means a person using a public beach.
(3) "Cabinet" is defined by KRS 211.015(1)(a).
(4) "Facility" means a public beach as defined in subsection (6) of this section.

(5) "Facility operator" means a person or employee of that person who is responsible for the proper operation and maintenance of the facility.

(6) "Public beach" means a natural body of water that is modified or improved for the purpose of swimming or bathing.

(7) "Readily accessible" means direct access without the necessity of removing any panel, door, or similar obstruction.

(8) "State Plumbing Code" means the requirements established in 815 KAR Chapter 20. [A]

(9) "Turbidity" means the state or quality of being clouded or opaque with suspended matter.

Section 2. Submission of Plans and Specifications for Approval.

(1) A person shall not construct, alter, or reconstruct a public beach until approval of detailed plans and specifications, with supporting design data as required in this administrative regulation, is granted in writing by the state or local agency having jurisdiction.

(2) The original plans and five (5) copies shall be submitted to the local health department with payment pursuant to Section [f3l] of this administrative regulation.

(3) The front page of the plans submitted for review and approval shall contain the:

- (a) Name of the public beach;
(b) Location by city and county;
(c) Name and contact information for the facility owner;
(d) Name of the installer; and
(e) Name of the engineer, architect, or person preparing the plans.

(4) Plans shall be submitted by an engineer or architect licensed in the state of Kentucky and bear the individual's official seal.

(5) The plans shall be:

- (a) Drawn to scale;
(b) Accompanied by proper specifications to permit a comprehensive review of the plans; and
(c) Include:

1. A site plan of the general area with a sectional view of the facility complex with all necessary dimensions;

2. A diagram showing all appurtenances in sufficient detail, as well as pertinent elevation data, water depths, and slope of the beach below the water line;

3. Indication of the placement of sand or gravel for the beach area; and

4. The fees required by Section 3 of this administrative regulation.

(6) One (1) set of approved plans shall be kept at the job site and available for inspection.

(7) Prior to the issuance of plan and construction approval, the cabinet shall conduct a sanitary survey of the proposed beach. This survey shall include an evaluation of the physical, chemical, and bacteriological characteristics of the public beach area and the watershed.

(8) Upon completion of construction, a notarized statement certifying the facility was constructed in accordance with the approved plans and this administrative regulation shall be submitted to the cabinet.

(9) The facility shall not be used before receiving a final inspection and written approval from the cabinet.

(10) Unless construction is begun within one (1) year from the date of approval, the approval shall expire. Extension of approval may be considered upon written request to the cabinet.

(11) A [No] change in location, construction, design, materials, or equipment shall not be made to approved plans or the facility without the written approval of the cabinet.

Section 3. Plan Review and Construction Inspection Fees.

(1) A fee shall be required for all plan reviews and construction inspections by the cabinet or the local health department.

(2) The fee for plan review shall be calculated as follows:

- (a) Public beach plan review, the fee shall be \$346.50; and
(b) Include \$82.50 for interactive water features or inflatable water features.

(3) The fee for public beach construction inspection shall be calculated as follows:

VOLUME 51, NUMBER 8— February 1, 2025

(a) Pre-construction survey or pre-renovation evaluation, the fee shall be \$231.50;

(b) Rough-in construction inspection, the fee shall be \$115.50; and;

(c) Final construction inspection, the fee shall be \$173.25.

Section 4. Permit and Inspection Fees.

(1) An annual permit fee of \$110 for all public beaches shall be:

(a) Paid no later than May 1 each year; and

(b) Paid to the Kentucky Department for Public Health by check or money order made payable to the Kentucky State Treasurer.

(2) Permits shall be nontransferable from one (1) person to another.

(3) Fees for Inspections.

(a) For all public beaches, the annual inspection fee shall be:

1. Assessed according to the linear footage of beach front;

2. Calculated as established in this paragraph:

a. 149 or less linear feet, the fee shall be ninety-nine (99) dollars;

b. 150 to 200 linear feet, the fee shall be \$192.50; and

c. 201 and above, the fee shall be \$192.50 plus fifty-five (55) dollars for each additional fifty (50) linear feet; and

(b) Include \$82.50 for interactive or inflatable water features.

(4) A late payment fee of fifty-five (55) dollars shall be assessed on all annual permits not received by May 1 each year.

(5) The inspection fee required by this section shall be:

(a) Paid to the local health department having jurisdiction by check or money order made payable to the Kentucky State Treasurer;

(b) Deposited in the environmental fee account; and

(c) Sent to the Department for Public Health for deposit with the Kentucky State Treasury.

Section 5. Water Quality and Sanitary Requirements for Public Beaches.

(1) Physical quality. The following characteristics shall not be present in the beach area or watershed:

(a) Sludge deposits, solid refuse, floating waste solids, oils, grease, and scum; or

(b) Hazardous substances being discharged into public beach water or watershed.

(2) **The beach or watershed used for recreational purposes shall not have been used as part of a municipal sewage system, including a sewage overflow reservoir.**

(3) Bacteriological quality. The bacteriological quality of water at public beaches shall comply with the following criteria:

(a) It shall meet the requirements of 401 KAR 10:031. Satisfactory bacteriological results shall be obtained before approval for construction is considered; and

(b) There shall not be any sanitary or combined sewer discharges or other raw or partially treated sewage discharges to the public beach area or immediate watershed.

(4) ~~(3)~~ Chemical quality. There shall not be any discharges of chemical substances, other than disinfecting agents, capable of creating toxic reactions, or irritations to the skin or mucous membranes of a bather.

Section 6. Water Supplies at Public Beaches.

(1) Potable water from an approved municipal water system or water district shall be supplied to all public beaches. If these supplies are not available, a potable water supply meeting the approval of the Energy and Environment Cabinet shall be provided.

(2) The water supply shall be capable of providing sufficient quantities of water under pressure to all water-using fixtures and equipment at the facility.

Section 7. Sewage and Wastewater Disposal.

(1) All sewage and waste water shall be disposed of into a public sewer system if available.

(2) If a public sewer system is not available, disposal shall be made into a private sewage disposal system designed, constructed, and operated pursuant to the requirements of the cabinet in 902 KAR 10:085 and the Energy and Environment Cabinet in KAR Title 401.50

(3) If a public sewer system subsequently becomes available, connections shall be made to it and the use of the facility's private sewage disposal system shall be discontinued.

Section 8. Refuse Disposal.

(1) All refuse at a public swimming and bathing beach shall be disposed of in a manner approved by the Energy and Environment Cabinet in KAR Title 401.

(2) An adequate number of refuse containers with tight fitting lids shall be provided at readily accessible locations at all public beaches.

(3) Refuse containers in women's restrooms shall be kept covered.

(4) Bulk refuse storage areas shall be designed and maintained to prevent rodent harborage.

(5) Bulk refuse containers shall be:

(a) Of approved design and construction;

(b) Kept closed; and

(c) Placed upon an impervious surface within a suitable enclosure to prevent access by animals.

Section 9. Facility Design and Construction.

(1) Attendant structures, such as bathhouses, dressing rooms, or restrooms, shall meet the design, materials, fixture, and construction requirements of 815 KAR 7:120 and 815 KAR Chapter 20.

(2)

(a) The wading and swimming areas at beaches where the water is less than five (5) feet deep shall be separated from swimming and diving areas by lines securely anchored and buoyed.

(b) Safe limits of swimming shall be marked by buoys, poles, or other markers located not over 100 feet apart and visible to bathers from a distance of at least 100 feet.

(c) Lettering on markers shall be maintained in good repair.

(d) Within these limits of safe swimming there shall not be any boating, underwater obstructions, or other hazards that may be dangerous or cause injury to swimmers.

(e) Signs shall be provided on the beach describing these markers and stating that they indicate the limits of safe bathing.

(f) The bottom of the swimming area shall consist of sand or gravel and be of a uniform slope.

(3) The water surrounding any floats or inflatable features where diving is permitted shall be at least nine (9) and one-half (1/2) feet deep.

Section 10. General Facility Operation and Maintenance.

(1) All facilities shall be maintained in good repair and free of debris.

(2) Bather preparation facilities. Each beach facility shall provide one (1) or more central bath ~~houses~~house containing the necessary toilet and other plumbing fixtures as designated in paragraphs (a) through (e) of this subsection below.

(a) Toilet facilities shall be provided for females at a ratio of three (3) for 500 linear feet of beach.

(b) Toilet facilities shall be provided for males at a ratio of one (1) for 500 linear feet of beach.

(c) Urinal facilities shall be provided for males at a ratio of two (2) for 500 linear feet of beach.

(d) Lavatories shall be provided for each sex accommodated at a ratio of two (2) for 500 linear feet of beach.

(e) For each additional 500 linear feet of beach one (1) additional toilet and lavatory shall be provided for female and male restrooms and one (1) additional urinal for male restrooms.

(3) A bath house shall be conveniently located within 500 feet of the beach area to be served.

(4) All plumbing installations~~installation~~ shall meet the State Plumbing Code, 815 KAR Chapter 20.

(5) A room containing sanitary facilities shall have:

(a) Every opening to the outer air effectively screened and a self-closing entry door;

(b) Natural or artificial lighting;

(c) Hot and cold or tempered water under pressure furnished at every lavatory and sink; and

(d) Cold water furnished to every toilet and urinal.

VOLUME 51, NUMBER 8— February 1, 2025

(6) Floors, walls, ceilings, attached or freestanding fixtures, and equipment shall be easily cleanable and in good repair. Floors shall be maintained in a nonslip condition.

(7) An adequate ~~supply~~**[supplies]** of toilet tissue, soap, and disposable hand drying towels or suitable hand drying devices shall be provided and maintained.

(8) Refuse containers shall be placed in all restrooms.

(9) Diving boards or platforms, ladders, hand rails, docks, and other similar equipment, shall be maintained in good repair, be securely anchored, and have a nonslip surface.

(10) Maintenance of bathing beaches.

(a) Beach areas shall be maintained free of litter and water borne debris. Beverage containers of glass or metal containers with detachable pull tabs shall be prohibited.

(b) A layer of sand or gravel of sufficient depth to prevent the creation of mud holes or slicks and to reduce shallow water turbidity shall be maintained on all beach areas and shall extend beneath the water of all wading and swimming areas.

(c) Wading, swimming, and diving areas shall be examined by the facility operator on a routine basis and immediately after high water conditions for floating or sunken debris, obstructions at diving areas, and high-water turbidity, which may present safety hazards to bathers.

Section 11. Personnel.

(1) Operator. A facility operator shall be responsible for the operation and maintenance of the facility. The operator shall be available at all times ~~if~~**[when]** the facility is open for use.

(2) Lifeguards.

(a) Lifeguards shall be provided at all bathing beaches that allow bathers seventeen (17) years of age or younger without a responsible adult at a rate of one (1) per 100 linear feet of beach front or major fraction more than half thereof. Public beaches that do not provide lifeguards shall post the following warnings: "No lifeguard on duty. Swim at your own risk. ~~A~~**[No]** person seventeen (17) years of age or younger ~~shall not~~**[may]** swim without a responsible adult present."

(b) A public beach that has an inflatable water attraction shall have a minimum of one (1) lifeguard per attraction, with additional lifeguards provided to ensure all areas surrounding the attraction are clearly visible at all times.

(3) Lifeguards shall comply with the following:

(a) Lifeguards shall have a current lifesaving certificate. Current training as a lifesaver or water safety instructor by the American Red Cross or equivalent shall satisfy this requirement. The certificate of competency shall be prominently posted;

(b) Lifeguards shall be dressed in swimming attire; and

(c) Lifeguards assigned to the supervision of the facility shall not be subject to duties that ~~may~~**[would]**:

1. Distract their attention from proper observation of persons in the facility area; or

2. Prevent immediate assistance to persons in distress in the water.

Section 12. Safety Equipment.

(1) One (1) unit of life saving equipment consisting of the following shall be provided per facility:

(a) A U.S. Coast Guard approved ring buoy no more than twenty (20) inches in diameter with a three-sixteenths (3/16) inch rope attached;

(b) A shepherd's hook securely attached to a one (1) piece pole not less than twelve (12) feet in length;

(c) One (1) backboard with head immobilizer and at least three (3) straps, for back and neck injuries;

(d) One (1) lifeboat outfitted to meet state water safety administrative regulations;

(e) A torpedo shaped buoy; and

(f) A minimum of one (1) standard twenty-four (24) unit first aid kit or its equivalent that is kept filled and ready for use.

(2) Lifesaving equipment shall be mounted in a conspicuous place at the most centrally located readily accessible location. Its function shall be plainly marked, and this equipment shall be kept in good repair and ready condition. Bathers or other persons shall not be permitted to tamper with, use for any purpose other than its

intended use, or remove this equipment from its established location.

(3) Telephones.

(a) All facilities shall have a non-pay landline or Voice over Internet Protocol (VoIP) telephone, continuously connected to a power source and operational at all times, capable of direct dialing 911 without going through a switchboard, and located in a conspicuous, readily accessible location. A cordless telephone shall be prohibited. Instructions for dialing shall be posted if necessary.

(b) A two (2) way radio communication system to a manned telephone system may be substituted at an isolated beach facility.

(c) All facilities utilizing VoIP telephones shall only use fixed VoIP services. Non-fixed VoIP services shall be prohibited.

(d) The address of the facility and the telephone number of the police department, fire department, emergency medical service, or a hospital shall be posted in a conspicuous place near the telephone.

(4) All drownings, near drownings, and injuries requiring hospitalization shall be immediately reported by next business day to the local health department and the Department for Public Health on form DFS-354, Kentucky Public Swimming and Bathing Facilities Drowning and Injury Report, incorporated by reference in 902 KAR 10:125.

Section 13. Spectator and Bather Administrative Regulations.

(1) Management of each facility shall adopt rules for controlling of food, drink, and smoking in the facility and surrounding areas.

(2) Rules governing the use of the facility and instructions to bathers shall be displayed on placards at the entrance to dressing rooms and enforced by the facility operator. Posting of rules and other instructions shall provide that:

(a) Admission to the facility shall be refused to a person:

1. Having any contagious disease or infectious conditions, such as colds, fever, ringworm, foot infections, skin lesions, carbuncles, boils, inflamed eyes, ear discharges, or any other condition that has the appearance of being infectious;

2. Having excessive sunburn, abrasions that have not healed, corn plasters, bunion pads, adhesive tape, rubber bandages, or other bandages of any kind; and

3. Under the influence of alcohol, illegal substances, or exhibiting erratic behavior;

(b) Food, drink, gum, tobacco, or vapor producing products shall not be allowed, other than in specially designated and controlled sections of the facility area;

(c) Glass, soap, or other material that creates hazardous conditions shall not be permitted in the beach area or in the water;

(d) Beverage containers of glass or metal containers with detachable pull tabs shall not be permitted in the beach area or in the water;

(e) Diving in areas other than designated diving areas shall not be permitted; and

(f) Caution shall be exercised in the use of diving boards, floating platforms, and inflatable attractions.

Section 14. Facility Inspection.

(1) Inspections.

(a) All owners or operators, prior to opening to the public, shall certify to the cabinet in writing, that the facility is in compliance with the requirements of this administrative regulation, except ~~if~~**[in instances where]** the cabinet has made an inspection prior to its opening. The cabinet shall make at least two (2) full facility inspections during the operating season. The cabinet may require one (1) of the full facility inspections to be performed prior to a facility's opening.

(b) The facility owner or operator shall be responsible for notifying the cabinet of the proposed opening date.

(2) New facilities shall receive final construction approval inspections by the cabinet, and other affected state and local regulatory agencies, prior to placing the facility in operation. It shall be the owner or operator's responsibility to notify the cabinet and other involved agencies of construction completion and call for inspection.

VOLUME 51, NUMBER 8– February 1, 2025

(3) The cabinet may make as many additional inspections and re-inspections as necessary for the enforcement of this administrative regulation.

(4) ~~[When]~~ an agent of the cabinet makes an inspection of a public swimming and bathing facility, the findings shall be recorded on the DFS-350, Public ~~Beach~~~~[Beaches]~~ Inspection Report, and a copy provided to the facility owner or operator. The inspection report shall:

- (a) Set forth any violation observed;
- (b) Establish a specific and reasonable period of time for the correction of the violation observed; and
- (c) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in closure of the facility.

Section 15. Water Sampling and Testing.

(1) Beaches shall comply with the requirements of Section 5 of this administrative regulation prior to opening for the season and during the operating season.

(2) Beaches shall be monitored once each month or anytime immediately after periods of heavy rainfall. Monitoring inspections for beaches shall include general sanitation, bacteriological water sampling, and safety checks as necessary. Results shall be made available to the cabinet upon inspection.

(3) Additional samples may be requested to ensure compliance with this administrative regulation.

Section 16. Conditions requiring Closure of a Facility and Enforcement Provisions.

(1) The cabinet shall immediately order the closure of a facility and prohibit any person from using the facility by written notice to the facility owner or operator if:

- (a) There is an immediate danger to health or safety;
- (b) The water does not conform to the bacteriological standards contained in this administrative regulation;
- (c) An environmental survey of the area shows evidence of sewage, other pollutants, or toxic materials being discharged to waters tributary to a beach;
- (d) The owner, operator, an employee, or representative of the owner interferes with duly authorized agents of the cabinet who bear proper identification, in the performance of their duties; ~~and~~
- (e) If serious or repeated violations of any of the requirements of ~~this~~~~the~~ administrative ~~regulation~~~~regulations~~ are found.

(2) The notice shall state the reasons prompting the closing of the facility, and a copy of the notice shall be posted conspicuously at the facility by the owner or operator.

(3) Any owner or operator affected by an order may request an administrative conference in accordance with 902 KAR 1:400.

(4) If the conditions rendering closure are abated or further analyses prove to not render closure, the cabinet may authorize reopening the facility.

(5) If a source of sewage, pollution, or toxic material discovered as a result of an environmental survey is eliminated, the cabinet may authorize the reopening of a beach.

(6) In all other instances of a violation of the provisions of this administrative regulation, or for the nonpayment of fees, the cabinet shall serve upon the owner or operator a written notice specifying the violation in question and afford a reasonable opportunity to correct the violation. An owner or operator who fails to comply with any written notice issued under the provisions of this administrative regulation shall be notified in writing that the facility shall be closed at the end of ten (10) days following service of the notice, unless a written request for a conference pursuant to 902 KAR 1:400 is filed with the cabinet by the owner or operator within the ten (10) day period.

(7) All administrative hearings shall be conducted in accordance with KRS Chapter 13B.

(8) Any person whose facility has been closed may, at any time, make application for a reinspection for the purpose of reopening the facility. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that in his or her opinion the conditions causing closure of the facility have been corrected, the cabinet shall make a reinspection. If the facility is

found to be in compliance with the requirements of this administrative regulation, the facility shall be reopened.

(9)

(a) For serious or repeated violations of any of the requirements of this administrative regulation, or for interference with the agents of the cabinet in the performance of their duties, the facility may be permanently closed after an opportunity for a conference has been provided in accordance with 902 KAR 1:400.

(b) Prior to the action, the cabinet shall notify the owner or operator, in writing, stating the reasons for which the facility is subject to closure and advising that the facility shall be permanently closed at the end of ten (10) days following service of the notice unless a request for a conference is filed with the cabinet by the owner or operator, within the ten (10) day period.

Section 17. Existing Facilities and Equipment. Existing facilities and equipment being used prior to the effective date of this administrative regulation that do not fully meet the design, construction, and materials requirements of this administrative regulation, may continue to be used if the facilities and equipment:

- (1) Are in good repair;
- (2) Are capable of being maintained in a sanitary condition;
- (3) Meet facility water quality standards; and
- (4) Create no health or safety hazard.

Section 18. Effect on Local Administrative Regulations. Compliance with this administrative regulation shall not relieve any person from compliance with any other state or local laws dealing with beach operation and maintenance matters or zoning requirements that may also be applicable.

Section 19. Variances for Construction Requirements.

(1) All facilities shall be constructed or remodeled in compliance with the provisions of this administrative regulation, except that an applicant may request a variance if the cabinet determines that the variance ~~shall~~~~would~~ not ~~affect~~—seriously ~~affect~~ the safe and healthful operation of the facility.

(2) Before granting a variance, the cabinet shall require ~~documentation~~~~proof~~ from the applicant ~~documenting~~ that the requested variance ~~shall~~~~will~~ comply with the basic intent of ~~this~~~~these~~ administrative ~~regulation~~~~regulations~~ and that ~~a~~~~no~~ safety or health hazard ~~shall not~~~~would~~ be created if the variance is granted.

Section 20. Incorporated by Reference.

(1) The "DFS-350 Public Beach Inspection Report", 3/2024, is incorporated by reference. [?]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Public Health Protection and Safety, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. and online at <https://chfs.ky.gov/agencies/dph/dphps/emb/Pages/pools.aspx>.

FILED WITH LRC: January 13, 2025

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

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Office of the Commissioner (As Amended at ARRS, January 13, 2025)

902 KAR 28:030. Kentucky's trauma system level IV criteria.

RELATES TO: KRS 211.490, 211.492, 211.494, 211.496

STATUTORY AUTHORITY: KRS 211.494(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.494(8) authorizes the Department for Public Health to promulgate administrative regulations in accordance with KRS Chapter 13A to implement a statewide trauma care system. This

VOLUME 51, NUMBER 8– February 1, 2025

administrative regulation establishes the criteria for a Level IV trauma center in the Kentucky Trauma Care System.

Section 1. Level IV Trauma Centers.

(1) A hospital that seeks designation as a Level IV trauma center shall meet the criteria established in this subsection.

(a) Trauma program.

1. A trauma program shall be created with agreement from the hospital's board of directors, administration, and medical staff.

2. The board of directors, administration, medical, nursing, and ancillary staff shall commit to provide trauma care at the level for which the facility is seeking trauma center verification.

3. A board resolution advising of that commitment shall be submitted with the KYTAC-Application-1, [~~KYTAC1 application~~] incorporated by reference in 902 KAR 28:020, Section 5[6].

4. The trauma program shall adopt and meet the "Pediatric Readiness in the Emergency Department" policy guidance for care of children, as endorsed by the American Academy of Pediatrics (AAP), the American College of Emergency Physicians (ACEP), the American College of Surgeons, and the Emergency Nurses Association (ENA), and published at [https://www.annemergmed.com/article/S0196-0644\(18\)31167-3/pdf](https://www.annemergmed.com/article/S0196-0644(18)31167-3/pdf).

(b) Trauma services medical director.

1. The trauma services medical director shall be a physician on staff at the facility.

2. The job description shall include roles and responsibilities for trauma care, including trauma team formation, supervision and leadership, and continuing education.

3. The medical director shall act as the medical staff liaison to administration and[-] nursing staff, and as the primary contact for that facility with other trauma centers in the region.

4. The medical director shall maintain certification as an Advanced Trauma Life Support (ATLS) provider if not Board Certified/Board Eligible by the American Board of Emergency Medicine (ABEM) or the American Osteopathic Board of Emergency Medicine (AOBEM). The trauma services medical director shall may participate in a Rural Trauma Team Development Course (RTTDC)[-] ~~participation shall be required for the trauma services medical director~~.

(c) Trauma coordinator[~~services manager~~].

1. The facility shall have a trauma coordinator[~~services manager~~] who may be referred to as the trauma services manager or trauma program manager[~~coordinator~~].

2. The trauma coordinator[~~manager~~] shall work with the medical director to coordinate and implement the facility's trauma care response.

3. The job description of this position shall include time dedicated to the trauma program, separate from other duties the trauma coordinator[~~program manager~~] may have at the facility.

(d) Emergency department coverage.

1. The facility shall have twenty-four (24) hour physician coverage of the emergency department and a designated physician medical director for the emergency department.

2. A mid-level provider, such as a nurse practitioner or physician[~~physician's~~] assistant, may serve as the trauma team leader. A designated emergency department physician shall be present for immediate consultation during trauma team activations.

(e) Emergency department physicians. Physicians assigned to the emergency department of a Level IV Trauma Center shall:

1. Be licensed in the Commonwealth of Kentucky; and

2.

a. Maintain current Advanced Trauma Life Support® (ATLS) provider certification; or

b. Be certified by ABEM or AOBEM.

(f) Surgical staff.

1. Orthopedic surgery, plastic surgery, and radiology medical staff availability shall be documented by published call schedules.

2. If surgical services are provided, anesthesia coverage shall be provided.

3. Surgical staff shall document completion of fifteen (15) hours of annual trauma-related continuing medical education for surgeons

completed every three (3) years as part of the CME required by the Kentucky Board of Medical Licensure.

4. Surgical specialties participating in the trauma team shall have at least one (1) representative of its specialty attend more than half of the hospital's multi-disciplinary trauma review committee meetings.

(g) Prior to being assigned to the facility's trauma team, nurses responsible for trauma care at the facility shall have completed one of the following professional education courses specific to trauma care:

1. Trauma Nursing Core Course (TNCC); or
2. Advanced Trauma Care for Nurses (ATCN).

(h) Transfer Protocols.

1. The facility shall have a written transfer protocol describing the method to transfer the trauma patient requiring a higher level of care.

2. The transfer protocol shall address:

- a. Available ground or air transport services;
- b. Alternative transport services;
- c. Receiving trauma centers and trauma surgeon contact information;

d. What supplies, records, and resources shall be available for use to affect the transfer; and

e. Specific anatomic and physiologic criteria that will immediately initiate transfer to definitive care.

3. The transfer protocol shall be developed with involvement of each local ground EMS provider and regional air medical provider to assure seamless patient care during transfer and be consistent with the protocol examples found in the Kentucky Trauma Hospital Reference[~~Resource~~] Manual.

(i) Transfer agreements. A Level IV Trauma Center shall have:

1. A written agreement with a verified Level I, II, or III trauma center or a hospital whose capabilities exceed that of a Level IV facility regarding the transfer and care of adult and pediatric trauma patients;

2. A written agreement with back-up transfer agreements specifically for burn patients if the primary regional receiving facility does not have the required capacity; and

3. Transfer plans that shall be defined and consistent with the examples found in the Kentucky Trauma Hospital Reference[~~Resource~~] Manual.

(j) Radiology.

1. The facility shall have a radiologic technologist available on-site twenty-four (24) hours a day to provide basic plain films used in the evaluation of trauma patients.

2. A twenty (20) minute response time for trauma team activation shall be required. Response times shall be documented and monitored by the trauma coordinator and the facility's process improvement program.

3. The facility shall have computed tomography and sonography capabilities.

(k) Clinical laboratory.

1. The facility shall have a lab technician available on duty or on-call twenty-four (24) hours a day to perform basic studies used in the initial evaluation of trauma patients, including Complete Blood Count, typing, coagulation profile, and Arterial Blood Gas.

2. A twenty (20) minute response time from trauma team activation shall be required for a lab technician. Response times shall be documented and monitored by the trauma coordinator and the facility's process improvement program.

3. The lab or facility blood bank shall have at least two (2) units of O-negative blood available for trauma patients, to be infused at the facility or while en route[~~en-route~~] to definitive care.

4. Access to blood and blood products during an emergency situation if the lab is not staffed shall be documented.

5. The facility shall have the capability to conduct micro-sampling.

(l) Respiratory therapy.

1. The facility shall have a respiratory care practitioner on duty or on-call twenty-four (24) hours a day to respond to the emergency department if the trauma team is activated.

2. A twenty (20) minute response time from trauma team activation shall be required if a respiratory care practitioner is not on-

VOLUME 51, NUMBER 8— February 1, 2025

site. Response times shall be documented and monitored by the trauma coordinator and the facility's process improvement program.

3. Other trained health care personnel may fulfill the respiratory care practitioner's role until the designated respiratory care practitioner arrives.

(2) Trauma Team Activation Protocol. A facility designated as a Level IV Trauma Center shall have a written trauma team activation protocol in place that:

(a) Documents the members of the trauma team and their response requirements if activated;

(b) Establishes the criteria based on severity, anatomy, or physiology of the injury for trauma team activation and provides the names of each person authorized to activate the trauma team; and

(c) Is consistent with the examples of trauma team activation protocols found in the Kentucky Trauma Hospital ~~Reference~~[Resource] Manual.

(3) Performance improvement.

(a) A facility designated as a Level IV Trauma Center shall develop a performance improvement program that includes:

1. An in-house trauma registry or a secure on-line trauma registry system; and

2. A written policy outlining the quality and performance improvement (PI) portion of the trauma program, which shall include:

a. The names of each person responsible for performing PI reviews;

b. The names of the multidisciplinary trauma review committee;

c. The composition by name and position of the morbidity and mortality review committee;

d. The minimum number of cases to be reviewed annually including:

(i) Patients requiring transfer;

(ii) Record of each trauma death;

(iii) Noncompliance of trauma team members to response time requirements;

(iv) Bypasses;

(v) Transfers; and

(vi) Trauma care provided by physicians not meeting minimal education requirements;

e. Frequency of performance improvement meetings;

f. Minimum requirements for member attendance by position; ~~and~~

g. ~~[Evidence of a quality assurance program as required by 902 KAR 20:016, Section 3(8)(b)6; and]~~

~~[h.] Feedback obtained from patients transferred to a Level I, II, or III trauma center.~~

(b) Each performance improvement program shall be consistent with the examples in the Kentucky Trauma Hospital ~~Reference~~[Resource] Manual.

(4) Level IV Trauma Center emergency department.

(a) Basic and essential equipment and supplies for the care and treatment of both adult and pediatric patients shall be present in a Level IV Trauma Center emergency room.

(b) A Level IV Trauma Center emergency room shall contain items described as the minimum equipment and supply lists found in the Kentucky Trauma Hospital ~~Reference~~[Resource] Manual.

(5) Level IV Trauma Center designated treatment rooms~~[operating room]~~.

(a) Any operating room available and used for the surgical care of victims of trauma shall have the following:

1. Operating room staff available within thirty (30) minutes of notification;

2. Anesthesia staff available within thirty (30) minutes of notification; and

3. Age-specific equipment including thermal control equipment for patients, fluids, and blood products.

(b) ~~[C-arm capability shall be required if orthopedic procedures are to be performed.]~~

~~[(e)] Post-anesthetic recovery shall contain equipment for monitoring and resuscitation, pulse oximetry, and thermal control.~~

~~[(c)] [(d)] Required resuscitation equipment shall include:~~

~~1. Airway and ventilation;~~

~~2. Pulse oximetry;~~

~~3. Suction;~~

4. Electro Cardiogram;

5. Defibrillator;

6. IV administration sets;

7. Large bore vascular catheters;

8. Cricothyroidotomy;

9. Thoracostomy;

10. Emergency drugs;

11. Broselow or Handtevy pediatric resuscitation system equipment and supplies~~[tape];~~

12. Fluid and body warmer,

13. Qualitative CO2 detector; and

14. EMS communication equipment.

(6) Trauma diversion.

(a) The Level IV trauma center shall have a policy in place that outlines the circumstances that shall trigger a trauma diversion and the procedures to be followed, including procedures if one (1) or more hospital resources are functioning at maximum capacity or are otherwise unavailable.

(b) This process shall be coordinated with the EMS providers in the service area and potential receiving facilities.

~~(c) [EMS providers shall coordinate diversion plans under the provisions of 202 KAR 7:501, Section 5(3).]~~

~~[(d)]~~ Examples of trauma diversion protocols shall be found in the Kentucky Trauma Hospital ~~Reference~~[Resource] Manual.

(7) Other Level IV requirements. A facility designated as a Level IV trauma center may:

(a) Host or participate in a joint RTTDC program. Participation by physicians, members of administration, nursing, ancillary support staff, and local prehospital care providers shall be strongly encouraged;

(b) Conduct or participate in local or regional outreach education, specifically ATLS, APLS, ENPC, TNCC, and ITLS/PHTLS courses, and conduct or participate in local or regional presentations of trauma-related CME for physicians, nurses, prehospital staff, and other personnel; and

(c) Participate in injury prevention programs organized by the facility or in cooperation with the Kentucky Injury Prevention Research Center (KIPRC), law enforcement, fire, EMS and other safety organizations. Documentation of injury prevention program activities shall be available for review during the trauma center verification or reverification process.

Section 2. Level IV Site Visits.

(1) A hospital may request a site visit from a peer review team for a consultation visit, a verification visit, or a reverification visit.

(a) A consultation visit shall be conducted to assess the facility's system of trauma care delivery or to prepare for a verification visit.

1. A consultation visit shall follow the same format as a verification visit.

2. Site visit reviewers shall provide recommendations to aid a facility in attaining verification readiness.

(b) A verification visit shall be conducted to confirm the facility is performing as a trauma center according to the criteria listed in Section 1 of this administrative regulation.

1. Site visit reviewers shall provide a report of findings to the KyTAC.

2. The KyTAC, upon receipt and review of the report, shall recommend to the Commissioner of Public Health that:

a. A Certificate of ~~Designation~~[Verification] be issued, and that the Commissioner designate the facility as a Level IV Trauma Center; or

b. The facility be notified of deficiencies in writing and a focus review visit scheduled within eight (8)~~[six (6)]~~ months of the date of the original verification visit to review~~[identify]~~ those deficiencies and verify that they have been isolated and corrected~~[can be isolated and correctable]~~.

(c) A reverification visit shall be requested by a facility previously issued a certificate of ~~designation~~[verification] if the facility does not want its certificate of ~~[verification and] designation~~ to expire.

1. The facility shall schedule a reverification visit at least four (4)~~[six (6)]~~ months prior to the expiration date of its current certificate of ~~[verification and] designation~~ as a Level IV Trauma Center.

VOLUME 51, NUMBER 8– February 1, 2025

2. A facility whose current certificate of ~~designation~~~~[verification]~~ has lapsed due to the facility's failure to initiate reverification shall submit a new KYTAC-Application-1~~[KYTAC1]~~ as required by 902 KAR 28:020 and this administrative regulation.

3. A reverification visit shall follow the same procedures established in subsection (2) of this section.

(2) Site visit teams.

(a) A site visit team shall be composed of a minimum number of persons as follows:

1. Consultation visit: Two (2) members;
2. Verification visit: Two (2)~~[Three (3)]~~ members;
3. Reverification visit: Two (2)~~[Three (3)]~~ members; or
4. Focus review visit: Two (2) members, one (1) of whom shall have been on the original verification team.

(b) At least one (1)~~[Each]~~ site visit team member shall be a physician or registered nurse trauma center program manager~~[member of either the:]~~

~~[1.] [American College of Surgeons; or]~~

~~[2.] [American Board of Emergency Medicine;]~~

~~[(c)] [The Commissioner of Public Health shall solicit from the KyTAC two (2) names for each team member position for the requested visit.]~~

~~[(d)] [The Commissioner of Public Health shall select the team members from the list provided and notify KyTAC of the team members selected.]~~

~~[(e)] [Only one (1) of each team's members may be a KyTAC member].~~

Section 3. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Kentucky Trauma Hospital Reference~~[Resource]~~ Manual", May 2024; and

(b) "Pediatric Readiness in the Emergency Department", Annals of Emergency Medicine, December 2018~~[April, 2012, is incorporated by reference].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Public Health, Commissioner's Office, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) "Kentucky Trauma Hospital Reference Manual" is available online at <https://www.kyha.com/kentucky-trauma-system/>.

(4) "Pediatric Readiness in the Emergency Department", Annals of Emergency Medicine, is available online at [https://www.annemergmed.com/article/S0196-0644\(18\)31167-3/pdf](https://www.annemergmed.com/article/S0196-0644(18)31167-3/pdf).

FILED WITH LRC: January 13, 2025

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

ENERGY AND ENVIRONMENT CABINET
Department of Environmental Protection
Division of Waste Management
(Amended After Comments)

401 KAR 47:110. Registered permit-by-rule.

RELATES TO: KRS 224.01-010, 224.10-100, 224.10-105, 224.40-100, 224.40-110, 224.40-120, 224.40-305, 224.40-310, 224.40-315, 224.40-320, 224.40-325, 224.40-330, 224.40-340, 224.40-605, 224.40-650, 224.43-010, 224.43-020, 224.43-070, 224.43-310, 224.43-315, 224.43-330, 224.43-340, 224.43-345, 224.43-350, 224.70-100, 224.70-110, 224.99-010, 224.99-020

STATUTORY AUTHORITY: KRS 224.10-100(19)(c) ~~and~~ (24), 224.40-100, 224.40-305

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(19)(c) ~~and~~ (24), and 224.40-305 authorize the cabinet to promulgate administrative regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires that persons engaging in the management, processing, and disposal of waste obtain a permit. This administrative regulation establishes requirements for registered permits-by-rule and the standards for the certification program.

Section 1. Issuance of Registered Permit-by-rule.

(1) Before accepting waste, the owner or operator of a solid waste site or facility ~~established~~ [specified] in 401 KAR 47:080, Section 2(6) shall notify the cabinet by submitting a registration. ~~[For solid waste sites or facilities other than medical waste transfer stations,] The registration shall become effective thirty (30) calendar [five (5) business] days after the cabinet receives it unless the cabinet approves or denies the registration within that time. A registration shall be denied if the registration is incomplete or the registration fails to demonstrate compliance with the requirements established in 401 KAR 47:120 and 401 KAR 48:320 [401 KAR Chapters 47 and 48]. [For medical waste transfer stations, the registration shall become effective thirty (30) days after the cabinet receives it unless the cabinet denies the registration within that time.] The cabinet shall hold a public hearing in accordance with 401 KAR 47:140, Section 10, prior to accepting or denying the registration upon the request of any individual. The owner or operator of a registered permit-by-rule facility shall comply with the environmental performance standards in 401 KAR 30:031 in order for the registered permit-by-rule to remain effective.~~

(2) The registration for a registered permit-by-rule facility shall be submitted to the cabinet on one (1) of the following registration forms:

- (a) DEP 7059; Solid Waste Transfer Station, Convenience Center, and Recycling Center;
- (b) DEP 7059-A; Solid Waste Composting Facility;
- (c) DEP 7059-E; Class I Solid Waste Landfarm;
- (d) DEP 7059-H; Less-than-one-acre Construction/Demolition Debris (CDD) Landfill; or
- (e) DEP 7059-J; Solid Waste Incinerator.

(3) ~~[A registration that is determined to be administratively incomplete may be denied within five (5) business days after receiving the registration. Thereafter,] If the cabinet determines that a registration that is not approved or denied pursuant to subsection 1 of this section fails to include all of the information required, the cabinet shall notify the operator that the registration is deficient. The owner or operator shall submit the requested information within thirty (30) calendar days of the date of the notice of deficiency. The cabinet shall review the registration [cabinet's review shall be conducted] in accordance with the requirements of 401 KAR 47:025.~~

(4) Prior to submission of the registration, the owner or operator shall prepare a groundwater protection plan in accordance with 401 KAR 5:037.

(5) The owner or operator shall publish a notice two (2) weeks prior to submission of the registration in a daily or weekly newspaper

of general circulation where the proposed facility is located. Public notices shall be of a size to include not less than two (2) column widths for advertising and shall be in a display format. The public notice shall contain ~~the following~~:

- (a) Name and address of the owner or operator;
- (b) The type of facility;
- (c) A brief description of the business to be conducted; and
- (d) Name and address of the facility.

Section 2. Operating Requirements for Registered Permit-by-rule Facilities.

(1) The owner or operator of a facility operating under a registered permit-by-rule, except as ~~established~~ [provided] in Section 3 of this administrative regulation, shall not:

- (a) Store, treat, or dispose of solid waste not specified in the registration; or
 - (b) Exceed the design capacities specified in the registration.
- (2) The owner or operator of a facility operating under a registered permit-by-rule shall comply with the environmental performance standards in 401 KAR 30:031.

(3) The owner or operator of a registered permit-by-rule facility shall keep records as ~~established~~ [provided] in this section.

(a) The owner or operator of a less-than-one (1) acre ~~or expanded less-than-two (2) acre construction or [d]emolition debris landfill or solid waste incinerator shall report quarterly pursuant to KRS 224.43-330. In addition, the owner or operator shall submit DEP 7046, Annual Waste Quantity Report, to the cabinet annually and upon closure of the facility.~~

(b) The owner or operator of a composting facility shall report quarterly pursuant to KRS 224.43-330. In addition, the owner or operator shall submit DEP 7108, Annual Report for a Solid Waste Composting Facility, to the cabinet annually and upon closure of the facility.

(c) The owner or operator of a landfarming facility shall report quarterly pursuant to KRS 224.43-330. In addition, the owner or operator shall submit DEP 7064, Annual Report for a Class I Solid Waste Landfarm, to the cabinet annually and upon closure of the facility.

(d) The owner or operator of a registered permit-by-rule convenience center, transfer station or commercial recycling center shall document records on DEP 7046, Annual Waste Quantity Report. Records shall be kept on site and available for inspection for ~~at least three (3) years.~~

(4) The owner or operator of a solid waste incinerator shall conduct the Toxicity Characteristic Leaching Procedure (TCLP) test ~~established~~ [described] in ~~401 KAR 39:060, Section 2~~ [401 KAR 31:030, Section 5], before the initial disposal of any ash and ~~if~~ [whenever] the characteristics of the waste accepted by the incinerator significantly change. The owner or operator shall keep a record of the current TCLP laboratory analysis report required by this section available for inspection by the cabinet for ~~at least~~ three (3) years. The owner or operator of a solid waste incinerator shall report the volume of ash generated to the cabinet annually and upon closure of the facility. The report shall be submitted no later than January 31 for the preceding calendar year.

Section 3. Changes to a Registered Permit-by-rule.

(1) A revised registration shall be submitted as ~~established in paragraphs (a) through (c) of this subsection~~ [follows]:

(a) Solid wastes not previously identified in the registration may be stored, treated, or disposed at a facility operating under a registered permit-by-rule if the owner or operator submits a revised registration to the cabinet prior to that change.

(b) The owner or operator of a facility operating under a registered permit-by-rule shall submit a revised registration to the cabinet prior to increasing the design capacity of processes used at a facility.

(c) The owner or operator of a facility operating under a registered permit-by-rule shall submit a revised registration to the

cabinet prior to changing the processes for the storage, treatment, or disposal of solid waste, using additional processes, or changing the owner or operator.

(2) The revised registration shall become effective thirty (30) calendar~~[five (5) business]~~ days after the cabinet receives it, unless the cabinet approves or denies the registration within that time. The cabinet shall review the registration in accordance with Section 1 of this administrative regulation.

Section 4. Revocation of a Registered Permit by Rule. The cabinet may revoke a registered permit-by-rule for the following causes:

(1) Noncompliance by the owner or operator with a condition of the registration;

(2) The owner, operator, or key personnel fail~~[owners, operators, or key personnel's failure during the registration process]~~ to disclose all information required by the cabinet during the registration process;

(3) The owner, operator, or key personnel misrepresent~~[owner's, operator's, or key personnel's misrepresentation of]~~ any information required by the cabinet at any time;

(4) The cabinet determines~~[cabinet's]~~~~[determination]~~ that the operation endangers human health, safety, or the environment;

(5) The owner, operator, or key personnel violate~~[owner's, operator's or key personnel's violation of]~~ any requirement of KRS Chapter 224 or 401 KAR Chapters 30 through 49~~[the administrative regulations promulgated pursuant thereto]~~; or

(6) A change to the registered-permit-by-rule that was made without complying with Section 3 of this administrative regulation.

Section 5. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) DEP 7059; "Solid Waste Transfer Station, Convenience Center, and Recycling Center", November 2016;

(b) DEP 7059-A; "Solid Waste Composting Facility", November 2016;

(c) DEP 7059-E; "Class I Solid Waste Landfarm", November 2016;

(d) DEP 7059-H; "Less-than-one-acre Construction/Demolition Debris", July 2024~~[November 2016]~~;

(e) DEP 7059-J; "Solid Waste Incinerator", November 2016;

(f) DEP 7064; "Annual Report for a Class I Solid Waste Landfarm", November 2016;

(g) DEP 7108; "Annual Report for a Solid Waste Composting Facility", November 2016; and

(h) DEP 7046; "Annual Waste Quantity Report", November 2016.

(2) This material may be inspected, copied, or obtained at the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or at any of the division's field offices Monday through Friday, 8 a.m. to 4:30 p.m.; 2642 Russellville~~[Russelville]~~ Road, Bowling Green, Kentucky 42101; 2751 Campbellsville Road, Columbia, Kentucky 42728; 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042; 1332 State Highway 15, Hazard, Kentucky 41701; 875 South Main Street, London, Kentucky 40741; 9116 Leesgate Road, Louisville, Kentucky 40222-4925; Madisonville State Office Building, 625 Hospital Drive, Madisonville, Kentucky 42431; 525 Hecks Plaza Drive, Morehead, Kentucky 40351; 130 Eagle Nest Drive, Paducah, Kentucky 42003.

(3) This material is also available at the division Web site at eec.ky.gov/environmental-protection/waste.

JOHN S. LYONS, Deputy Secretary

REBECCA GOODMAN, Secretary

APPROVED BY AGENCY: January 14, 2025

FILED WITH LRC: January 14, 2025 at 12 noon.

Contact Person: Tyler Shields

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for registered permits-by-rule and the standards for the certification program.

(b) The necessity of this administrative regulation: KRS 224.10-100(19)(c) and (24), and 224.40-305 authorize the Cabinet to promulgate administrative regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires that persons engaging in the management, processing, and disposal of waste obtain a permit. This administrative regulation establishes requirements for registered permits-by-rule and the standards for the certification program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(19)(c) and (24), and 224.40-305 authorize the Cabinet to promulgate administrative regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires that persons engaging in the management, processing, and disposal of waste obtain a permit.

(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 requirements for registered permits-by-rule and the standards for the certification 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 amendments will change multiple sections of the existing administrative regulation. Sections of this administrative regulation are amended to revise the registration review period from five (5) business days to thirty (30) calendar days unless the Cabinet approves or denies the registration within that time. The exception for medical waste transfer station in Section 1(1) is being removed as those facilities currently adhere to a thirty (30) day review period. Section 2 of the administrative regulation is amended to include expanded less than two (2) acre construction or demolition and debris landfills to conform with KRS 224.40-120 and 224.43-330. Sections 5 and 6 of this administrative regulation are amended to update the edition of a form incorporated by reference to correct the address of the Bowling Green Regional Office, respectively. The administrative regulation is amended throughout in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The current review period established in the administrative regulation does not allow adequate review time for staff to address deficiencies, thus requiring staff to deny an entire registration instead of working with the registrant to revise deficient documentation. The amendment to include language referencing expanded less than two (2) acre construction or demolition debris landfills is necessary to comply with KRS 224.40-120 and KRS 224.43-330.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100(19)(c) and (24), and 224.40-305 authorize the Cabinet to promulgate administrative regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires that persons engaging in the management, processing, and disposal of waste obtain a permit. (d) How the amendment will assist in the effective administration of statutes: The amendments to the administrative regulation will allow the division to implement and enforce requirements of registered permit-by-rules and the standards for the certification program.

(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 administrative regulation will affect existing and new owners or operators of: recycling centers (101),

convenience centers (50), solid waste transfer stations (133), solid waste composting facilities (28), solid waste incinerator facilities (0), class one (1) solid waste landfills (2), less than one (1) acre construction or demolition debris landfills (82) or expanded less than two (2) acre construction or demolition debris landfills (0), and medical waste transfer stations (11). Additionally, the administrative regulation will affect any local government or municipality who have a specified facility within their jurisdiction. Landowners where the specified facility is located or is proposed to be located will also be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities identified will have to comply with the established requirements and standards when submitting or modifying registration for a registered permit-by-rule and comply with operating requirements in accordance with 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): This administrative regulation does not establish fees for a registered permit-by-rule, however indirect fees are established in 401 KAR 47:090 for registration, modification, and annual permit renewal of a registered permit-by-rule.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this administrative regulation, registrants will be certified to own and operate a registered permit-by-rule facility established in this administrative regulation. (5) Provide an estimate of how much it will cost to implement this administrative regulation:

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

(a) Initially: The agency will not incur any initial costs for the implementation of this administrative regulation as this certification program is already established within the Solid Waste Branch of the Division of Waste Management.

(b) On a continuing basis: The agency will not incur any additional costs for the implementation of this administrative regulation as this certification program is already established within the Solid Waste Branch of the Division of Waste Management.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation utilizes the General Fund (0100) to pay the Division of Waste Management personnel template (AP0175/AP0179).

(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. This administrative regulation has established indirect fees for registration, modification, and annual permit renewal of a registered permit-by-rule which are established in 401 KAR 47:090.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: While this administrative regulation package does not establish new fees, this administrative regulation has established indirect fees for registration, modification, and annual permit renewal of a registered permit-by-rule which are established in 401 KAR 47:090.

(9) TIERING: Is tiering applied? No, this administrative regulation establishes requirements for registered permits-by-rule and the standards for the certification program.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 40 C.F.R. Part 257 describes the criteria for classification of solid waste disposal facilities and practices excluding municipal solid waste landfill units, under authority of 42 U.S.C. 6907(a)(3), 6912(a)(1) and (d); 33 U.S.C. 1345(d) and (e).

(2) State compliance standards. KRS 224.40-100(19)(c) and (24), and KRS 224.40-305

(3) Minimum or uniform standards contained in the federal mandate. 40 C.F.R. Part 257 Subpart A describes classifications of solid waste disposal facilities and practices, while 40 C.F.R. Part 257 Subpart B sets disposal standards for the receipt of very small quantity generator waste at non-municipal non-hazardous waste disposal units. Pursuant to this administrative regulation amendment package, 40 C.F.R. 248.2 defines construction and demolition (C&D) landfills, subject to the requirements in part 257, subparts A and B. Only C&D landfills that meet the requirements of 40 C.F.R. Part 257, subpart B may receive very small generator waste (defined in 40 C.F.R. 260.1).

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation is broader in scope as it establishes requirements for registered permits-by-rule and the standards for the certification program, while the federal regulations reference general disposal requirements.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation is broader in scope as it establishes requirements for registered permits-by-rule and the standards for the certification program, while the federal regulations reference general disposal requirements. Solid waste disposal, including nonhazardous industrial waste, is overseen by the states.

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 224.40-100(19)(c) and (24), 224.40-305 and 40 C.F.R. Part 257, Subpart A and B.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Energy and Environment Cabinet, Department for Environmental Protection, Division of Waste Management.

(a) Estimate the following for the first year:

Expenditures: The Cabinet's current program expenditures total \$623,095. There is no increase in expenditures expected.

Revenues: The Cabinet does not expect an increase in revenues. The Cabinet estimates the revenue generated from annual permit renewal fees, pursuant to 401 KAR 47:090, to total \$359,250. An additional source of revenue is generated from registration and modification fees for a registered permit-by-rule, established in 401 KAR 47:090. The registration and modification fees for registered permit-by rule facilities include a \$2,500 fee for transfer stations or convenience centers, \$4,500 for less than one-acre construction or demolition debris landfills, \$3,000 for compost facilities, \$4,000 for Class I landfill facilities, and \$20,000 for solid waste incinerators.

Cost Savings: By extending application review periods, the Cabinet will have additional time to work with regulated entities to address deficiencies and avoid denial of the registration or modification, resulting in potential cost savings to the registrant.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The Cabinet does not anticipate the expenditures, revenues, or cost savings to differ in subsequent years. It should be noted that registration and modification fee submissions fluctuate pursuant to new applicants and requests for modification which could potentially impact revenues generated by this program.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Local entities that will be affected by this administrative regulation include any local municipality that owns or operates a registered permit-by-rule facility established in this administrative regulation.

(a) Estimate the following for the first year:

Expenditures: Pursuant to 401 KAR 47:090, publicly owned facilities are exempt from fees associated with this administrative regulation.

Revenues: The Cabinet will not generate revenues from local entities as they are exempt from fees associated with this administrative regulation.

Cost Savings: Pursuant to 401 KAR 47:090, publicly owned facilities are exempt from fees associated with this administrative regulation.

VOLUME 51, NUMBER 8– February 1, 2025

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The Cabinet does not anticipate the expenditures, revenues, or cost savings to differ in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): Entities affected by the amendments in this administrative regulation package include owners or operators of a registered permit-by-rule facility established in this administrative regulation.

(a) Estimate the following for the first year:

Expenditures: Owners or operators of facilities operating under a registered permit-by-rule will be subject to a registration, modification, and annual permit renewal fees as established in 401 KAR 47:090.

Revenues: The Cabinet estimates revenues to remain consistent with the current revenues for the program of \$359,250.

Cost Savings: Pursuant to the amendments of this administrative regulation, by extending application review periods the Cabinet will have additional time to work with regulated entities to address deficiencies and avoid denial of the registration or modification, resulting in potential cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The Cabinet does not anticipate the expenditures, revenues, or cost savings to differ in subsequent years.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation has indirect fees for the registration, modification, and annual permit renewal for facilities operating under a registered permit-by-rule, as established in 401 KAR 47:090. Pursuant to 401 KAR 47:090, public-owned facilities are not subject to the established fees.

(b) Methodology and resources used to determine the fiscal impact: The fees associated with the fiscal impact of this administrative regulation are established in 401 KAR 47:090.

(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 proposed administrative regulation will not have a major economic impact as the indirect fees established in 401 KAR 47:090 are not being amended.

(b) The methodology and resources used to reach this conclusion: While this administrative regulation does not include fees, indirect fees are established in 401 KAR 47:090, registration or modification fees for registered permit-by rule facilities include a \$2,500 fee for transfer stations or convenience centers, \$4,500 for less than one-acre construction or demolition debris landfills, \$3,000 for compost facilities, \$4,000 for Class I landfarm facilities, and \$20,000 for solid waste incinerators. Additionally, these facilities are required to submit an annual permit renewal fee, pursuant to 401 KAR 47:090. The annual permit renewal fee for each facility specified in this administrative regulation are as follows: \$2,500 fee for transfer stations or convenience centers; \$500 for less than one-acre construction or demolition debris landfills receiving 1,000 or less tons of waste per year, \$1,500 for less than one-acre construction or demolition debris landfills receiving more than 1,000 and less than \$5,000 tons of waste per year, and \$3,000 for less than one-acre construction or demolition debris landfills receiving 5,000 or more tons of waste per year; \$3,000 for compost facilities; \$4,000 for Class I landfarm facilities; and \$1,000 for solid waste incinerators. Pursuant to 401 KAR 47:090, public-owned facilities are not subject to the established fees. In addition, there are financial assurance requirements established in 401 KAR Chapters 47 and 48 for registered permit-by-rule facilities.

**PUBLIC PROTECTION CABINET
Department of Financial Institutions
Division of Non-Depository Institutions
(Amended After Comments)**

808 KAR 9:010. Deferred deposit database compliance.

RELATES TO: KRS 286.9-010(7)(6), 286.9-075, 286.9-100(1), (7), (9), (10), (18), (19), 286.9-140.

STATUTORY AUTHORITY: KRS 286.9-090(1), 286.9-100, 286.9-140(1).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 286.9-100(9) prohibits licensees from having more than two (2) deferred

deposit transactions from any one (1) customer at any one (1) time and limits the total proceeds received by a customer from all deferred deposit transactions to \$500. KRS 286.9-140(1) requires the commissioner to implement a common database with real-time access through an internet connection accessible to the department and licensees to verify whether any deferred deposit transactions are outstanding for a particular person and authorizes the commissioner to adopt rules to administer and enforce KRS 286.9-140. This administrative regulation establishes requirements for licensee use of the database established pursuant to KRS 286.9-140.

Section 1. Closed Deferred Deposit Service Transactions. The Commissioner deems the following occurrences as closed deferred deposit service transactions pursuant to [Definitions. The following shall be additional definitions of "closed" or "close" under] KRS 286.9-010(7)(6)(e):

- (1) The customer's payment instrument was unpaid and the licensee has sold the underlying debt to a non-affiliated third party without recourse;
- (2) The underlying debt represented by the customer's payment instrument has been discharged in bankruptcy;
- (3) The database provider has designated the deferred deposit transaction concerning the customer's payment instrument as closed pursuant to KRS 286.9-140(7); or
- (4) The licensee has reported to the database provider that the deferred deposit transaction concerning the customer's payment instrument is closed following being held open pursuant to KRS 286.9-140(7).

Section 2. Deferred Deposit Database Requirements.

- (1) A licensee shall institute procedures and maintain an accounting system designed to:
 - (a) Prevent the licensee from entering into transactions with a customer in violation of KRS 286.9-100(9), including procedures for:
 - 1. Maintaining a record of all current transactions with the licensee; and
 - 2. Checking the record of current transactions with the database prior to issuance of a new transaction; and
 - (b) Generate reports that will readily permit examination and verification of compliance with KRS 286.9-100(9), KRS 286.9-140, and this section by department examiners.
- (2) For each deferred deposit transaction, a licensee shall submit:
 - (a) The customer's date of birth;
 - (b) The check number of the payment instrument, if applicable;
 - (c) The database verification fee of \$2.25, which may be paid directly by the licensee or charged to the customer[-, if any];
 - (d) The service fee charged to the customer; and
 - (e) The date the payment instrument was deposited or otherwise presented for payment.
- (3) A licensee shall indicate in the database whether the customer entered into the deferred deposit transaction in person, electronically, or via telephone.

(4)(3) A licensee shall not cause a closed deferred deposit transaction to be reopened in the database unless:

- (a) The deferred deposit transaction was closed by reason of clerical error by the licensee;
- (b) The licensee caused the deferred deposit transaction to be reopened on or before the close of business on the business day after the transaction was closed; and
- (c) Reopening the transaction would not cause the customer to exceed the transaction limits set forth in KRS 286.9-100(9).

(5)(4) A licensee shall not accept, collect, or seek payment on a deferred deposit transaction that is designated as closed in the database.

(6)(5) A licensee that has reported to the database provider that a deferred deposit transaction is open beyond the maturity date pursuant to KRS 286.9-140(7) shall immediately notify the database provider when the transaction becomes closed.

(7)(6) A new licensee or an existing licensee applying for an additional location shall establish an account with the database provider for each location prior to the time of application.

VOLUME 51, NUMBER 8– February 1, 2025

MARNI R. GIBSON, Commissioner
RAY PERRY, Secretary

APPROVED BY AGENCY: January 15, 2025

FILED WITH LRC: January 15, 2025 at 10:05 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Stephens

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the definitions and requirements for licensee operation of the deferred deposit database established in KRS 286.9-140.

(b) The necessity of this administrative regulation: KRS 286.9-140(1) requires the commissioner to implement a common database with real-time access to verify outstanding deferred deposit transactions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes and sets forth the requirements for the licensee operation of the deferred deposit database.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the database and licensee requirements for compliance with statute.

(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: KRS 286.9-140(2) was amended from a set amount of one dollar (\$1) to require the commissioner to charge a fee of up to three dollars (\$3) per transaction. This amendment sets the fee per transaction to \$2.25, which, based on the amendments after public comments, may be paid by the licensee or passed on to the customer.

(b) The necessity of the amendment to this administrative regulation: This regulation sets forth the fee amount as the amended statute provided only a ceiling but no specific dollar amount.

(c) How the amendment conforms to the content of the authorizing statutes: The statute requires the commissioner to charge a fee for each transaction; however, the amount was not set.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will establish the fee as required by statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment would affect licensed deferred deposit entities and consumers that enter into deferred deposit agreements. From May 2023 through May 2024, there have been 1,131,119 deferred deposit transactions in Kentucky. There are 231 licensed deferred deposit entities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will be required to amend their customer documents to reflect the new fee and ensure it is properly disclosed.

(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 editing the template documents will be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will not accrue benefits as they do not retain the fee.

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

(a) Initially: \$0

(b) On a continuing basis: \$0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(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.

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

administrative regulation increases the transaction fee from \$1 to \$2.25.

(9) TIERING: Is tiering applied? No. The set amount for each transaction is the same regardless of the dollar amount of the deferred deposit transaction.

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 286.9-140

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Department of Financial Institutions, Non-Depository Division

(a) Estimate the following for the first year:

Expenditures: None

Revenues: Estimated to be \$1.2 million (depends on number of transactions, which varies each year)

Cost Savings: None

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

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None

(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): The fee is a pass-through to the consumer, so it will not impact other regulated entities.

(a) Estimate the following for the first year:

Expenditures: N/A

Revenues: N/A

Cost Savings: N/A

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

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The costs will not impact the licensees, but the fee will pass to the consumer and will only be incurred when entering into a contract for a deferred deposit transaction. Based on the amendments after public comments, a licensee may pay the fee directly or pass it along to the consumer. If the licensee pays the fee directly, the impact would be as much as \$2.25 per transaction.

(b) Methodology and resources used to determine the fiscal impact: The fiscal impact was determined by reviewing the requirements to comply with the amended regulation.

(6) Explain:

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

(b) The methodology and resources used to reach this conclusion: The expected costs were reviewed.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Maternal and Child Health (Amended After Comments)

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

VOLUME 51, NUMBER 8– February 1, 2025

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 ~~have~~**[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, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 10, 2025

FILED WITH LRC: January 14, 2025 at 9:14 a.m.

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. The amended after comment version of this administrative regulation revises the program implementation language to be less clinical in nature.
 - (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 for 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.

VOLUME 51, NUMBER 8– February 1, 2025

(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. 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. $\$750,000 + \$75,000 = \$825,000$.

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](#).

**OFFICE OF THE GOVERNOR
Department of Veterans Affairs
Office of Kentucky Veterans Centers
(Amendment)**

17 KAR 1:030. Nurse Loan Repayment Program.

RELATES TO: KRS 18A.190, 40.320, 314.011
STATUTORY AUTHORITY: KRS 40.325(2), 40.327

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.325(2) authorizes state veterans' nursing homes. KRS 40.327(1) and (5) requires the Department of Veterans Affairs (KDVA) and the Kentucky Higher Education Assistance Authority (KHEAA) to create a Veterans Affairs Nurse Loan Repayment Program (VANLRPP) for registered nurses and licensed practical nurses within the Department's employ. KRS 40.327(6) requires administrative regulations necessary to operate this program. This administrative regulation establishes the eligibility requirements, the application process, the selection criteria, and the award process for the Nurse Loan Repayment Program.

Section 1. Definitions.

- (1) "Full time" means working at least a forty (40) hour work week every week of the year, except for authorized and approved leave and holidays as established in KRS 18A.190.
- (2) "Licensed practical nurse" is defined by KRS 314.011(9).
- (3) "Registered nurse" is defined by:
 - (a) KRS 314.011(5); and
 - (b) Does not include nurse practitioners.
- (4) "Satisfactory employment" means employment in which the applicant does not have disciplinary or corrective actions during the year being certified and in which the applicant is not currently on a performance improvement plan at the time the application is submitted.

Section 2. Eligibility Requirements. To be eligible to apply for the program, an applicant shall:

- (1) Have a current Kentucky license as a registered nurse (RN) or as a licensed practical nurse (LPN);
- (2) Be currently employed as an RN or LPN on a full-time basis at a Kentucky Department of Veterans Affairs' state veteran nursing home;
- (3) Be a classified employee with status under KRS Chapter 18A; and
- (4) Have completed at least one (1) year of full-time, satisfactory employment performance as an RN or LPN at a KDVA's state veteran nursing home in the year preceding the application; and
- (5) If applying for loan repayment more than once, each application shall be consecutive to the prior application up to a maximum of four (4) consecutive applications and up to a maximum loan repayment for four (4) successful, consecutive applications of no more than \$40,000.
- (6) An applicant shall not have other unsatisfied contractual service obligations upon completing the Contract Between Nurse Loan Repayment Applicant and the Kentucky Department of Veterans Affairs.
- (7) An applicant shall not have an active military obligation.

Section 3. Application Process. Each eligible applicant shall complete a Veterans Affairs Nurse Loan Repayment Program (VANLRP) Application and submit:

- (1) The Veterans Affairs Nurse Loan Repayment (VANLRP) Application [~~between January 1 and March 31~~];
- (2) Documentation required to be attached to the Veterans Affairs Nurse Loan Repayment (VANLRP) application, including:
 - (a) A professional experience narrative;
 - (b) Educational loan debt information; and
 - (c) A copy of a current, valid Kentucky Nursing License;

- (3) One (1) copy of the KRS Chapter 18A annual performance evaluation, if any, which the applicant received for the immediate prior calendar year.

Section 4. Selection Process.

- (1) The selection panel shall consist of the executive director of the Office of Kentucky Veterans Centers (OKVC), the deputy executive director of OKVC, and the administrator of the state veterans nursing home where the applicant is employed.
- (2) Criteria for selection shall include:
 - (a) Availability of funding;
 - (b) The work performance of the applicant compared to other applicants; and
 - (c) The needs for additional nurses at the applicant's state veteran nursing home compared to the needs of the other state veterans nursing homes.

Section 5. Award Process.

- (1) Upon the selection panel awarding an applicant a loan repayment, the Commissioner of the Kentucky Department of Veterans Affairs shall issue an Award Letter to the applicant.
- (2) The Award Letter shall state the amount of loan repayment of up to twenty-five (25) percent of the applicant's loan balance up to a maximum of \$10,000 per application year.
- (3) KDVA and the applicant shall enter into a binding contract stating the terms of the loan repayment on the Contract Between Nurse Loan Repayment Applicant and the Kentucky Department of Veterans Affairs document.
- (4) OKVC shall notify the Kentucky Higher Education Assistance Authority to implement the repayment and the Personnel Cabinet to process the taxable amount through employee payroll.

Section 6. Appeals. Denial by the selection panel shall not be considered a sanction and shall not be appealable.

Section 7. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Contract Between Nurse Loan Repayment Applicant and the Kentucky Department of Veterans Affairs", 2024[2020];
 - (b) "Veterans Affairs Nurse Loan Repayment Program (VANLRP) Application", 2024[2020]; and
 - (c) "Award Letter", 2024[2020].
- (2) This material may be inspected, copied, or obtained at the Kentucky Department of Veterans Affairs, 1111[B] Louisville Road, Suite B, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Executive Director of the Office of Kentucky Veteran Centers and the Commissioner of the Kentucky Department of Veterans Affairs have reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 156.070(4).

MARK BOWMAN, Executive Director
WHITNEY ALLEN, Commissioner

APPROVED BY AGENCY: January 9, 2025

FILED WITH LRC: January 9, 2025 at 3:34 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, March 25, 2025, at 11:00 Eastern Time at KDVA Headquarters Office, 1111 Louisville Rd., Suite B, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 March 31, 2025. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Juan Renaud, Deputy Commissioner, Office of the Commissioner, or Mark Bowman, Executive Director, 1111 Louisville Rd., Suite B, Frankfort, Kentucky 40601; phone (502) 782.5721 or (502) 564.9203; fax (502) 564.9240; email: Juan.Renaud@ky.gov or Mark.Bowman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Juan Renaud or Mark Bowman

(1) Provide a brief summary of:

(a) What this administrative regulation does: The administrative regulation outlines the terms and processes for KDVA's Veterans Affairs Nurse Loan Repayment Program (VANLRP) as required by KRS 40.327.

(b) The necessity of this administrative regulation: KRS 40.325(2) authorizes state veterans' nursing homes. KRS 40.327(1) and (5) requires the Department of Veterans' Affairs (KDVA) and the Kentucky Higher Education Assistance Authority (KHEAA) to create a Veterans' Affairs Nurse Loan Repayment Program (VANLRPP) for registered nurses and licensed practical nurses within the Department's employ. KRS 40.327(6) requires administrative regulations necessary to operate this program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation establishes the eligibility requirements, the application process, selection criteria, and awards process for VANLRPP as stipulated by KRS 40.327(6).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Like KRS 40.327, 17 KAR 1:030 provides eligibility requirements, the selection process, and the award process. 17 KAR 1:030 further clarifies relevant definitions, outlines limitations on appeals, and provides necessary information on the documents necessary to apply for VANLRPP: the application, the contract between the applicant and KDVA, and a sample award letter.

(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: There are two revisions to the existing regulation. Pursuant to 17 KAR 1:030 Section 1(3)(a)-(b), a registered nurse is defined by KRS 314.011(5) and does not include nurse practitioners. The amendment will change the existing administration regulation by removing Section (b) in order to allow nurse practitioners to apply for VANLRPP. Pursuant to 17 KAR 1:030 3(1), applicants can only apply for VANLRPP between January 1 and March 31 of each year. The amendment will change the existing administrative regulation by removing the specific timeframe to allow applicants to apply for VANLRPP throughout the year.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary because it allows KDVA to expand the number of applicants able to apply for VANLRPP and affords the applicants a year-round application cycle, while still complying with KRS 40.327.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statute by establishing the necessary provisions for registered nurses and licensed practical nurses within KDVA's employ to apply for VANLRPP. KRS 40.327 neither precludes nurse practitioners from making application for VANLRPP nor determines when applications shall be accepted. Thus, the amendments are designed to address the practicalities of annual hiring and of different types of titles afford nurses in the nursing field.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by expanding the timeframe for employment of VANLRPP to address new nurses who are hired throughout the year and reach their first year of service. The amendment replaces the one time a year award, thus providing flexibility and more opportunities for recruitment and retainment of these critical positions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Registered Nurses (RNs), Nurse Practitioners, Licensed Practical Nurses (LPNs), Eastern Kentucky Veterans Center (EKVC), Western Kentucky Veterans Center (WKVC), Thomson-Hood Veterans Center (THVC), Radcliff Veterans Center (RVC), and the Bowling Green Veterans Center (BGVC).

(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: For RNs, Nurse practitioners and LPNs, they will be required to complete one year of satisfactory employment at one of KDVA's Veterans Centers. Once completed, they will need to apply for the program recognizing that application is for outstanding loans only, and not those previously repaid. If approved, they will need to sign a contract pursuant to KRS 40.327 and 17 KAR 1:030 to receive the award. At present, the Veterans Centers offer the program, so the amendment to 17 KAR 1:030 will result in an expanded timeframe for applications and awards as well as applications being accepted from Nurse Practitioners.

(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 entities identified in question (3) to expand VANLRPP, as it is already implemented. Presently, it is impracticable to quantify the cost associated with the expanded timeframe or additional nursing class. Pursuant to KRS 40.327(4)(e), "the total amount paid by the loan repayment program shall not exceed forty thousand dollars (\$40,000) for a maximum of four (4) consecutive full years of employment per person." Thus, each new approved applicant could cost the Commonwealth up to \$40,000 over 4 years, provided that those nurses continue their nursing careers at one of KDVA's Veterans Centers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Nurses who focus their careers on serving Kentucky's veterans at one of KDVA's Veterans Centers will be the direct beneficiaries of VANLRPP, while KDVA and the Commonwealth will undoubtedly accrue the benefit of more effective recruitment, retention, nursing stability at the Veteran Centers, and long-term medical care availability for Kentucky's veterans residing in one of KDVA's Veteran Centers.

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

(a) Initially: The initial projection, using a \$10,000 as the maximum repayment amount for any one applicant, is \$240,000, which will fund up to 24 applicants per year.

(b) On a continuing basis: Depending on the staffing needs of KDVA's Veterans Centers, \$240,000 is the annual target figure, or \$480,000 over a biennium.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of the funding to be used for the implementation and enforcement of this administrative regulation funds KDVA's existing operational budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding will Not be necessary to implement this administrative regulation beyond continued budget support for funding of the Veteran Centers.

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

(9) TIERING: Is tiering applied? Tiering is not applied because (1) the regulated entities are licensed nurses; (2) no non-licensed entities can apply; and (3) the goal of the regulation is to attract and retain qualified, quality nurses in the Commonwealth.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. RELATES TO: KRS 18A.190, 40.320, 314.011. STATUTORY AUTHORITY: KRS 40.325(2), 40.327.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The promulgating agency is the Kentucky Department of Veterans Affairs (KDVA), Office of Kentucky Veterans Centers (OKVC).

(a) Estimate the following for the first year:

Expenditures: \$240,000

Revenues: 0

Cost Savings: Up to \$360,000/yr.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Expenditures and the potential cost savings will differ annually based on the number of applications and approved repayments.

(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: KDVA anticipates a cost savings by the decrease in turnover caused by the loss of qualified nursing staff, who find better opportunities through federal employment or in the private sector.

(b) Methodology and resources used to determine the fiscal impact: KDVA conducted an analysis of the costs associated with turnover caused by the loss of one (1) Board of Nursing qualified member of KDVA's nursing staff. Utilizing \$25,000.00/FTE as the turnover cost, the analysis encompassed: (1) estimating the recruitment cost; (2) the hiring process; and (3) the filling of missing shifts until the lost nursing staff's position could be replaced. The analysis demonstrated that the maximum VANLRPP award a nurse can receive during any one year is \$10,000.00 (which is, a cost to KDVA). If the nurse opts to continue their nursing career at one of KDVA's state veterans centers for one full year, that will reduce the turnover cost for that one position by \$15,000.00 (i.e., \$25,000-\$10,000 VANLRPP award = Positive \$15,000/FTE). If all of the 24 budgeted VANLRPP awards are given for one year, the total savings to the KDVA's state veterans centers will be \$15,000 x 24 = a \$360,000 benefit to KDVA.

(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) Given the construct of the VANLRPP program, any expenditures will have a position impact on all affected entities.

(b) The methodology and resources used to reach this conclusion: Cost benefit analysis of comparing turnover cost by

position versus the VANLRPP amount expended for one (1) member of the nursing staff over one (1) year.

PERSONNEL CABINET
(Amendment)

101 KAR 2:034. Classified compensation administrative regulations.

RELATES TO: KRS 18A.030(2), 18A.110, 18A.165, 29 U.S.C. sec. 201, et seq.

STATUTORY AUTHORITY: KRS 18A.110(1)(c), (d), (g), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 requires the Secretary of Personnel to promulgate administrative regulations which govern the pay plan for all employees in the classified service. This administrative regulation establishes requirements to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements.

Section 1. New Appointments.

(1) An appointing authority shall appoint a new employee at a salary not to exceed the midpoint of the pay grade.

(2) The appointing authority shall adjust to that salary an employee who is not on initial or promotional probation and is earning less than the new appointee's salary, if the appointing authority determines that the incumbent employee:

(a) Is in the same job classification;

(b) Is in the same department or office;

(c) Is in the same work county; and

(d) Has a similar combination of education and experience relating to the relevant job class specification.

(3) The appointing authority shall adjust to five (5) percent above that salary an employee who is not on initial or promotional probation and whose salary is the same or less than five (5) percent above the appointment salary assigned to the new employee, if the appointing authority determines that the incumbent employee:

(a) Is in the same job classification;

(b) Is in the same department or office;

(c) Is in the same work county; and

(d) Has a similar combination of education and experience relating to the relevant job class specification. [If sufficient funds are available, the appointing authority may identify each incumbent employee affected by subsection (2) of this section whose salary is less than five (5) percent above the appointment salary assigned to the new employee. The appointing authority may adjust all affected incumbent employees' salaries to five (5) percent above the new appointee's salary].

Section 2. Reentrance to Classified Service.

(1) Returning retirees. An employee who was formerly employed under KRS Chapter 18A and who is appointed to a position covered by the provisions of KRS Chapter 18A while receiving retirement payments through the Kentucky Public Pensions Authority or Kentucky Teachers Retirement System shall be appointed in accordance with the provisions for new appointments in this administrative regulation.

(2) Other reentering employees.

(a) Former classified employees. An appointing authority shall set the salary of a former classified employee, other than a returning retiree, who is being reemployed, reinstated after a break in continuous employment in the classified service, or probationarily appointed in one (1) of the following ways:

1.

[a.] In accordance with the standards used for making new appointments in this administrative regulation;

2. [b.] Up to the same hourly rate[salary] as that paid at the time of separation from the classified service, if that hourly rate[salary] does not exceed the midpoint hourly rate[salary] plus the difference, in dollars, between the job class entry level hourly rate[salary] and the pay grade midpoint hourly rate[salary]; or

3. [c.] The same hourly rate[salary] as that paid at the time of separation from the classified service if the employee is returning to

the same pay grade or same job classification held at the time of separation from the classified service.

~~[2.] If sufficient funds are available, the appointing authority may identify each incumbent employee affected by Section 1(2) of this administrative regulation who is not on initial or promotional probation at the time the salary adjustment becomes effective. For all affected incumbent employees whose salary is less than five (5) percent above the appointment salary assigned to the new employee, the appointing authority may adjust all affected incumbent employees' salaries to five (5) percent above the new appointee's salary on that same effective date. An adjustment made pursuant to this subparagraph shall not exceed the midpoint salary plus the difference, in dollars, between the job class entry level salary and the pay grade midpoint salary.]~~

(b) Former unclassified employees with prior classified service. An appointing authority shall set the salary of a former classified employee who moved to the unclassified service and who is reinstated, reemployed, or probationarily appointed to a position in the classified service in one (1) of the following ways:

1.

~~[a.] In accordance with the standards for making new appointments;~~

~~2.[b.] Up to the same hourly rate[salary] as that paid at the time of separation from the classified service, if that hourly rate[salary] does not exceed the pay grade midpoint hourly rate[salary] plus the difference, in dollars, between the job class entry level hourly rate[salary] and the pay grade midpoint hourly rate[salary];~~

~~3.[c.] At an hourly rate[a salary] that is the same as the hourly rate[salary] the employee last received in the classified service with adjustments for increases that would have been received if the employee had remained in the classified service prior to resignation if the hourly rate[salary] does not exceed the pay grade midpoint hourly rate[salary] plus the difference, in dollars, between the job class entry level hourly rate[salary] and the pay grade midpoint hourly rate[salary]; or~~

~~4.[d.] At a salary up to five (5) percent above the pay grade entry level wage for each year of service in the KRS Chapter 18A system, if the salary does not exceed the pay grade midpoint salary plus the difference, in dollars, between the job class entry level salary and the pay grade midpoint salary. Salary shall be calculated using whole percentages.~~

~~[2.] If sufficient funds are available, the appointing authority may identify each incumbent employee affected by Section 1(2) of this administrative regulation who is not on initial or promotional probation at the time the salary adjustment becomes effective. For all affected incumbent employees whose salary is less than five (5) percent above the appointment salary assigned to the new employee, the appointing authority may adjust all affected incumbent employees' salaries to five (5) percent above the new appointee's salary on that same effective date. An adjustment made pursuant to this subparagraph shall not exceed the midpoint salary plus the difference, in dollars, between the job class entry level salary and the pay grade midpoint salary.]~~

(c) Former unclassified employees with no previous classified service. An appointing authority shall set the salary of a former unclassified employee with no previous classified service, who is probationarily appointed or reemployed, in one (1) of the following ways:

1.

~~[a.] In accordance with the standards for making new appointments; or~~

~~2.[b.] At a salary up to five (5) percent above the minimum salary for each year of service in the unclassified service, if the salary does not exceed the pay grade midpoint salary plus the difference, in dollars, between the job class entry level salary and the pay grade midpoint salary. Salary shall be calculated using whole percentages.~~

~~[2.] If sufficient funds are available, the appointing authority may identify each incumbent employee affected by Section 1(2) of this administrative regulation who is not on initial or promotional probation at the time the salary adjustment becomes effective. For all affected incumbent employees whose salary is less than five (5) percent above the appointment salary assigned to the new employee, the appointing authority may adjust all affected~~

~~incumbent employees' salaries to five (5) percent above the new appointee's salary on that same effective date. An adjustment made pursuant to this subparagraph shall not exceed the midpoint salary plus the difference, in dollars, between the job class entry level salary and the pay grade midpoint salary.]~~

(d) Laid off employees. A former employee, separated from the classified service by layoff and reinstated or reemployed in the same [or similar] job classification within ~~two (2)~~ five (5) years from the date of layoff, may receive the salary the employee was receiving at the time of layoff, even if the salary is above the maximum of the pay grade.

(3) Probationary increments upon reentrance to state service. A former employee who is probationarily appointed at a salary at or below the midpoint of the pay grade shall receive a probationary increment upon successful completion of the probationary period.

Section 3. Salary Adjustments.

(1) Promotion.

(a) An employee who is promoted shall receive the greater of five (5) percent for each grade, or an increase to the minimum of the new grade except as provided under subsections (2)(b), (3)(b), and (4)(b) of this section; or

(b) If sufficient funds are available, an appointing authority may adjust the employee's salary up to the midpoint of the pay grade if the increase is greater than the increase specified in paragraph (a) of this subsection.

(2) Demotion.

(a) If an employee is demoted, ~~[the appointing authority shall determine] the salary shall be determined~~ in one (1) of the following ways:

1. The employee's salary shall be reduced by five (5) percent for each grade the employee is reduced; or

~~2. If requested in writing by the appointing authority and approved by the secretary, the employee shall retain the salary received prior to demotion. If approved by the secretary, the written request and notice of approval shall be placed in the employee's agency and Personnel Cabinet files maintained in accordance with KRS 18A.020(2)(a) [If the employee's salary is not reduced upon demotion, the appointing authority shall explain the reason in writing and place the explanation in the employee's personnel files].~~

(b) An employee whose salary is not reduced by five (5) percent per grade upon demotion shall not be eligible for a salary increase upon promotion, reclassification, detail to special duty, reallocation, pay grade change, or successful completion of promotional probation until the employee is moved to a job classification with a higher pay grade than that from which he or she was demoted. If a promotion, reclassification, detail to special duty, reallocation, or pay grade change occurs, it shall be deemed as having been made from the grade from which the employee had been demoted.

(c) Upon the salary schedule adjustment of an entry level wage of a pay grade, if an employee demoted to a lower pay grade, retained his or her salary, and was subsequently promoted and on promotional probation on the effective date of the new salary schedule, if the employee's salary is less than five (5) percent above the new entry level salary of the pay grade assigned to that employee on the effective date, the Personnel Cabinet shall adjust that employee's salary to five (5) percent above the new entry level wage.

(3) Reclassification.

(a) An appointing authority shall adjust the salary of an employee who is advanced to a higher pay grade through reclassification in one (1) of the following ways:

1. The greater of five (5) percent for each grade or the new grade minimum except as provided under subsections (2)(b) and (4)(b) of this section, and paragraph (b) of this subsection; or

2. If sufficient funds are available, up to the midpoint of the pay grade if the increase is greater than the increase specified in subparagraph 1. of this paragraph.

(b) An employee who is placed in a lower pay grade through reclassification shall receive the same salary received prior to reclassification, but shall not be eligible for a salary increase upon promotion, reclassification, detail to special duty, reallocation, pay grade change, or successful completion of promotional probation

until the employee is moved to a job classification with a higher pay grade than that from which he or she was reclassified. If a promotion, reclassification, detail to special duty, reallocation, or pay grade change occurs, it shall be deemed as having been made from the grade from which the employee had been reclassified.

(c) If sufficient funds are available, an appointing authority may adjust up to the midpoint of the pay grade the salary of an employee who is placed in the same pay grade through reclassification.

(d) An employee shall not be reclassified from a job classification that does not require the supervision of employees to a job classification that requires the supervision of employees as mandated within the job class specification.

(4) Reallocation.

(a) An employee who is advanced to a higher pay grade through reallocation shall receive the greater of five (5) percent for each grade or the new grade minimum except as provided under subsections (2)(b) and (3)(b) of this section, and paragraph (b) of this subsection.

(b) An employee who is placed in a lower pay grade through reallocation shall receive the same salary received prior to reallocation, but shall not be eligible for a salary increase upon promotion, reclassification, detail to special duty, reallocation, pay grade change, or successful completion of promotional probation until he or she is moved to a job classification with a higher pay grade than that from which he or she was reallocated. If a promotion, reclassification, detail to special duty, reallocation, or pay grade change occurs, it shall be deemed as having been made from the grade from which the employee had been reallocated.

(5) Detail to special duty.

(a) An employee who is approved for detail to special duty shall receive, during the period of detail, the greater of five (5) percent for each grade or the new grade minimum except as provided under subsections (2)(b), (3)(b), and (4)(b) of this section.

(b) If sufficient funds are available, an appointing authority may adjust the salary of an employee who is placed in the same pay grade or higher pay grade through detail to special duty, up to the midpoint of the pay grade, if the increase is greater than the increase specified in paragraph (a) of this subsection.

(c) An employee who is approved for detail to the same or lower pay grade shall receive the same salary received prior to detail except as provided under paragraph (b) of this subsection.

(6) Reversion.

(a) The salary of an employee who is reverted while serving a promotional probationary period, or following detail to special duty in a higher pay grade, shall be adjusted to:

1. The salary received prior to the promotion or detail; and
2. All salary advancements and adjustments which would have been awarded if the promotion or detail had not occurred.

(b) The salary of an employee who is reverted from a position in the unclassified service to a position in the classified service shall be adjusted to:

1. The salary received prior to leaving the classified service; and
2. All salary advancements and adjustments which would have been awarded if the individual had remained in the classified service.

(c) The increment date of an employee who is reverted from a position in the unclassified service to a position in the classified service shall be restored to the increment date set prior to leaving the classified service.

(7) Pay grade changes.

(a) If a job classification is assigned to a higher pay grade, except as provided under subsections (2)(b), (3)(b), and (4)(b) of this section, the appointing authority shall raise the salary of an employee below the new grade minimum to the new grade minimum. If sufficient funds are available, an appointing authority may uniformly adjust the salary of all employees in that agency in that job classification to:

1. The greater of the new grade minimum or five (5) percent per pay grade;
2. The greater of the new grade minimum or ten (10) percent per pay grade; or
3. At a percentage determined by the Personnel Cabinet.

(b) If a job classification is assigned to a lower pay grade, an employee in that job classification shall retain his or her current salary.

(8) Special entrance rates. If a special entrance rate is established for a job classification, an appointing authority shall adjust the salary of an employee in that job classification who is below the special entrance rate to the new rate. If sufficient funds are available, on the same date as the establishment of the special entrance rate, an appointing authority may uniformly grant to all employees in that job classification, except those employees who are on initial probation, a salary adjustment equal to the difference between the entrance of the pay grade and the new entrance rate.

(9) Other salary adjustments.

(a) On the 16th of a month, an appointing authority may grant a salary adjustment to all employees in a job classification within an agency who were eligible for, but did not receive, a five (5) percent per pay grade increase or ten (10) percent per pay grade increase as a result of a grade change applicable to the job classification, on or after January 1, 1999. The total adjustment granted at the time of the grade change and under this paragraph shall equal a five (5) percent per pay grade increase or ten (10) percent per pay grade increase to the employee's salary immediately prior to the grade change. The adjustment shall not be retroactive.

(b) If sufficient funds are available, an appointing authority may adjust the salary of one (1) or more employees with status in an office or department due to internal pay equity issues within a job classification or sustained retention issues impacting the mission of the agency.

1. The appointing authority shall substantiate in writing to the secretary the need for adjustment and include the proposed adjustment for each employee.

2.

a. An adjustment shall be any amount that does not cause an employee's hourly rate to exceed the midpoint of the pay grade; or

b. An adjustment that causes an employee's hourly rate to exceed the midpoint of the pay grade shall not exceed twenty-five (25) percent of the employee's hourly pay rate.

(10) Conversion rule. The salary of an employee whose position changes from a thirty-seven and one-half (37.5) hour workweek to a forty (40) hour workweek, or vice versa, shall be converted to accurately reflect the employee's hourly rate of base pay. This conversion shall be applied before applying any other salary adjustment to which the employee is entitled pursuant to this section.

Section 4. Salary Advancements.

(1) Initial probation increase. A full-time or part-time employee who completes an initial probationary period shall be granted a five (5) percent salary advancement on the first of the month following completion of the probationary period.

(2) Promotional probation increase. An employee shall receive a five (5) percent salary advancement on the first of the month following completion of the promotional probationary period except as provided under Sections 3(2)(b), 3(3)(b), and 3(4)(b) of this administrative regulation.

(3) An employee who separates prior to the first of the month following completion of a probationary period shall forfeit the five (5) percent salary advancement.

(4) Annual increment dates shall be established as follows:

(a) Upon completion of an initial probationary period;

(b) When a former employee has been probationarily appointed and has received compensation in any twelve (12) months without receiving an increment; or

(c) When an employee returns from leave without pay under the provisions of subsection (6) of this section.

(5) Annual increment dates shall not change if an employee:

(a) Is in a position which is assigned a new or different pay grade;

(b) Receives a salary adjustment as a result of a reallocation;

(c) Is promoted;

(d) Is transferred;

(e) Is demoted;

(f) Is detailed to special duty;

(g) Receives an educational achievement award;

- (h) Returns from military leave;
- (i) Is reclassified;
- (j) Receives a promotional increase after completion of a promotional probationary period; or
- (k) Is reemployed after layoff.

(6) Return from leave without pay. An employee returning to duty from leave without pay shall receive an annual increment on the first of the month after receiving compensation in any twelve (12) months since the last increment was received.

(7) Service computation. Full-time and part-time service shall be counted in computing service for the purpose of determining increment eligibility.

(8) Order of calculating increments and other salary increases which occur at the same time. If an employee's increment date occurs on the same date that a salary adjustment or advancement is granted, the increment shall be applied before the adjustment or advancement is added to the employee's salary, except if the adjustment is based on a reversion, pay grade change, a salary schedule change, or establishment of a special entrance rate.

Section 5. Educational Achievement Award.

(1) On the 16th of a month, an appointing authority may grant a five (5) percent increase to an employee's base salary based on educational achievement as specified in this section.

(2) An agency may elect not to participate in the educational achievement program if sufficient funds are not available.

(3) An employee shall not receive more than one (1) educational achievement award in a fiscal year.

(4) An employee shall not receive an educational achievement award and an adjustment for continuing excellence (ACE) based on the same training.

(5) By submitting a personnel action to grant an educational achievement award, the appointing authority shall certify that all of the qualifying conditions established by this section for the appropriate type of educational achievement award have been met.

(a) For a high school diploma, high school equivalency certificate, or a passing score on the GED test, the qualifying conditions shall be met if:

1. The employee has obtained the high school diploma, equivalency certificate, or passing score on the GED test:

- a. Outside of work hours;
- b. While in state service; and
- c. After establishing an increment date;

2. The employee has not previously attained a high school diploma, equivalency certificate, or passing score on the GED test; and

3. The employee has not completed college coursework on the undergraduate or graduate level prior to obtaining the high school diploma, equivalency certificate, or a passing score on the GED test.

(b) For postsecondary education or training, the qualifying conditions shall be met if:

1. The employee has completed 260 hours of job-related instruction, or the equivalent;

2. The employee began the course work after becoming a state employee and completed the course work after establishing an increment date;

3. The employee has completed the course work within five (5) years of the date on which it was begun;

4. The course work has not previously been applied toward an educational achievement award;

5. The agency has not paid for the course work or costs associated with it, in whole or in part; and

6. The employee was not on educational or extended sick leave when the courses were taken.

Section 6. Salary Schedule Adjustment.

(1) If the secretary authorizes an adjustment of a salary schedule, an appointing authority shall adjust the salaries of all employees below the new schedule entry level wage for the pay grade to the new schedule entry level wage for the pay grade. If sufficient funds are available, the secretary may authorize an appointing authority to grant a salary increase for all employees

equal to the difference in the old schedule entry level wage for the grade and the new schedule entry level wage for the grade.

(2) After consultation with the state budget director, if sufficient funds are available, and the Secretary of Personnel determines that an increase in the entry level wage of one (1) or more pay grades is warranted, the Personnel Cabinet shall identify each currently active employee in the pay grade(s), other than an interim employee, who is not on initial or promotional probation at the time the revised salary schedule becomes effective. For an employee whose salary is less than five (5) percent above the new entry level wage of the pay grade assigned to that employee on the effective date, the Personnel Cabinet shall adjust that employee's salary to five (5) percent above the new entry level wage.

Section 7. Paid Overtime.

(1) Overtime for which pay is authorized shall be in accordance with 101 KAR 2:102, Section 5, and the Fair Labor Standards Act, 29 U.S.C. Section 201, et seq., as amended.

(2) Eligibility for overtime pay shall be approved by the appointing authority, and shall be subject to review by the Secretary of Personnel.

(3) An employee who is eligible for overtime shall request permission from or be directed in advance by the supervisor to work overtime.

(4) An overtime payment shall not be added to base salary or wages.

Section 8. Maintenance and Maintenance Allowance. If an employee, or the employee and family, is provided with full or partial maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, the maintenance shall be treated as partial payment of wages. The value of those services shall be deducted from the employee's salary in accordance with a maintenance schedule developed by the appropriate appointing authority after consultation with the Secretary of the Finance and Administration Cabinet.

Section 9. Supplemental Premiums.

(1) Locality premium.

(a)

1. Upon request by an appointing authority, the secretary may authorize and establish the amount of the payment of a locality premium for an employee who is regularly, temporarily, or intermittently assigned to work in a job classification, work county, and organizational unit if the agency can demonstrate sustained recruitment and retention issues impacting the mission of the agency; or

2. The secretary may direct the payment of a locality premium for an employee who is regularly, temporarily, or intermittently assigned to work in a job classification, work county, and organizational unit if there are demonstrated sustained recruitment and retention issues impacting the mission of the agency.

(b) Once authorized or directed, this premium shall apply to all employees in that organizational unit who are regularly or temporarily assigned to work in the job classification and work county for which the locality premium is approved.

(c) An employee shall not receive a locality premium after transfer, reclassification, reallocation, detail to special duty, promotion or demotion to a position in a job classification, organizational unit, or work county that is ineligible for a locality premium.

(d) The secretary may rescind authorization to pay a locality premium for a job classification at any time.

(e) Locality premium pay shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

(2) Shift premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a supplemental premium for an employee who is regularly assigned to work an evening or night shift in that agency.

(b) Once authorized, this premium shall apply to all employees in that agency who are regularly assigned to work an evening or

night shift in a job classification for which the shift premium is approved.

(c) An employee shall not receive a shift premium after shift reassignment, transfer, promotion or demotion to a position that is ineligible for a shift differential premium.

(d) The secretary may rescind authorization to pay shift premium for a job classification at any time.

(e) Shift differential pay shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

(3) Weekend premium.

(a) Upon request by an appointing authority, the secretary ~~may~~shall authorize the payment of a weekend premium for an employee in a specific job classification who is regularly assigned to work on Saturdays, Sundays, or state holidays as part of the usual work week.

(b) Once authorized, the premium shall apply to all employees in the specified job classifications in that agency who are regularly assigned to work Saturdays, Sundays, or state holidays as part of their usual work week.

(c) An employee shall not receive a weekend premium after reassignment, transfer, promotion, or demotion to a position that is ineligible for weekend premium.

(d) The secretary may rescind authorization to pay weekend premium at any time.

(e) Weekend premium pay shall not be considered part of the employee's base salary or wages and shall not be applied to any leave time usage.

(f) An agency may request, and be authorized for, both shift premium and weekend premium for the same job classifications.

(4) Multilingual hourly premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a supplemental multilingual hourly premium for an employee who is assigned to complete work duties in a specified foreign language. An employee completing work duties in a specified foreign language shall receive a multilingual hourly premium based on the percentage of time multilingual skills are performed. An employee in a job classification that includes interpreting services as a characteristic of the job on the job class specification shall not be eligible for this premium.

(b) Language proficiency testing shall be completed prior to an employee receiving the multilingual hourly premium. Testing shall indicate a standard level of multilingual proficiency as required by the appointing authority.

(c) An appointing authority shall submit the multilingual premium request to the Personnel Cabinet in writing. The request shall contain, at a minimum:

1. An explanation of the reason or reasons for granting the multilingual premium;

2. The percentage of time the employee will use multilingual skills; and

3. Certification by the appointing authority that the employee has completed multilingual testing and received a standard level of multilingual proficiency rating. This certification shall include the name of the testing facility or organization, the format of the test taken (oral, written, or a combination of oral and written), and the level of proficiency granted in the request for the multilingual premium.

(d) Once authorized, the multilingual hourly premium shall apply to all employees in that agency who are regularly assigned to complete work in a specified foreign language once the employees are individually approved in accordance with this subsection.

(e) An employee shall not receive a multilingual hourly premium after reassignment, reclassification, transfer, promotion, reallocation, or demotion to a position which no longer requires work in a specified foreign language.

(f) An employee who ceases to perform work duties in a specified foreign language shall not be eligible to receive a multilingual hourly premium.

(g) The secretary may rescind the multilingual hourly premium authorization provided to an agency or individual employee at any time.

(h) The multilingual hourly premium shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

(5) Critical position premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a premium for a position held by an employee who has established an annual increment date and is regularly assigned to perform job duties that are deemed critical to the operation of the agency.

(b) A critical position premium may be authorized for at least ~~three (3)~~one (1) full-time filled ~~positions~~position in an office or department. The premium may be authorized for additional full-time filled positions if the total number of premiums does not exceed one (1) percent of the total number of full-time filled positions in an office or department.

(c) The premium shall not exceed twenty-five (25) percent of the employee's hourly rate.

(d) The critical position designation shall expire when the position becomes vacant.

(e) An employee shall not receive a critical position premium after transfer, reclassification, reallocation, detail to special duty, promotion, or demotion to a position in a different job classification, organizational unit, or work county, unless the appointing authority submits a new request, for approval by the secretary, to designate the position in the different job classification, organizational unit, or work county as critical prior to the personnel action at issue.

(f) The appointing authority or the secretary may rescind authorization to pay a critical position premium at any time.

(g) A critical position premium shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

(6) Sign-on bonus.

(a) Upon written request by an appointing authority, the secretary may prospectively authorize a sign-on bonus for full-time or part time classified positions if:

1. The positions are in the same job classification, work county, and department or office if the appointing authority can substantiate sustained recruitment and retention issues impacting the mission of the agency;

2. The total amount of the sign-on bonus is uniform and does not exceed \$5,000 for the job classification; and

3. Eligibility for the sign-on bonus is limited to a probationarily appointed, rehired, or reinstated employee who:

a. Has not been employed in a KRS Chapter 18A classified position within ninety (90) calendar days preceding the effective date of appointment, rehire, or reinstatement;

b. Has not previously received any amount of sign-on bonus pursuant to this subsection; and

c. Is working or on approved leave at the time payment is scheduled to be issued.

(b) Once a sign-on bonus is authorized by the secretary, an eligible employee shall receive:

1. Twenty-five (25) percent of the total sign-on bonus on the first day of the month after appointment, rehire, or reinstatement;

2. Twenty-five (25) percent of the total sign-on bonus on the first day of the month after completion of six (6) months of active service in the position into which the employee was appointed, rehired, or reinstated; and

3. Fifty (50) percent of the total sign-on bonus on the first day of the month after completion of twelve (12) months of active service in the position into which the employee was appointed, rehired, or reinstated.

(c) An employee shall not receive future payment of any portion of a sign-on bonus after transfer, promotion, or demotion to a position in a job classification, department or office, or work county other than the position into which the employee was appointed, rehired, or reinstated.

(d) An employee who is detailed to special duty or whose position is reclassified or reallocated shall remain eligible for future payment of the original sign-on bonus amount.

(e) The secretary may rescind authorization to pay a sign-on bonus at any time prior to the effective date of appointment, rehire, or reinstatement.

VOLUME 51, NUMBER 8— February 1, 2025

(f) A sign-on bonus shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

Section 10. Employee Recognition Award (ERA).

(1) On the 16th day of a month, an appointing authority may grant an employee an ERA in the form of a lump sum payment of any whole percentage from one (1) to ten (10) percent of the grade midpoint under the following conditions:

(a) The employee has not received an ERA in the preceding twenty four (24) months, nor an Adjustment for Continuing Excellence (ACE) award in the preceding twelve (12) months; and

(b)

1. The appointing authority determines that the employee's acts or ideas have resulted in significant financial savings or improvements in services to the Commonwealth and its citizens;

2. The employee has exhibited distinguished performance during participation in special projects that have had a significant beneficial impact on the department, office, or governmental operations; or

3. The employee has demonstrated a sustained level of exceptional job performance.

(2) An employee shall not be eligible for an ERA under this section for an act or idea that has been approved or submitted for consideration as an Employee Suggestion System Award. An employee who has received an ERA shall not be eligible to be considered for an Employee Suggestion System Award for those acts or ideas upon which the ERA is based.

(3) The granting of an ERA shall be within the sole discretion of the appointing authority.

(4) If an appointing authority grants an ERA, the justification for the award shall be stated in writing, and placed in the employee's personnel files.

(5) An appointing authority shall submit a written justification to the Personnel Cabinet to award an ERA. The justification shall:

(a) Explain the reason or reasons for the granting of the award; and

(b) Include a certification by the appointing authority that:

1. Sufficient funds are available within the department or office; and

2. The criteria and limitations established in this section have been met.

Section 11. Adjustment for Continuing Excellence (ACE) Award.

(1) On the 16th day of a month, an appointing authority may grant a salary adjustment of any whole percentage from one (1) to ten (10) percent of the grade midpoint of the position in which the employee holds status to a full-time employee's base pay as an ACE award under the following conditions:

(a) The employee has an established annual increment date;

(b) The employee has worked at least the immediately preceding twenty-four (24) consecutive months in KRS Chapter 18A state service, twelve (12) consecutive months of which shall have been served in the department or office granting the award;

(c) The employee has not received an ACE award in the preceding twenty-four (24) months or an ERA in the preceding twelve (12) months; and

(d)

1. The employee has demonstrated a sustained level of exceptional job performance;

2. The employee has assumed a significant level of additional job responsibilities or duties consistent with the assigned job classification, and has performed them in an exceptional manner; or

3. The employee has acquired professional or technical skills or knowledge through department or office directed or authorized attainment of a job related licensure, certification, or formal training that will substantially improve job performance.

(2) An employee shall not be eligible for an ACE award under this section if:

(a) An educational achievement award has been granted for the same training; or

(b) The employee received either of the two (2) lowest possible evaluation ratings on the most recent performance evaluation.

(3) The granting of an ACE award shall be within the sole discretion of the appointing authority.

(4) An appointing authority shall submit a written justification to the Personnel Cabinet to grant an ACE award. The justification shall:

(a) Explain the reason or reasons for the granting of the award; and

(b) Include a certification by the appointing authority that:

1. The criteria and limitations established in this section have been met; and

2. Sufficient funds are available within the department's or office's current recurring base budget to support the award.

Section 12. Voluntary Actions. An employee request for transfer, demotion, or promotion shall be documented on the Voluntary Transfer/Demotion/Promotion Employee Agreement Form in Accordance with 101 KAR 1:335 and 101 KAR 1:400.

Section 13. Incorporation by Reference.

(1) "Voluntary Transfer/Demotion/Promotion Employee Agreement Form", November 2024~~[September 2017]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material incorporated by reference is also available on the Personnel Cabinet's Web site at: <https://personnel.ky.gov/Pages/mir.aspx>.

MARY ELIZABETH BAILEY, Secretary

APPROVED BY AGENCY: December 13, 2024

FILED WITH LRC: December 16, 2024 at 10:35 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2025, at 10:00 a.m. at 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on March 31, 2025. 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: Rosemary Holbrook, Executive Director, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone: (502) 564-7430, fax: (502) 564-0224, email: RosemaryG.Holbrook@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rosemary Holbrook

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes requirements for administration of the pay plan for classified employees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to assure uniformity and equity in administration of the pay plan for classified employees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.110 requires the secretary to promulgate administrative regulations which govern the pay plan for all employees in the classified service.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation ensures the consistent application and handling of classified compensation.

(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: Currently, when a new employee is appointed at a salary

above the minimum for the job classification, the appointing authority has the option to adjust the salary of eligible incumbents making less than five percent above the new appointee's salary. The amendment makes the adjustment mandatory for eligible incumbents. For demotions, the authority to allow retention of salary is changed from the appointing authority to the Personnel Cabinet Secretary. For a critical position premium, the number authorized increases from one to three in an office or department. The Voluntary Transfer/Demotion/Promotion Employee Agreement Form, incorporated by reference, is revised to eliminate language already included in statutes and regulations. Finally, minor changes are made to reenfranchise to classified service, weekend premium, and ACE award language to clarify existing provisions.

(b) The necessity of the amendment to this administrative regulation: It is anticipated that these amendments will address various salary compression issues that sometimes result in the Executive Branch. These amendments further serve to clarify existing provisions. Lastly, the regulation is amended to permit agencies to apply the current critical position premium to three positions, as opposed to only one position.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 18A.110 requires the secretary to promulgate administrative regulations which govern the pay plan for all employees in the classified service.

(d) How the amendment will assist in the effective administration of the statutes: These amendments will address various Executive Branch salary compression issues and will clarify existing provisions. The amendments also broaden application of the critical position premium.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A employees in classified positions and their employing agencies are subject to the provisions of 101 KAR 2:034.

(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 amendments will require agencies to adjust incumbent employee salaries when regulatory requirements are satisfied. The amendments will also require agencies to submit requests for salary retention after demotion to the Personnel Cabinet Secretary for review/approval. Lastly, the regulation is amended to permit agencies to apply the current critical position premium to three positions, as opposed to only on position.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Cost increases or decreases would be determined based on the requested action.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It is anticipated that the amendments will help address salary compression that sometimes occurs at the agencies. Lastly, the regulation is amended to permit agencies to apply the current critical position premium to three positions, as opposed to only one position. It is also anticipated that these amendments will assist agencies by clarifying application of existing provisions.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing agency funds will be used for implementation and enforcement.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation, as amended, is not anticipated to generate any new or additional fees or funding.

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

(9) TIERING: Is tiering applied? No. This administrative regulation treats all impacted entities the same.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.110 requires the secretary to promulgate administrative regulations which govern the pay plan for all employees in the classified service.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Personnel Cabinet is the promulgating agency. All KRS Chapter 18A employees in classified positions and their employing agencies are subject to the provisions of 101 KAR 2:034.

(a) Estimate the following for the first year:

Expenditures: These changes could have some future cost reduction actions. Others permit some cost increases but only if the agency's budget can accommodate these actions.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: This administrative regulation itself will not result in cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? These changes could have some future cost reduction actions. Others permit some cost increases but only if the agency's budget can accommodate these actions.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None.

(a) Estimate the following for the first year:

Expenditures: Not applicable.

Revenues: Not applicable.

Cost Savings: Not applicable.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Not applicable.

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

(a) Estimate the following for the first year:

Expenditures: Not applicable

Revenues: Not applicable.

Cost Savings: Not applicable.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Not applicable.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation does not have a significant fiscal impact.

(b) Methodology and resources used to determine the fiscal impact: The provisions of this administrative regulation were reviewed, and a significant fiscal impact was not identified.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) An overall negative or adverse major economic impact is not anticipated.

(b) The methodology and resources used to reach this conclusion: The provisions of the administrative regulation were reviewed, and a significant fiscal impact was not identified.

PERSONNEL CABINET
(Amendment)

101 KAR 2:102. Classified leave general requirements.

RELATES TO: KRS 18A.020, 18A.030, 18A.095, 18A.110, 18A.140, 18A.145, 18A.195, 18A.990, 61.373, 61.394, 118.035, 344.030, 29 C.F.R. 825, 29 U.S.C. 8, 29 U.S.C. 201 – 219, 2601 – 2654

STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.110, 29 U.S.C. 201 – 219, 2601 – 2654

VOLUME 51, NUMBER 8– February 1, 2025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.030(2)(b) requires the Secretary of Personnel to promulgate administrative regulations, consistent with KRS Chapter 18A and federal standards, for the administration of a personnel system. KRS 18A.110(7)(g) requires the secretary, with the approval of the Governor, to promulgate administrative regulations that govern annual leave, sick leave, special leaves of absence, and other conditions of leave. This administrative regulation establishes the leave requirements for classified employees.

Section 1. Annual Leave.

(1) Accrual of annual leave.

(a) Each full-time employee shall accumulate annual leave at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180-239 months	1 3/4 days per month; 21 per year
240 months & over	2 leave days per month; 24 per year

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 or more regular hours per month to accrue annual leave. This shall not include hours worked in excess of the prescribed hours of duty.

(c) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(d) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(e) A former employee who has been rehired shall receive credit for months of prior service, unless the employee had been dismissed for cause or has retired from a position covered by a state retirement system.

(f) A part-time employee shall not be entitled to accrue annual leave.

(2) Use and retention of annual leave.

(a) Annual leave shall be used in increments of one-quarter (1/4) hours.

(b) Except as provided in paragraph (c) of this subsection, an employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time earned that year, if the operating requirements of the agency permit.

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward pursuant to this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of the amount available for those purposes shall, at the request of the employee, be charged against annual leave.

(e) An employee shall be able to use annual leave for an absence on a regularly scheduled workday.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain accumulated annual leave in the receiving agency.

(g) An employee who is eligible for state contributions for life insurance pursuant to KRS Chapter 18A shall have worked or been on paid leave, other than holiday or educational leave, during any part of the previous month.

(h) An employee who is eligible for state contributions for health benefits pursuant to KRS Chapter 18A shall have worked or been on paid leave, other than holiday or educational leave, during any part of the previous pay period.

(i) Annual leave may be carried from one (1) calendar year to the next. If annual leave is carried from one (1) calendar year to the next, the leave shall be calculated as established in the following table:

Months of Service	Maximum Amount	37.5 Hour Week Equivalent	40 Hour Week Equivalent
0-59	30 work-days	225 hours	240 hours
60-119 months	37 work-days	277.50 hours	296 hours
120-179 months	45 work-days	337.50 hours	360 hours
180-239 months	52 work-days	390 hours	416 hours
240 months and over	60 work-days	450 hours	480 hours

(j) Leave in excess of the maximum amounts specified in paragraph (i) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement.

(k) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(d) of this section.

(3) Annual leave on separation.

(a)

1. If an employee is separated by proper resignation or retirement, or terminated from initial probation other than for cause, the employee shall be paid in a lump sum for accumulated annual leave.

2. The accumulated annual leave for which the employee is paid shall not exceed the amounts established by subsection (2)(i) of this section.

3. Following payment of annual leave at resignation, any remaining annual leave after the payment of the maximum shall:

- a. Not be paid to the employee or converted to sick leave; and
- b. Be removed from the balance.

(b) If an employee is laid off, the employee shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who reverts to the classified service, or an employee who resigns one (1) day and is employed the next workday, shall retain the accumulated leave in the receiving agency.

(d) An employee who has been dismissed for cause shall not be paid for accumulated annual leave.

(e) An appointing authority may withhold payment of accumulated annual leave for an employee who has failed to give proper notice of resignation or retirement as described in 101 KAR 2:095 Section 4, or who has submitted notice of resignation or retirement after receiving an intent to dismiss letter. Annual leave withheld pursuant to this paragraph shall result in a determination that the employee resigned not in good standing.

(f) Upon the death of an employee, the employee's estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(g) An employee may request in writing that accumulated annual leave not be paid upon resignation, and that all or part of the amount of accumulated annual leave that does not exceed the amount established by this section be waived, if:

- 1. The employee resigns, or is laid off, because of an approved plan of privatization of the services performed; and
- 2. The successor employer has agreed to credit the employee with an equal amount of annual leave.

Section 2. Sick Leave.

(1) Accrual of sick leave.

(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more regular hours in a month to accrue sick leave. This shall not include hours worked in excess of the prescribed hours of duty.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

VOLUME 51, NUMBER 8— February 1, 2025

(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(e) A full-time employee who completes 240 months of total service with the state shall be credited with another ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service.

(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(g) A former employee who has been rehired shall receive credit for months of prior service, and shall be credited with the unused sick leave balance that existed at the time of the previous separation, unless the employee had been dismissed for cause or has retired from a position covered by a state retirement system.

(h) The total service shall be verified by the Personnel Cabinet before the leave is credited to the employee's record.

(i) Sick leave may be accumulated with no maximum.

(2) Use and retention of sick leave.

(a) An appointing authority shall grant or may require the use of sick leave with or without pay if an employee:

1. Is unable to work due to medical, dental, or optical examination or treatment;

2. Is disabled by illness or injury. If requested by the appointing authority, the employee shall provide a statement from an appropriate medical health professional certifying the employee's inability to perform the employee's duties for the days or hours sick leave is requested. Before an employee is permitted to return to work, if requested by the appointing authority, the employee shall obtain and present a fitness-for-duty certification from an appropriate medical health care professional indicating the employee is able to resume work;

3. Is required to care for or transport a member of the employee's immediate family in need of medical attention for a reasonable period of time. If requested by the appointing authority, the employee shall provide a statement from an appropriate medical health professional certifying the employee's need to care for a family member;

4. Would jeopardize the health of the employee or others at the employee's work station because of a contagious disease or communicable condition. Before an employee is permitted to return to work, if requested by the appointing authority, the employee shall obtain and present a fitness-for-duty certification from an appropriate medical health care professional indicating the employee is able to resume work; or

5. Demonstrates behavior that might endanger the employee or others. Before an employee is permitted to return to work, if requested by the appointing authority, the employee shall obtain and present a fitness-for-duty certification from an appropriate medical health care professional indicating the employee is able to resume work.

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to the employee's former position.

(c) An employee eligible for state contributions for life insurance pursuant to the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than holiday or education leave, during any part of the previous month.

(d) An employee who is eligible for state contributions for health benefits pursuant to the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than holiday or educational leave, during any part of the previous pay period.

(e) Sick leave shall be used in increments of one-quarter (1/4) hours.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain accumulated sick leave in the receiving agency.

(g) An employee shall be credited for accumulated sick leave if separated by proper resignation, layoff, or retirement.

(3) Sick leave without pay.

(a) An appointing authority shall grant sick leave without pay, without a change in the employee's personnel status, for the duration of an employee's impairment by injury or illness, if:

1. The leave does not exceed thirty (30) continuous calendar days; and

2. The employee has used or been paid for all accumulated annual, sick, and compensatory leave unless the employee has requested to retain up to ten (10) days of accumulated sick leave.

(b) Within an employee's first twelve (12) months of employment after initial appointment, an appointing authority shall grant sick leave without pay to an employee who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family, or for the duration of the employee's impairment by illness or injury, for a period not to exceed thirty (30) working days in a calendar year.

(4) Sick leave by personnel action.

(a) If the duration of an employee's impairment by illness or injury exceeds the sick leave without pay allotment of thirty (30) continuous calendar days, including holidays, the appointing authority shall place the employee on sick leave without pay by personnel action.

(b) The appointing authority shall notify the employee in writing that the employee is being placed on sick leave by personnel action.

(c) Sick leave by personnel action shall not exceed one (1) year.

(d) If requested by the appointing authority, the employee shall provide statements during the year from an appropriate medical health professional attesting to the employee's continued inability to perform the essential functions of the employee's duties with or without reasonable accommodation.

(e) If an employee has given notice of the employee's ability to resume duties following sick leave by personnel action, the appointing authority shall return the employee to the original position or to a position for which the employee is qualified and which resembles the former position as closely as circumstances permit. The appointing authority shall notify the employee in writing of the following:

1. The effective date of the employee's return;

2. The position to which the employee is being returned;

3. The employee's salary upon return to work; and

4. The employee's new annual increment date, if applicable.

(f) If reasonable accommodation is requested, the employee shall:

1. Inform the employer; and

2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be deemed resigned if the employee:

1. Has been on one (1) year continuous sick leave by personnel action;

2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of leave;

3. Is unable to return to the employee's former position or to a position for which the employee is qualified and which resembles the former position as closely as circumstances permit;

4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which the employee is qualified and is capable of performing its essential functions with or without reasonable accommodation; and

5. Has not been placed by the appointing authority in a vacant position.

(h) Sick leave granted pursuant to this subsection shall not be renewable after the employee has been medically certified as able to return to work.

(i) An employee with status who is deemed resigned pursuant to paragraph (g) of this subsection shall retain reinstatement privileges that were accrued during service in the classified service.

(5) Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental, or optical examinations, and for sick leave without pay.

(c) If the employee is too ill to work, the employee shall notify the immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination, or treatment.

(f) An appointing authority shall grant sick leave if the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 3. Family and Medical Leave.

(1) An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 29 U.S.C. 2601 – 2654, and the federal regulations implementing the Act, 29 C.F.R. Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family leave if the employee has:

(a) Completed twelve (12) months of service; and

(b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar year basis.

(4) An employee shall be entitled to a maximum of twelve (12) weeks of unpaid family and medical leave for the birth, placement, or adoption of the employee's child.

(5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.

(6) Except as provided by Section 4 of this administrative regulation, an employee shall use accrued paid leave concurrently with FMLA leave, except an employee may reserve up to ten (10) days of accumulated sick leave while on FMLA leave. If an employee reserves accumulated sick leave, the remaining FMLA leave shall be unpaid. The employee shall satisfy all[any—procedural] requirements of this administrative regulation for use of accrued paid leave only in connection with the receipt of such payment.

Section 4. Employer Paid Leave.

(1) Notwithstanding the eligibility requirements of the FMLA, a full-time employee shall be entitled to a maximum of six (6) weeks of continuous employer paid leave for one or more of the following reasons:

(a) For the birth of a child, and to care for the newborn child if the leave is taken within one (1) year of the child's birth;

(b) For placement with the employee of a child for adoption or foster care if the leave is taken within one (1) year of the child's placement; or

(c) Because of a serious health condition that makes an employee unable to perform the functions of the employee's job.

(2) Employer paid leave shall comply with the requirements of the FMLA of 1993, 29 U.S.C. 2601 – 2654, and the federal regulations implementing the Act, 29 C.F.R. Part 825. Any leave entitlements provided by the FMLA that are not specifically listed in this section shall not qualify for employer paid leave.

(3) Leave that qualifies as employer paid leave shall be so designated and shall be exhausted prior to the employee's use of other accrued leave for an employer paid leave qualifying condition.

(4) Upon exhaustion of employer paid leave, additional leave usage shall comply with the other provisions of this administrative regulation, to include provision of medical documentation signed by a licensed practitioner certifying the employee's continued need for leave.

(5) Employer paid leave shall be used only on a continuous basis for absences of three (3) or more consecutive days.

(6) An employee shall be eligible for six (6) weeks of employer paid leave upon appointment.

(7) An employee shall request advance approval to use employer paid leave.

(8) Employer paid leave shall renew for a new six (6) week period following the completion of 120 months of service and following the completion of 240 months of service. Renewal shall void the remaining employer paid leave allotment so that the maximum amount of leave available pursuant to this section shall not exceed six (6) weeks.

(9) If an employee returns to work from employer paid leave but does not use the entire six (6) weeks of continuous employer paid leave, the remaining leave allotment may be utilized by the employee until renewal at 120 months of service or 240 months of service as described in subsection (8).

(10) If an employee returns to state service following a break in service, the leave allotment authorized in subsection (6) shall not renew. The allotment schedule outlined in subsection (8) shall not reset after a break in service.

(11) Upon separation from state service, an employee shall not be paid for any unused employer paid leave, and the unused balance of leave shall not be converted to any other type of leave or transfer to the employee's retirement account.

(12) When FMLA is applicable, an employee shall use employer paid leave concurrently with FMLA leave.

(13) On the effective date of this administrative regulation, an incumbent full-time employee shall be granted six (6) weeks of employer paid leave that may be used in accordance with this section.

Section 5.[Section 4-] Court Leave.

(1) With prior notification to their supervisor, an employee shall be entitled to court leave during the employee's scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with a subpoena by a court, administrative agency, or body of the federal or state government or any political subdivision thereof; or

(b) Serve as a juror.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or released from subpoena during the employee's normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of the employee's assigned duties.

(5) An employee shall not be eligible for court leave to comply with a subpoena if the employee or a member of the employee's family is a party to the proceeding.

Section 6.[Section 5-] Compensatory Leave and Overtime.

(1) Accrual of compensatory leave and overtime.

(a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. Chapter 8.

(b) An employee who is directed to work, or who requests and is authorized to work, in excess of the prescribed hours of duty shall be granted compensatory leave and paid overtime subject to the provisions of the Fair Labor Standards Act, 29 U.S.C. Chapter 8, the Kentucky Revised Statutes, and this administrative regulation.

(c) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be compensated for hours worked in excess of forty (40) per week as provided by subparagraphs 1 through 3 of this paragraph.

1. An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate compensatory leave at the rate of an hour and one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.

2. An employee's election to receive compensatory leave in lieu of paid overtime shall be in writing on the Overtime Compensation Form and shall remain in force for a minimum of three (3) months. The employee's election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next work week following receipt of the election. The employing agency shall not mandate an employee's election of compensatory leave or paid overtime.

3. An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times the regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.

(d) An employee deemed to be "exempt" pursuant to the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours worked in excess of the regular work schedule.

(e) Compensatory leave shall be accumulated or used in increments of one-quarter (1/4) hours.

(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be:

1. 239.99 hours by an employee in a nonpolicy-making position;

or

2. 240 hours by an employee in a policy-making position.

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain the compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has accrued at least 100 hours compensatory leave to use compensatory leave before annual leave and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.

(b) An appointing authority may require an employee who has accrued 200 hours of compensatory leave to take off work using compensatory leave in an amount sufficient to reduce the compensatory leave balance below 200 hours.

(c) An employee who is not in a policy-making position may, after accumulating 151 hours of compensatory leave, request payment for fifty (50) hours at the regular rate of pay. If the appointing authority or the designee approves the payment, an employee's leave balance shall be reduced accordingly.

(d) An employee who is not in a policy-making position shall be paid for fifty (50) hours at the regular hourly rate of pay upon accumulation of 240 hours of compensatory leave at the end of a pay period. If a work week is split between pay periods, then the 240 hours of compensatory leave required for payment shall be accrued at the end of the pay period following the split pay period week. The employee's leave balance shall be reduced accordingly.

(e) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, the employee shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and

2. Do not exceed the maximum amount of compensatory time that is permitted.

(f) Only hours actually worked shall be used for computing paid overtime or time and one-half (1 1/2) compensatory time.

(g) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of the employee's:

1. Regular hourly rate of pay; or

2. Average regular rate of pay for the final three (3) years of employment.

Section 7.[Section-6-] Military Leave.

(1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the National Guard shall be relieved from the civil duties, to serve under order or training duty without loss of the regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds the number of working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave, or leave without pay.

(4) If requested by the appointing authority, the employee shall provide a copy of the orders requiring the attendance of the employee before military leave is granted.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for the period of duty in accordance with KRS 61.373. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 8.[Section-7-] Voting and Election Leave.

(1) An employee who is eligible and registered to vote shall be allowed, upon prior request and approval, leave up to four (4) hours for the purpose of voting or to appear before the county clerk to request an application for or to execute an absentee ballot. A supervisor, manager, or appointing authority may specify the hours an employee may be absent.

(2) An employee casting an absentee ballot shall record the leave on the day the employee's vote is cast by mail or in-person submission. An employee shall be regularly scheduled to work on the day the vote is cast in order to receive the leave.

(3) An election officer shall receive additional leave if the total leave for election day does not exceed a regular workday.

(4) The absence shall not be charged against leave.

(5) An employee who is permitted or required to work during the employee's regular work hours, in lieu of voting leave, shall be granted compensatory leave on an hour-for-hour basis for the hours during the times the polls are open, up to a maximum of four (4) hours.

Section 9.[Section-8-] Funeral and Bereavement Leave.

(1) Upon the approval of the appointing authority, an employee who has lost an immediate family member by death may utilize five (5) days of accrued sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof.

(2) An appointing authority may approve the use of additional sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof, at the request of the employee following the loss of an immediate family member.

(3) For purposes of funeral and bereavement leave, an immediate family member shall include the employee's spouse, parent, grandparent, child, brother, or sister, or the spouse of any of them, and may include other relatives of close association if approved by the appointing authority.

Section 10.[Section-9-] Special Leave of Absence.

(1) If approved by the secretary, an appointing authority may grant a leave of absence for continuing education or training.

(a) Leave may be granted for a period not to exceed twenty-four (24) months.

(b) If granted, leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay.

(c) Leave shall be restricted to attendance at a college, university, vocational, or business school for training in subjects that relate to the employee's work and will benefit the state.

(2) An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3) If approved by the secretary, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of a work-related incident, or pending an investigation of an allegation of employee misconduct, lack of good behavior, or unsatisfactory performance of duties.

(a) Leave shall not exceed sixty (60) working days.

(b) The employee shall be notified in writing by the appointing authority that the employee is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(c) If the investigation reveals no misconduct by the employee, records relating to the investigation shall be purged from agency and Personnel Cabinet files maintained in accordance with KRS 18A.020(2)(a).

(d) The appointing authority shall notify a current employee, in writing, of the completion of the investigation and the action taken.

(4) An appointing authority may place an employee on administrative leave with pay upon the employee's receipt of an intent to dismiss letter as authorized by KRS 18A.095(2)(c).

(5) Discretionary leave with pay.

(a) An appointing authority may grant, or the secretary may direct, discretionary leave with pay to an employee for a period not to exceed ten (10) working days in a calendar year when it is considered necessary for the welfare of the employee.

(b) Reasons for discretionary leave with pay are limited to work-related events.

(c) An appointing authority, with approval of the secretary, may renew discretionary leave with pay, not to exceed an additional twenty (20) working days.

(d) Leave granted pursuant to this subsection may be taken intermittently if authorized by the appointing authority.

Section 11.~~[Section 10.]~~ Absence Without Leave.

(1) An employee who is absent from duty without prior approval shall report the reason for the absence to the supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered by the provisions of the Fair Labor Standards Act, 29 U.S.C. Chapter 8; and

(c) Constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of five (5) working days shall be deemed resigned.

Section 12.~~[Section 11.]~~ Absences Due to Adverse Weather.

(1) With supervisor approval, an employee who is unable~~[who is not designated for mandatory operations and chooses not]~~ to report to work or chooses to leave early if there are adverse weather conditions, such as tornado, flood, blizzard, or ice storm, shall have the time of the absence reported as:

(a) Charged to annual or compensatory leave;

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or

(c) Charged to paid adverse weather leave in accordance with subsection (4) of this section~~[Deferred in accordance with subsections (4) and (5) of this section].~~

(2) An employee who is on prearranged annual, compensatory, or sick leave shall charge leave as originally requested.

(3) An employee who is approved to telecommute shall not be eligible for adverse weather leave unless his or her telecommuting equipment is not operational or cannot be accessed during scheduled telecommuting hours due to adverse weather conditions.

(4) An employee, including an employee in a mandatory operation, who has supervisor approval, shall be eligible to use paid adverse weather leave subject to the following conditions:

(a) The amount of adverse weather leave shall not exceed one working day in a calendar year based on the employee's weekly work schedule;

(b) The leave shall be used in increments of one-quarter (1/4) hours; and

(c) The unused portion of the one-day allotment for paid adverse weather leave shall expire upon separation from employment or at the end of the calendar year, whichever comes first.~~[If operational needs allow, except for an employee in mandatory operations, management shall make every reasonable effort to arrange schedules whereby an employee shall be given an opportunity to make up time not worked rather than charging it to leave.]~~

~~[(5)] [An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.]~~

~~[(a)] [Time lost shall be made up within 123 calendar days of the occurrence of the absence. If it is not made up within 123 calendar~~

~~days, leave shall be deducted from compensatory leave, followed by annual leave, and if no compensatory or annual leave is available, time lost shall be charged to leave without pay and deducted from an employee's wages.]~~

~~[(b)] [If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual or compensatory leave or deducted from the final paycheck.]~~

~~[(6)]~~ If catastrophic, life-threatening weather conditions occur, as created by a tornado, flood, ice storm, or blizzard, and it becomes necessary for authorities to order evacuation or shut-down of the place of employment, the provisions established in paragraphs (a) and (b) of this subsection shall apply.

(a) An employee who is required to evacuate or who would report to a location that has been shut down shall not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety.

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Section 6[5] of this administrative regulation and the Fair Labor Standards Act, 29 U.S.C. Chapter 8.

Section 13.~~[Section 12.]~~ Blood Donation Leave.

(1) An employee who, during scheduled work hours, donates whole blood at a licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted pursuant to this section shall be used when the blood is donated unless circumstances as specified by the supervisor required the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave.

(4) An employee who is deferred from donating blood shall not:

(a) Be charged leave time for the time spent in the attempted donation; and

(b) Qualify for the remainder of the blood donation leave.

(5) A donation initiated or attempted during an employee's lunch period is outside of scheduled work hours and shall not qualify for any amount of blood donation leave.

Section 14.~~[Section 13.]~~ Incorporation by Reference.

(1) "Overtime Compensation Form", May 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material incorporated by reference is also available on the Personnel Cabinet's Web site on the Documents in Demand page at: <https://personnel.ky.gov/>.

MARY ELIZABETH BAILEY, Secretary
ANDY BESHEAR, Governor

APPROVED BY AGENCY: December 13, 2024

FILED WITH LRC: December 16, 2024 at 10:35 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2025, at 10:00 a.m. at 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on March 31, 2025. 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: Rosemary Holbrook, Executive Director, Office of Legal Services, 501 High Street, 3rd floor, Frankfort,

VOLUME 51, NUMBER 8– February 1, 2025

Kentucky 40601, phone: (502) 564-7430, fax: (502) 564-0224, email: RosemaryG.Holbrook@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rosemary Holbrook

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation details the various types of leave available to KRS Chapter 18A classified employees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the various types of leave available to KRS Chapter 18A classified employees, and the requirements for these types of leave.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110(7)(f) requires the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations which govern annual leave, sick leave, special leaves of absence, and other conditions of leave.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the consistent application and treatment for classified employees on all employment leave matters.

(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: A new section is added to provide for employer paid leave for qualifying reasons. The adverse weather leave section is amended to add up to one day of paid leave in a calendar year, while removing the option to charge time to adverse weather leave and subsequently make-up the time.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement initiatives that enhance employment market competitiveness for KRS Chapter 18A service.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110(7)(f) requires the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations which govern annual leave, sick leave, special leaves of absence, and other conditions of leave.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the consistent application and treatment for classified employees on all employment leave matters.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A classified employees and their agencies are 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: No additional action is required. Agencies will continue to review employee leave requests and monitor usage.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Agencies provide paid leave benefits from existing agency funds. The cost of a state employee is already established, and the use of this leave will not result in higher direct expenditures.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Full-time employees in KRS Chapter 18A service will be entitled to six (6) weeks of employer paid leave for qualifying conditions. Employees will also be eligible for one day of paid adverse weather leave per calendar year.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation, as amended, is not anticipated to generate any new or additional fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted entities the same.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030(2)(b), 18A.110, 29 U.S.C. 201 – 219, 2601 – 2654

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Personnel Cabinet is the promulgating agency. All state agencies with employees covered under KRS Chapter 18A are affected.

(a) Estimate the following for the first year:

Expenditures: Agencies provide paid leave benefits from existing agency funds. The cost of a state employee is already established, and the use of this leave will not result in higher direct expenditures.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: This administrative regulation itself will not result in cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? A difference in financial impact is not anticipated in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Not applicable

(a) Estimate the following for the first year:

Expenditures: Not applicable

Revenues: Not applicable

Cost Savings: Not applicable

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Not applicable

(4) Identify additional regulated entities not listed in questions (2) or (3): Not applicable

(a) Estimate the following for the first year:

Expenditures: Not applicable

Revenues: Not applicable

Cost Savings: Not applicable

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Not applicable

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation does not have a significant fiscal impact.

(b) Methodology and resources used to determine the fiscal impact: The provisions of this administrative regulation were reviewed, and a significant fiscal impact was not identified.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) An overall negative or adverse major economic impact is not anticipated.

(b) The methodology and resources used to reach this conclusion: The provisions of this administrative regulation were reviewed, and a significant fiscal impact was not identified.

**PERSONNEL CABINET
(Amendment)**

101 KAR 3:015. Leave requirements for unclassified service.

RELATES TO: KRS 18A.020, 18A.030, 18A.110, 18A.140, 18A.145, 18A.195, 18A.990, 61.373, 61.394, 118.035, 344.030, 29 C.F.R. 825, 29 U.S.C. 8, 29 U.S.C. 201 – 219, 2601 – 2654

STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.110(2), (7)(g), 18A.155, 29 U.S.C. 201 – 219, 2601 – 2654

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.030(2)(b) requires the Secretary of Personnel to promulgate administrative regulations, consistent with KRS Chapter 18A and federal standards, for the administration of a personnel system. KRS 18A.110(2) and 18A.155 require the secretary to promulgate administrative regulations for the unclassified service. KRS 18A.110(7)(g) requires the secretary, with the approval of the Governor, to promulgate administrative regulations to govern annual leave, sick leave, special leaves of absence, and other conditions of leave. This administrative regulation establishes the leave requirements for unclassified employees.

Section 1. Annual Leave.

(1) Accrual of annual leave.

(a) Each full-time employee shall accumulate annual leave at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180-239 months	1 3/4 days per month; 21 per year
240 months & over	2 leave days per month; 24 per year

(b) A full-time employee shall have worked, or been on paid leave, other than educational leave with pay, for 100 or more regular hours per month to accrue annual leave. This shall not include hours worked in excess of the prescribed hours of duty.

(c) Accrued leave shall be credited on the first day of the month following the month in which the annual leave is earned.

(d) In computing months of total service for the purpose of earning annual leave, only the months for which an employee earned annual leave shall be counted.

(e) A former employee who has been rehired shall receive credit for months of prior service, unless the employee had been dismissed for cause or has retired from a position covered by a state retirement system.

(f) A part-time employee shall not be entitled to accrue annual leave.

(2) Use and retention of annual leave.

(a) Annual leave shall be used in increments of one-quarter (1/4) hours.

(b) Except as provided in paragraph (c) of this subsection, an employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time earned that year, if the operating requirements of the agency permit.

(c) An appointing authority may require an employee who has a balance of at least 100 hours of compensatory leave to use compensatory leave before the employee's request to use annual leave is granted, unless the employee's annual leave balance exceeds the maximum number of hours that may be carried forward pursuant to this administrative regulation.

(d) Absence due to sickness, injury, or disability in excess of the amount available for those purposes shall, at the request of the employee, be charged against annual leave.

(e) An employee shall be able to use annual leave for an absence on a regularly scheduled workday.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain accumulated annual leave in the receiving agency.

(g) An employee who is eligible for state contributions for life insurance pursuant to KRS Chapter 18A shall have worked or been

on paid leave, other than holiday or educational leave, during any part of the previous month.

(h) An employee who is eligible for state contributions for health benefits pursuant to KRS Chapter 18A shall have worked or been on paid leave, other than holiday or educational leave, during any part of the previous pay period.

(i) Annual leave may be carried from one (1) calendar year to the next. If annual leave is carried from one (1) calendar year to the next, leave shall be calculated as established in the following table:

Months of Service	Maximum Amount	37.5 Hour Week Equivalent	40 Hour Week Equivalent
0-59	30 work-days	225 hours	240 hours
60-119 months	37 work- days	277.50hours	296 hours
120-179 months	45 work- days	337.50hours	360 hours
180-239 months	52 work- days	390 hours	416 hours
240 months and over	60 work- days	450 hours	480 hours

(j) Leave in excess of the maximum amounts specified in paragraph (i) of this subsection shall be converted to sick leave at the end of the calendar year or upon retirement.

(k) The amount of annual leave that may be carried forward and the amount of annual leave that may be converted to sick leave shall be determined by computing months of service as provided by subsection (1)(d) of this section.

(3) Annual leave on separation.

(a)

1. If an employee is separated by proper resignation or retirement, or terminated other than for cause, the employee shall be paid in a lump sum for accumulated annual leave.

2. The accumulated annual leave for which the employee is paid shall not exceed the amounts established by subsection (2)(i) of this section.

3. Following payment of annual leave at resignation, any remaining annual leave after the payment of the maximum shall:

- a. Not be paid to the employee or converted to sick leave; and
- b. Be removed from the balance.

(b) If an employee is laid off, the employee shall be paid in a lump sum for all accumulated annual leave.

(c) An employee in the unclassified service who reverts to the classified service, or an employee who resigns one (1) day and is employed the next workday, shall retain the accumulated leave in the receiving agency.

(d) An employee who has been dismissed for cause shall not be paid for accumulated annual leave.

(e) An appointing authority may withhold payment of accumulated annual leave for an employee who has failed to give proper notice of resignation or retirement as described in 101 KAR 3:050 Section 8, or who has submitted notice of resignation or retirement after receiving an intent to dismiss letter. Annual leave withheld pursuant to this paragraph shall result in a determination that the employee resigned not in good standing.

(f) Upon the death of an employee, the employee's estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(g) An employee may request in writing that accumulated annual leave not be paid upon resignation, and that all or part of the amount of accumulated annual leave that does not exceed the amount established by this section be waived, if:

- 1. The employee resigns, or is laid off, because of an approved plan of privatization of the services performed; and
- 2. The successor employer has agreed to credit the employee with an equal amount of annual leave.

Section 2. Sick Leave.

(1) Accrual of sick leave.

(a) An employee, except a part-time employee, shall accumulate sick leave with pay at the rate of one (1) working day per month.

(b) An employee shall have worked or been on paid leave, other than educational leave, for 100 or more regular hours in a month to

accrue sick leave. This shall not include hours worked in excess of the prescribed hours of duty.

(c) An employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(d) A full-time employee who completes 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

(e) A full-time employee who completes 240 months of total service with the state shall be credited with another ten (10) additional days of sick leave upon the first day of the month following the completion of 240 months of service.

(f) In computing months of total service for the purpose of crediting sick leave, only the months for which an employee earned sick leave shall be counted.

(g) A former employee who has been rehired shall receive credit for months of prior service, and shall be credited with the unused sick leave balance that existed at the time of the previous separation, unless the employee had been dismissed for cause or has retired from a position covered by a state retirement system.

(h) The total service shall be verified by the Personnel Cabinet before the leave is credited to the employee's record.

(i) Sick leave may be accumulated with no maximum.

(2) Use and retention of sick leave.

(a) An appointing authority shall grant or may require the use of sick leave with or without pay if an employee:

1. Is unable to work due to medical, dental, or optical examination or treatment;

2. Is disabled by illness or injury. If requested by the appointing authority, the employee shall provide a statement from an appropriate medical health professional certifying the employee's inability to perform the employee's duties for the days or hours sick leave is requested. Before an employee is permitted to return to work, if requested by the appointing authority, the employee shall obtain and present a fitness-for-duty certification from an appropriate medical health care professional indicating the employee is able to resume work;

3. Is required to care for or transport a member of the employee's immediate family in need of medical attention for a reasonable period of time. If requested by the appointing authority, the employee shall provide a statement from an appropriate medical health professional certifying the employee's need to care for a family member;

4. Would jeopardize the health of the employee or others at the employee's work station because of a contagious disease or communicable condition. Before an employee is permitted to return to work, if requested by the appointing authority, the employee shall obtain and present a fitness-for-duty certification from an appropriate medical health care professional indicating the employee is able to resume work; or

5. Demonstrates behavior that might endanger the employee or others. Before an employee is permitted to return to work, if requested by the appointing authority, the employee shall obtain and present a fitness-for-duty certification from an appropriate medical health care professional indicating the employee is able to resume work.

(b) At the termination of sick leave with pay, the appointing authority shall return the employee to the employee's former position.

(c) An employee eligible for state contributions for life insurance pursuant to the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than holiday or education leave, during any part of the previous month.

(d) An employee who is eligible for state contributions for health benefits pursuant to the provisions of KRS Chapter 18A shall have worked or been on paid leave, other than holiday or educational leave, during any part of the previous pay period.

(e) Sick leave shall be used in increments of one-quarter (1/4) hours.

(f) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain accumulated sick leave in the receiving agency.

(g) An employee shall be credited for accumulated sick leave if separated by proper resignation, layoff, or retirement.

(h) The duration of an interim employee's appointment shall not be extended by the use or approval for sick leave with or without pay.

(3) Sick leave without pay.

(a) An appointing authority shall grant sick leave without pay, without a change in the employee's personnel status, for the duration of an employee's impairment by injury or illness, if:

1. The leave does not exceed thirty (30) continuous calendar days; and

2. The employee has used or been paid for all accumulated annual, sick, and compensatory leave unless the employee has requested to retain up to ten (10) days of accumulated sick leave.

(b) Within an employee's first twelve (12) months of employment after initial appointment, an appointing authority shall grant sick leave without pay to an employee who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for a member of the immediate family, or for the duration of the employee's impairment by illness or injury, for a period not to exceed thirty (30) working days in a calendar year.

(4) Sick leave by personnel action.

(a) If the duration of an employee's impairment by illness or injury exceeds the sick leave without pay allotment of thirty (30) continuous calendar days, including holidays, the appointing authority shall place the employee on sick leave without pay by personnel action.

(b) The appointing authority shall notify the employee in writing that the employee is being placed on sick leave by personnel action.

(c) Sick leave by personnel action shall not exceed one (1) year.

(d) If requested by the appointing authority, the employee shall provide statements during the year from an appropriate medical health professional attesting to the employee's continued inability to perform the essential functions of the employee's duties with or without reasonable accommodation.

(e) If an employee has given notice of the employee's ability to resume duties following sick leave by personnel action, the appointing authority shall return the employee to the original position or to a position for which the employee is qualified and which resembles the former position as closely as circumstances permit. The appointing authority shall notify the employee in writing of the following:

1. The effective date of the employee's return;

2. The position to which the employee is being returned;

3. The employee's salary upon return to work; and

4. The employee's new annual increment date, if applicable.

(f) If reasonable accommodation is requested, the employee shall:

1. Inform the employer; and

2. Upon request, provide supportive documentation from a certified professional.

(g) An employee shall be deemed resigned if the employee:

1. Has been on one (1) year continuous sick leave by personnel action;

2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of leave;

3. Is unable to return to the employee's former position or to a position for which the employee is qualified and which resembles the former position as closely as circumstances permit;

4. Has been given priority consideration by the appointing authority for a vacant, budgeted position with the same agency, for which the employee is qualified and is capable of performing its essential functions with or without reasonable accommodation; and

5. Has not been placed by the appointing authority in a vacant position.

(h) Sick leave granted pursuant to this subsection shall not be renewable after the employee has been medically certified as able to return to work.

(i) An employee who is deemed resigned pursuant to paragraph (g) of this subsection shall retain reinstatement privileges that were accrued during service in the classified service.

(5) Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental, or optical examinations, and for sick leave without pay.

(c) If the employee is too ill to work, an employee shall notify the immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination, or treatment.

(f) An appointing authority shall grant sick leave if the application is supported by acceptable evidence but may require confirmation if there is reasonable cause to question the authenticity of the certificate or its contents.

Section 3. Family and Medical Leave.

(1) An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 29 U.S.C. 2601 – 2654, and the federal regulations implementing the Act, 29 C.F.R. Part 825.

(2) An employee in state service shall qualify for twelve (12) weeks of unpaid family leave if the employee has:

(a) Completed twelve (12) months of service; and

(b) Worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.

(3) Family and medical leave shall be awarded on a calendar year basis.

(4) An employee shall be entitled to a maximum of twelve (12) weeks of unpaid family and medical leave for the birth, placement, or adoption of the employee's child.

(5) While an employee is on unpaid family and medical leave, the state contribution for health and life insurance shall be maintained by the employer.

(6) Except as provided by Section 4 of this administrative regulation, an employee shall use accrued paid leave concurrently with FMLA leave, except an employee may reserve up to ten (10) days of accumulated sick leave while on FMLA leave. If an employee reserves accumulated sick leave, the remaining FMLA leave shall be unpaid. The employee shall satisfy all[any—procedural] requirements of this administrative regulation for use of accrued paid leave only in connection with the receipt of such payment.

Section 4. Employer Paid Leave.

(1) Notwithstanding the eligibility requirements of the FMLA, a full-time employee shall be entitled to a maximum of six (6) weeks of continuous employer paid leave for one or more of the following reasons:

(a) For the birth of a child, and to care for the newborn child if the leave is taken within one (1) year of the child's birth;

(b) For placement with the employee of a child for adoption or foster care if the leave is taken within one (1) year of the child's placement; or

(c) Because of a serious health condition that makes an employee unable to perform the functions of the employee's job.

(2) Employer paid leave shall comply with the requirements of the FMLA of 1993, 29 U.S.C. 2601 – 2654, and the federal regulations implementing the Act, 29 C.F.R. Part 825. Any leave entitlements provided by the FMLA that are not specifically listed in this section shall not qualify for employer paid leave.

(3) Leave that qualifies as employer paid leave shall be so designated and shall be exhausted prior to the employee's use of other accrued leave for an employer paid leave qualifying condition.

(4) Upon exhaustion of employer paid leave, additional leave usage shall comply with the other provisions of this administrative regulation, to include provision of medical documentation signed by a licensed practitioner certifying the employee's continued need for leave.

(5) Employer paid leave shall be used only on a continuous basis for absences of three (3) or more consecutive days.

(6) An employee shall be eligible for six (6) weeks of employer paid leave upon appointment.

(7) An employee shall request advance approval to use employer paid leave.

(8) Employer paid leave shall renew for a new six (6) week period following the completion of 120 months of service and following the completion of 240 months of service. Renewal shall void the remaining employer paid leave allotment so that the maximum amount of leave available pursuant to this section shall not exceed six (6) weeks.

(9) If an employee returns to work from employer paid leave but does not use the entire six (6) weeks of continuous employer paid leave, the remaining leave allotment may be utilized by the employee until renewal at 120 months of service or 240 months of service as described in subsection (8).

(10) If an employee returns to state service following a break in service, the leave allotment authorized in subsection (6) shall not renew. The allotment schedule outlined in subsection (8) shall not reset after a break in service.

(11) Upon separation from state service, an employee shall not be paid for any unused employer paid leave, and the unused balance of leave shall not be converted to any other type of leave or transfer to the employee's retirement account.

(12) When FMLA is applicable, an employee shall use employer paid leave concurrently with FMLA leave.

(13) On the effective date of this administrative regulation, an incumbent full-time employee shall be granted six (6) weeks of employer paid leave that may be used in accordance with this section.

Section 5.[Section 4.] Court Leave.

(1) With prior notice to their supervisor, an employee shall be entitled to court leave during the employee's scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with a subpoena by a court, administrative agency, or body of the federal or state government or any political subdivision thereof; or

(b) Serve as a juror.

(2) Court leave shall include necessary travel time.

(3) If relieved from duty as a juror or released from subpoena during the employee's normal working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of the employee's assigned duties.

(5) An employee shall not be eligible for court leave to comply with a subpoena if the employee or a member of the employee's family is a party to the proceeding.

Section 6.[Section 5.] Compensatory Leave and Overtime.

(1) Accrual of compensatory leave and overtime.

(a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. Chapter 8.

(b) An employee who is directed to work, or who requests and is authorized to work, in excess of the prescribed hours of duty shall be granted compensatory leave and paid overtime subject to the provisions of the Fair Labor Standards Act, 29 U.S.C. Chapter 8, KRS Chapter 337, and this administrative regulation.

(c) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be compensated for hours worked in excess of forty (40) per week as provided by subparagraphs 1 through 3 of this paragraph.

1. An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate compensatory leave at the rate of an hour and one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.

2. An employee's election to receive compensatory leave in lieu of paid overtime shall be in writing on the Overtime Compensation

Form and shall remain in force for a minimum of three (3) months. The employee's election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next workweek following receipt of the election. The employing agency shall not mandate an employee's election of compensatory leave or paid overtime.

3. An employee who does not elect compensatory leave in lieu of paid overtime shall be paid one and one-half (1 1/2) times the regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.

(d) An employee deemed to be "exempt" pursuant to the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours worked in excess of the regular work schedule.

(e) Compensatory leave shall be accumulated or used in increments of one-quarter (1/4) hours.

(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be:

1. 239.99 hours by an employee in a nonpolicy-making position; or
2. 480 hours by an employee in a policy-making position.

(g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain the compensatory leave in the receiving agency.

(2) Reductions in compensatory leave balances.

(a) An appointing authority may require an employee who has accrued at least 100 hours compensatory leave to use compensatory leave before annual leave and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency.

(b) An appointing authority may require an employee who is not in a policy-making position and has accrued 200 hours of compensatory leave to take off work using compensatory leave in an amount sufficient to reduce the compensatory leave balance below 200 hours.

(c) An employee who is not in a policy-making position may, after accumulating 151 hours of compensatory leave, request payment for fifty (50) hours at the regular rate of pay. If the appointing authority or the designee approves the payment, an employee's leave balance shall be reduced accordingly.

(d) An employee who is not in a policy-making position shall be paid for fifty (50) hours at the regular hourly rate of pay upon accumulation of 240 hours of compensatory leave at the end of a pay period. If a work week is split between pay periods, then the 240 hours of compensatory leave required for payment shall be accrued at the end of the pay period following the split pay period week. The employee's leave balance shall be reduced accordingly.

(e) If an employee's prescribed hours of duty are normally less than forty (40) hours per week, the employee shall receive compensatory leave for the number of hours worked that:

1. Exceed the number of normally prescribed hours of duty; and
2. Do not exceed the maximum amount of compensatory time that is permitted.

(f) Only hours actually worked shall be used for computing paid overtime or time and one-half (1 1/2) compensatory time.

(g) Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of the employee's:

1. Regular hourly rate of pay; or
2. Average regular rate of pay for the final three (3) years of employment.

Section 7.~~[Section 6.]~~ Military Leave.

(1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the National Guard shall be relieved from the civil duties, to serve under order or training duty without loss of the regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year.

(2) The absence shall not be charged to leave.

(3) Absence that exceeds the number of working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave, or leave without pay.

(4) If requested by the appointing authority, the employee shall provide a copy of the orders requiring the attendance of the employee before military leave is granted.

(5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for the period of duty in accordance with KRS 61.373. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee.

Section 8.~~[Section 7.]~~ Voting and Election Leave.

(1) An employee who is eligible and registered to vote shall be allowed, upon prior request and approval, leave up to four (4) hours for the purpose of voting or to appear before the county clerk to request an application for or to execute an absentee ballot. A supervisor, manager, or appointing authority may specify the hours an employee may be absent.

(2) An employee casting an absentee ballot shall record the leave on the day the employee's vote is cast by mail or in-person submission. An employee shall be regularly scheduled to work on the day the vote is cast in order to receive the leave.

(3) An election officer shall receive additional leave if the total leave for Election Day does not exceed a regular workday.

(4) The absence shall not be charged against leave.

(5) An employee who is permitted or required to work during the employee's regular work hours, in lieu of voting leave, shall be granted compensatory leave on an hour-for-hour basis for the hours during the times the polls are open, up to a maximum of four (4) hours.

Section 9.~~[Section 8.]~~ Funeral and Bereavement Leave.

(1) Upon the approval of the appointing authority, an employee who has lost an immediate family member by death may utilize five (5) days of accrued sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof.

(2) An appointing authority may approve the use of additional sick leave, compensatory leave, annual leave, or leave without pay if the employee does not have accrued leave, or a combination thereof, at the request of the employee following the loss of an immediate family member.

(3) For purposes of funeral and bereavement leave, an immediate family member shall include the employee's spouse, parent, grandparent, child, brother, or sister, or the spouse of any of them, and may include other relatives of close association if approved by the appointing authority.

Section 10.~~[Section 9.]~~ Special Leave of Absence.

(1) If approved by the secretary, an appointing authority may grant a leave of absence for continuing education or training.

(a) Leave may be granted for a period not to exceed twenty-four (24) months or the conclusion of the administration in which the employee is serving, whichever comes first.

(b) If granted, leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay.

(c) Leave shall be restricted to attendance at a college, university, vocational, or business school for training in subjects that relate to the employee's work and will benefit the state.

(2) An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state.

(3) If approved by the secretary, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of a work-related incident, or pending an investigation of an allegation of employee misconduct, lack of good behavior, or unsatisfactory performance of duties.

(a) Leave shall not exceed sixty (60) working days.

(b) The employee shall be notified in writing by the appointing authority that the employee is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(c) If the investigation reveals no misconduct by the employee, records relating to the investigation shall be purged from agency and Personnel Cabinet files maintained in accordance with KRS 18A.020(2)(a).

(d) The appointing authority shall notify a current employee, in writing, of the completion of the investigation and the action taken.

(4) An appointing authority may place a career unclassified employee on administrative leave with pay upon the employee's receipt of an intent to dismiss for cause letter.

(5) Discretionary leave with pay.

(a) An appointing authority may grant, or the secretary may direct, discretionary leave with pay to an employee for a period not to exceed ten (10) working days in a calendar year when it is considered necessary for the welfare of the employee.

(b) Reasons for discretionary leave with pay are limited to work-related events.

(c) An appointing authority, with approval of the secretary, may renew discretionary leave with pay, not to exceed an additional twenty (20) working days.

(d) Leave granted pursuant to this subsection may be taken intermittently if authorized by the appointing authority.

Section 11.~~[Section 10.]~~ Absence Without Leave.

(1) An employee who is absent from duty without prior approval shall report the reason for the absence to the supervisor immediately.

(2) Unauthorized or unreported absence shall:

(a) Be considered absence without leave;

(b) Be treated as leave without pay for an employee covered by the provisions of the Fair Labor Standards Act, 29 U.S.C. Chapter 8; and

(c) Constitute grounds for disciplinary action.

(3) An employee who has been absent without leave or notice to the supervisor for a period of five (5) working days shall be deemed resigned.

Section 12.~~[Section 11.]~~ Absences Due to Adverse Weather.

(1) With supervisor approval, an employee who is unable~~[, who is not designated for mandatory operations and chooses not]~~ to report to work or chooses to leave early if there are adverse weather conditions, such as tornado, flood, blizzard, or ice storm, shall have the time of the absence reported as:

(a) Charged to annual or compensatory leave;

(b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or

(c) Charged to paid adverse weather leave in accordance with subsection (4) of this section~~[Deferred in accordance with subsections (4) and (5) of this section].~~

(2) An employee who is on prearranged annual, compensatory, or sick leave shall charge leave as originally requested.

(3) An employee who is approved to telecommute shall not be eligible for adverse weather leave unless his or her telecommuting equipment is not operational or cannot be accessed during scheduled telecommuting hours due to adverse weather conditions.

(4) An employee, including an employee in a mandatory operation, who has supervisor approval, shall be eligible to use paid adverse weather leave subject to the following conditions:

(a) The amount of adverse weather leave shall not exceed one working day in a calendar year based on the employee's weekly work schedule;

(b) The leave shall be used in increments of one-quarter (1/4) hours; and

(c) The unused portion of the one-day allotment for paid adverse weather leave shall expire upon separation from employment or at the end of the calendar year, whichever comes first.~~[If operational needs allow, except for an employee in mandatory operations, management shall make every reasonable effort to arrange schedules whereby an employee shall be given an opportunity to make up time not worked rather than charging it to leave.]~~

~~[(5)] [An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek.]~~

~~[(a)] [Time lost shall be made up within 123 calendar days of the occurrence of the absence. If it is not made up within 123 calendar days, leave shall be deducted from compensatory leave, followed by annual leave, and if no compensatory or annual leave is available, time lost shall be charged to leave without pay and deducted from an employee's wages.]~~

~~[(b)] [If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual or compensatory leave or deducted from the final paycheck.]~~

~~[(5)]~~~~[(6)]~~ If catastrophic, life-threatening weather conditions occur, as created by a tornado, flood, ice storm, or blizzard, and it becomes necessary for authorities to order evacuation or shut-down of the place of employment, the provisions established in paragraphs (a) and (b) of this subsection shall apply.

(a) An employee who is required to evacuate or who would report to a location that has been shut down shall not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety.

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Section ~~6~~~~5~~ of this administrative regulation and the Fair Labor Standards Act, 29 U.S.C. Chapter 8.

Section 13.~~[Section 12.]~~ Blood Donation Leave.

(1) An employee who, during scheduled work hours, donates whole blood at a licensed blood center certified by the Food and Drug Administration shall receive four (4) hours leave time, with pay, for the purpose of donating and recuperating from the donation.

(2) Leave granted pursuant to this section shall be used when the blood is donated, unless circumstances as specified by the supervisor required the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave.

(4) An employee who is deferred from donating blood shall not:

(a) Be charged leave time for the time spent in the attempted donation; and

(b) Qualify for the remainder of the blood donation leave.

(5) A donation initiated or attempted during an employee's lunch period is outside of scheduled work hours and shall not qualify for any amount of blood donation leave.

Section 14.~~[Section 13.]~~ Incorporation by Reference.

(1) "Overtime Compensation Form", May 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material incorporated by reference is also available on the Personnel Cabinet's Web site on the Documents in Demand page at: <https://personnel.ky.gov/>.

MARY ELIZABETH BAILEY, Secretary
ANDY BESHEAR, Governor

APPROVED BY AGENCY: December 13, 2024

FILED WITH LRC: December 16, 2024 at 10:35 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2025, at 10:00 a.m. at 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on

VOLUME 51, NUMBER 8— February 1, 2025

March 31, 2025. 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: Rosemary Holbrook, Executive Director, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone: (502) 564-7430, fax: (502) 564-0224, email: RosemaryG.Holbrook@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rosemary Holbrook

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation details the various types of leave available to KRS Chapter 18A unclassified employees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the various types of leave available to KRS Chapter 18A unclassified employees, and the requirements for these types of leave.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110(7)(f) and KRS 18A.155 require the Secretary of Personnel to promulgate administrative regulations which govern leave.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the consistent application and treatment for unclassified employees on all employment leave matters.

(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: A new section is added to provide for employer paid leave for qualifying reasons. The adverse weather leave section is amended to add up to one day of paid leave in a calendar year, while removing the option to charge time to adverse weather leave and subsequently make-up the time.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement initiatives that enhance employment market competitiveness for KRS Chapter 18A service.

(c) How the amendment conforms to the content of the authorizing statutes: Pursuant to 18A.030(2), the Personnel Cabinet Secretary is required to promulgate comprehensive regulations consistent with the provisions for KRS Chapter 18A. KRS 18A.110(7)(f) and KRS 18A.155 require the Secretary of Personnel to promulgate administrative regulations which govern leave.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the consistent application and treatment for unclassified employees on all employment leave matters.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All KRS Chapter 18A unclassified employees and their agencies are 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: No additional action is required. Agencies will continue to review employee leave requests and monitor usage.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Agencies provide paid leave benefits from existing agency funds. The cost of a state employee is already established, and the use of this leave will not result in higher direct expenditures.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Full-time employees in KRS Chapter 18A service will be entitled to six (6) weeks of employer paid leave for qualifying conditions. Employees will also be eligible for one day of paid adverse weather leave per calendar year.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation, as amended, is not anticipated to generate any new or additional fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? No. This regulation, as amended, treats all impacted entities the same.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030(2)(b), 18A.110, 29 U.S.C. 201 – 219, 2601 – 2654

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Personnel Cabinet is the promulgating agency. All state agencies with employees covered under KRS Chapter 18A are affected.

(a) Estimate the following for the first year:

Expenditures: Agencies provide paid leave benefits from existing agency funds. The cost of a state employee is already established, and the use of this leave will not result in higher direct expenditures.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: This administrative regulation itself will not result in cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? A difference in financial impact is not anticipated in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Not applicable

(a) Estimate the following for the first year:

Expenditures: Not applicable

Revenues: Not applicable

Cost Savings: Not applicable

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Not applicable

(4) Identify additional regulated entities not listed in questions (2) or (3): Not applicable

(a) Estimate the following for the first year:

Expenditures: Not applicable

Revenues: Not applicable

Cost Savings: Not applicable

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Not applicable

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation does not have a significant fiscal impact.

(b) Methodology and resources used to determine the fiscal impact: The provisions of this administrative regulation were reviewed, and a significant fiscal impact was not identified.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) An overall negative or adverse major economic impact is not anticipated.

(b) The methodology and resources used to reach this conclusion: The provisions of this administrative regulation were reviewed, and a significant fiscal impact was not identified.

**PERSONNEL CABINET
(Amendment)**

101 KAR 3:045. Compensation plan and pay incentives for unclassified service.

RELATES TO: KRS 18A.110, 18A.155, 18A.202, 199.555

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.110(2), 18A.155(1)(b), (e), 18A.202(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.155 requires the Secretary of Personnel to promulgate administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (t), and (u). KRS 18A.110 requires the secretary to promulgate comprehensive administrative regulations for the unclassified service. KRS 18A.202 authorizes the secretary to implement work-related incentive programs for state employees. This administrative regulation establishes the compensation plan and pay incentives for employees in unclassified service.

Section 1. New Appointments. An appointing authority shall appoint a new employee at a salary not to exceed the midpoint of the pay grade.

Section 2. Reentrance to State Service.

(1) Returning retirees. An employee who was formerly employed under KRS Chapter 18A and who is appointed to a position covered by the provisions of KRS Chapter 18A, while receiving retirement payments through the Kentucky Public Pensions Authority or Kentucky Teachers Retirement System, shall be appointed in accordance with the provisions for new appointments in this administrative regulation.

(2) Other reentering employees. An appointing authority shall set the salary of a former classified or unclassified employee, other than a returning retiree:

(a) In accordance with the standards used for making new appointments in this administrative regulation; or

(b) Up to an hourly rate~~[a salary]~~ formerly paid in the classified or unclassified service.

Section 3. Salary Adjustments.

(1) Promotion.

(a)

1. An employee who is promoted shall receive a five (5) percent increase or an increase to the minimum of the new grade, whichever is greater; or

2. An appointing authority may grant a salary increase of five (5) percent per grade upon promotion.

(b) If sufficient funds are available, an appointing authority may adjust the employee's salary up to the midpoint of the pay grade as long as the increase is greater than the increase specified in subparagraph 1. of subsection (1)(a) of this section.

(2) Demotion. If an employee is demoted,~~[the appointing authority shall determine]~~ the salary shall be determined in one (1) of the following ways:

(a) The employee's salary shall be reduced by five (5) percent for each grade the employee is reduced~~[to a rate that is not below the minimum for the job classification to which the demotion is made];~~

(b) If requested in writing by the appointing authority and approved by the secretary, the employee shall retain the salary received prior to the demotion. If approved by the secretary, the written request and notice of approval shall be placed in the employee's agency and Personnel Cabinet files maintained in accordance with KRS 18A.020(2)(a) ~~[If the employee's salary is not reduced upon demotion, the appointing authority shall explain the reason in writing and place the explanation in the employee's personnel files];~~ or

(c) In the event of a salary schedule adjustment of an entry level wage of a pay grade, if an employee demoted to a lower pay grade, retained his or her salary, and was subsequently promoted and on promotional probation on the effective date of the new salary schedule, if the employee's salary is less than five (5) percent above the new entry level salary of the pay grade assigned to that

employee on the effective date, the Personnel Cabinet shall adjust that employee's salary to five (5) percent above the new entry level wage.

(3) Reclassification.

(a) An appointing authority shall adjust the salary of an employee who is advanced to a higher pay grade through reclassification in one (1) of the following ways:

1. The greater of five (5) percent or the new grade minimum;

2. The greater of five (5) percent for each grade or the new grade minimum; or

3. If sufficient funds are available, up to the midpoint of the pay grade as long as the increase is greater than the increase specified in subparagraph 1. of this paragraph.

(b) An employee who is placed in a lower pay grade through reclassification shall receive the same salary received prior to reclassification.

(c) If sufficient funds are available, an appointing authority may adjust up to the midpoint of the pay grade the salary of an employee who is placed in the same pay grade through reclassification.

(d) An employee shall not be reclassified from a job classification that does not require the supervision of employees to a job classification that requires the supervision of employees as mandated within the job class specification.

(4) Reallocation.

(a) An employee who is advanced to a higher pay grade through reallocation shall receive a five (5) percent increase or an increase to the new grade minimum, whichever is greater. An appointing authority may grant a five (5) percent increase per grade upon reallocation to a higher grade.

(b) An employee who is placed in a lower pay grade through reallocation shall receive the same salary received prior to reallocation.

(5) Detail to special duty.

(a) An employee who is detailed to special duty in a higher grade shall receive a five (5) percent increase or an increase to the minimum of the grade, whichever is greater, for the duration of the period of the detail. An appointing authority may grant a salary increase of five (5) percent per grade for the duration of the detail.

(b) If sufficient funds are available, an appointing authority may adjust the salary of an employee who is placed in the same pay grade or higher pay grade through detail to special duty, up to the midpoint of the pay grade, as long as the increase is greater than the increase specified in paragraph (a) of this subsection.

(c) An employee who is detailed to special duty to the same or lower grade shall continue to receive the same salary except as provided under paragraph (b) of this subsection.

(6) Reversion.

(a) The salary of an employee who is reverted following detail to special duty in a higher pay grade shall be adjusted to:

1. The salary received prior to the detail; and

2. All salary advancements and adjustments which would have been awarded if the detail had not occurred.

(b) The salary of an employee who is reverted from a position in the unclassified service to a position in the classified service shall be adjusted to:

1. The salary received prior to leaving the classified service; and

2. All salary advancements and adjustments which would have been awarded if the individual had remained in the classified service.

(7) Pay grade changes.

(a) If a job classification is assigned to a higher pay grade, the appointing authority shall raise the salary of an employee below the new grade minimum to the new grade minimum. If sufficient funds are available, an appointing authority may uniformly adjust the salary of all employees in that agency in that job classification to:

1. The greater of the new grade minimum or five (5) percent per pay grade;

2. The greater of the new grade minimum or ten (10) percent per pay grade; or

3. At a percentage determined by the Personnel Cabinet.

(b) If a job classification is assigned to a lower pay grade, an employee in that job classification shall retain his current salary.

(8) Special entrance rates. If a special entrance rate is established for a job classification, an appointing authority shall

adjust the salary of an employee in that job classification, who is below the special entrance rate, to the new rate. If sufficient funds are available, on the same date as the establishment of the special entrance rate, an appointing authority may also grant a salary adjustment equal to the difference between the entrance of the pay grade and the new special entrance rate to other employees in that job classification, except those employees who are on initial probation.

(9) Other salary adjustments.

(a) On the 16th of a month, an appointing authority may grant a five (5) percent salary adjustment to an employee who was eligible for, but did not receive, an increase upon the completion of six (6) months service following promotion.

(b) On the 16th of a month, an appointing authority may grant a salary adjustment to an employee within an agency who was eligible for, but did not receive, at least a five (5) percent per pay grade increase or ten (10) percent per pay grade increase as a result of a grade change on or after January 1, 1999. The total adjustment under this provision when combined with an increase at the time of the grade change shall equal a five (5) percent per pay grade increase or ten (10) percent per pay grade increase to the employee's salary immediately prior to the grade change. The adjustment shall not be retroactive.

(c) If sufficient funds are available, an appointing authority may adjust the salary of one (1) or more unclassified employees in an office or department due to internal pay equity issues within a job classification or sustained retention issues impacting the mission of the agency.

1. The appointing authority shall substantiate in writing to the secretary the need for adjustment and include the proposed adjustment for each employee.

2.

a. An adjustment shall be any amount that does not cause an employee's hourly rate to exceed the midpoint of the pay grade; or

b. An adjustment that causes an employee's hourly rate to exceed the midpoint of the pay grade shall not exceed twenty-five (25) percent of the employee's hourly pay rate.

(10) Conversion rule. The salary of an employee whose position changes from a thirty-seven and one-half (37.5) hour workweek to a forty (40) hour workweek, or vice versa, shall be converted to accurately reflect the employee's hourly rate of base pay. This conversion shall be applied before applying any other salary adjustment to which the employee is entitled pursuant to this section.

Section 4. Salary Advancements.

(1) Initial appointment increase. An appointing authority may grant a five (5) percent increase to an employee, except an interim employee, on the first day of the month following completion of the greater of six (6) months of service or the months of service required by 101 KAR 1:325 Section 1(2).

(2) Six (6) month promotional increase. An employee may receive a five (5) percent increase following the completion of the greater of six (6) months service after promotion or the months of service required by 101 KAR 1:325 Section 1(2).

(3) Annual increment dates shall be established as follows:

(a) On the first day of the month following completion of the initial probation period; or

(b) On the first day of the month following completion of twelve (12) months service since receiving the last annual increment for an employee, other than an interim employee, who returns from leave without pay.

(4) Annual increment dates shall not change if an employee:

(a) Is in a position which is assigned a new or different pay grade;

(b) Receives a salary adjustment as a result of his position being reallocated;

(c) Is promoted;

(d) Is transferred;

(e) Is demoted;

(f) Is detailed to special duty;

(g) Receives an educational achievement award;

(h) Returns from military leave;

(i) Is reclassified; or

(j) Receives an increase six (6) months following promotion.

(5) Return from leave without pay. An employee, other than an interim employee, returning to duty from leave without pay shall receive an annual increment on the first of the month after receiving compensation in any twelve (12) months since the last increment was received.

(6) Service computation. Full-time and part-time service shall be counted when computing service for purposes of determining increment eligibility. Service as an interim employee, or in the former seasonal, temporary, or emergency categories shall not be considered.

(7) Order of calculating increments and other salary increases which occur at the same time. If an employee's increment date occurs on the same date that a salary adjustment or advancement is granted, the increment shall be applied before the adjustment or advancement is added to the employee's salary, except if the adjustment is based on a reversion, pay grade change, a salary schedule change, or establishment of a special entrance rate.

Section 5. Educational Achievement Award.

(1) On the 16th of a month, an appointing authority may grant a five (5) percent increase to an employee's base salary based on educational achievement as specified in this section.

(2) An agency may elect not to participate in the educational achievement program if sufficient funds are not available.

(3) An employee shall not receive more than one (1) educational achievement award in a fiscal year.

(4) An employee shall not receive an educational achievement award and an adjustment for continuing excellence (ACE) based on the same training.

(5) By submitting a personnel action to grant an educational achievement award, the appointing authority shall certify that all of the qualifying conditions established in subsection (5) of this section for the appropriate type of educational achievement award have been met.

(a) For a high school diploma, high school equivalency certificate, or a passing score on the GED test, the qualifying conditions shall be met if:

1. The employee has obtained the high school diploma, equivalency certificate, or passing score on the GED test:

a. Outside of work hours;

b. While in state service; and

c. After establishing an increment date.

2. The employee has not previously attained a high school diploma, equivalency certificate, or passing score on the GED test; and

3. The employee has not completed college coursework on the undergraduate or graduate level prior to obtaining the high school diploma, equivalency certificate, or a passing score on the GED test.

(b) For postsecondary education or training, the qualifying conditions shall be met if:

1. The employee has completed 260 hours of job-related instruction, or the equivalent;

2. The employee began the course work after becoming a state employee and completed the course work after establishing an increment date;

3. The employee has completed the course work within five (5) years of the date on which it was begun;

4. The course work has not previously been applied toward an educational achievement award;

5. The agency has not paid for the course work or costs associated with it, in whole or in part; and

6. The employee was not on educational or extended sick leave when the courses were taken.

Section 6. Salary Schedule Adjustment.

(1) If the secretary authorizes an adjustment of a salary schedule, an appointing authority shall adjust the salaries of all employees below the new schedule entry level wage for the pay grade to the new schedule entry level wage for the pay grade. If sufficient funds are available, the secretary may authorize an appointing authority to grant a salary increase for all employees

equal to the difference in the old schedule entry level wage for the grade and the new schedule entry level wage for the grade.

(2) After consultation with the state budget director, if sufficient funds are available, and the Secretary of Personnel determines that an increase in the entry level wage of one (1) or more pay grades is warranted, the Personnel Cabinet shall identify each currently active employee in the pay grade(s), other than an interim employee, who is not on initial or promotional probation at the time the revised salary schedule becomes effective. For an employee whose salary is less than five (5) percent above the new entry level salary of the pay grade assigned to that employee on the effective date, the Personnel Cabinet shall adjust that employee's salary to five (5) percent above the new entry level wage.

Section 7. Maintenance and Maintenance Allowance. If an employee, or the employee and family, is provided with full or partial maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, the maintenance shall be treated as partial payment of wages. The value of those services shall be deducted from the employee's salary in accordance with a maintenance schedule developed by the appropriate appointing authority after consultation with the Secretary of the Finance and Administration Cabinet.

Section 8. Supplemental Premiums.

(1) Locality premium.

(a)

1. Upon request by an appointing authority, the secretary may authorize and establish the amount of the payment of a locality premium for an employee who is regularly, temporarily, or intermittently assigned to work in a job classification, work county, and organizational unit where the agency can demonstrate sustained recruitment and retention issues impacting the mission of the agency; or

2. The secretary may direct the payment of a locality premium for an employee who is regularly, temporarily, or intermittently assigned to work in a job classification, work county, and organizational unit where there are demonstrated sustained recruitment and retention issues impacting the mission of the agency.

(b) Once authorized or directed, this premium shall apply to all employees in that organizational unit who are regularly or temporarily assigned to work in the job classification and work county for which the locality premium is approved.

(c) An employee shall not receive a locality premium after transfer, reclassification, reallocation, detail to special duty, promotion, or demotion to a position in a job classification, organizational unit, or work county that is ineligible for a locality premium.

(d) The secretary may rescind authorization to pay a locality premium for a job classification at any time.

(e) Locality premium pay shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

(2) Shift premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a supplemental premium for an employee who is regularly assigned to work an evening or night shift in that agency.

(b) Once authorized, this premium shall apply to all employees in that agency who are regularly assigned to work an evening or night shift in a job classification for which the shift premium is approved.

(c) An employee shall not receive a shift premium after shift reassignment, transfer, promotion, or demotion to a position that is ineligible for a shift differential premium.

(d) The secretary may rescind authorization to pay shift premium for a job classification at any time.

(e) Shift differential pay shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

(3) Weekend premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a weekend premium for an employee in a specific job classification who is regularly assigned to

work on Saturdays, Sundays, or state holidays as part of the usual work week.

(b) Once authorized, the premium shall apply to all employees in the specified job classifications in that agency who are regularly assigned to work Saturdays, Sundays, or state holidays as part of their usual work week.

(c) An employee shall not receive a weekend premium after reassignment, transfer, promotion, or demotion to a position that is ineligible for weekend premium.

(d) The secretary may rescind authorization to pay weekend premium at any time.

(e) Weekend premium pay shall not be considered part of the employee's base salary or wages and shall not be applied to any leave time usage.

(f) An agency may request, and be authorized for, both shift premium and weekend premium for the same job classifications.

(4) Multilingual hourly premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a supplemental multilingual hourly premium for an employee who is assigned to complete work duties in a specified foreign language. An employee completing work duties in a specified foreign language shall receive a multilingual hourly premium based on the percentage of time multilingual skills are performed. An employee in a job classification that includes interpreting services as a characteristic of the job on the job class specification shall not be eligible for this premium.

(b) Language proficiency testing shall be completed prior to an employee receiving the multilingual hourly premium. Testing shall indicate a standard level of multilingual proficiency as required by the appointing authority.

(c) An appointing authority shall submit the multilingual premium request to the Personnel Cabinet in writing. The request shall contain, at a minimum:

1. An explanation of the reason or reasons for granting the multilingual premium;

2. The percentage of time the employee will use multilingual skills; and

3. Certification by the appointing authority that the employee has completed multilingual testing and received a standard level of multilingual proficiency rating. This certification shall include the name of the testing facility or organization, the format of the test taken (oral, written, or a combination of oral and written), and the level of proficiency granted in the request for the multilingual premium.

(d) Once authorized, the multilingual hourly premium shall apply to all employees in that agency who are regularly assigned to complete work in a specified foreign language once the employees are individually approved in accordance with this subsection.

(e) An employee shall not receive a multilingual hourly premium after reassignment, reclassification, transfer, promotion, reallocation, or demotion to a position which no longer requires work in a specified foreign language.

(f) An employee who ceases to perform work duties in a specified foreign language shall not be eligible to receive a multilingual hourly premium.

(g) The secretary may rescind the multilingual hourly premium authorization provided to an agency or individual employee at any time.

(h) The multilingual hourly premium shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

(5) Critical position premium.

(a) Upon request by an appointing authority, the secretary may authorize the payment of a premium for a position held by an employee who has established an annual increment date and is regularly assigned to perform job duties that are deemed critical to the operation of the agency.

(b) A critical position premium may be authorized for at least ~~three (3)~~^{one (1)} full-time filled positions~~[position]~~ in an office or department. The premium may be authorized for additional full-time filled positions if the total number of premiums does not exceed one (1) percent of the total number of full-time filled positions in an office or department.

(c) The premium shall not exceed twenty-five (25) percent of the employee's hourly rate.

(d) The critical position designation shall expire when the position becomes vacant.

(e) An employee shall not receive a critical position premium after transfer, reclassification, reallocation, detail to special duty, promotion, or demotion to a position in a different job classification, organizational unit, or work county, unless the appointing authority submits a new request, for approval by the secretary, to designate the position in the different job classification, organizational unit, or work county as critical prior to the personnel action at issue.

(f) The appointing authority or the secretary may rescind authorization to pay a critical position premium at any time.

(g) A critical position premium shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

(6) Sign-on bonus.

(a) Upon written request by an appointing authority, the secretary may prospectively authorize a sign-on bonus for full-time or part time unclassified positions if:

1. The positions are in the same job classification, work county, and department or office where the appointing authority can substantiate sustained recruitment and retention issues impacting the mission of the agency;

2. The total amount of the sign-on bonus is uniform and does not exceed \$5,000 for the job classification; and

3. Eligibility for the sign-on bonus is limited to a newly appointed or rehired employee who:

a. Has not been employed in a KRS Chapter 18A classified position within ninety (90) calendar days preceding the effective date of appointment or rehire;

b. Has not previously received any amount of sign-on bonus pursuant to this subsection; and

c. Is working or on approved leave at the time payment is scheduled to be issued.

(b) Once a sign-on bonus is authorized by the secretary, an eligible employee shall receive:

1. Twenty-five (25) percent of the total sign-on bonus on the first day of the month after appointment or rehire;

2. Twenty-five (25) percent of the total sign-on bonus on the first day of the month after completion of six (6) months of active service in the position into which the employee was appointed or rehired; and

3. Fifty (50) percent of the total sign-on bonus on the first day of the month after completion of twelve (12) months of active service in the position into which the employee was appointed or rehired.

(c) An employee shall not receive future payment of any portion of a sign-on bonus after transfer, promotion, or demotion to a position in a job classification, department or office, or work county other than the position into which the employee was appointed or rehired.

(d) An employee who is detailed to special duty or whose position is reclassified or reallocated shall remain eligible for future payment of the original sign-on bonus amount.

(e) The secretary may rescind authorization to pay a sign-on bonus at any time prior to the effective date of appointment or rehire.

(f) A sign-on bonus shall not be considered a part of base pay or wages and shall not be applied to any leave time usage.

Section 9. Employee Recognition Award (ERA).

(1) On the 16th day of a month, an appointing authority may grant an employee an ERA in the form of a lump sum payment of any whole percentage from one (1) to ten (10) percent of the employee's annual salary under the following conditions:

(a) The employee has not received an ERA in the preceding twenty four (24) months, nor an Adjustment for Continuing Excellence (ACE) award in the preceding twelve (12) months; and

(b)

1. The appointing authority determines that the employee's acts or ideas have resulted in significant financial savings or improvements in services to the Commonwealth and its citizens;

2. The employee has exhibited distinguished performance during participation in special projects that have had a significant beneficial impact on the department, office, or governmental operations; or

3. The employee has demonstrated a sustained level of exceptional job performance.

(2) An employee shall not be eligible for an ERA under this section for an act or idea that has been approved or submitted for consideration as an Employee Suggestion System Award. An employee who has received an ERA shall not be eligible to be considered for an Employee Suggestion System Award for those acts or ideas upon which the ERA is based.

(3) The granting of an ERA shall be within the sole discretion of the appointing authority.

(4) If an appointing authority grants an ERA, the justification for the award shall be stated in writing, and placed in the employee's personnel files.

(5) An appointing authority shall submit a written justification to the Personnel Cabinet to award an ERA. The justification shall:

(a) Explain the reason or reasons for the granting of the award; and

(b) Include a certification by the appointing authority that:

1. Sufficient funds are available within the department or office; and

2. The criteria and limitations established in this section have been met.

Section 10. Adjustment for Continuing Excellence (ACE) Award.

(1) On the 16th day of a month, an appointing authority may grant a salary adjustment of any whole percentage from one (1) to ten (10) percent of the employee's annual salary to a full-time employee's base pay as an ACE award under the following conditions:

(a) The employee has an established annual increment date;

(b) The employee has worked at least the immediately preceding twenty-four (24) consecutive months in KRS Chapter 18A state service, twelve (12) consecutive months of which shall have been served in the department or office granting the award;

(c) The employee has not received an ACE award in the preceding twenty-four (24) months or an ERA in the preceding twelve (12) months; and

(d)

1. The employee has demonstrated a sustained level of exceptional job performance;

2. The employee has assumed a significant level of additional job responsibilities or duties consistent with the assigned job classification, and has performed them in an exceptional manner; or

3. The employee has acquired professional or technical skills or knowledge through department or office directed or authorized attainment of a job related licensure, certification, or formal training that will substantially improve job performance.

(2) An employee shall not be eligible for an ACE award under this section if an educational achievement award has been granted for the same training.

(3) The granting of an ACE award shall be within the sole discretion of the appointing authority.

(4) An appointing authority shall submit a written justification to the Personnel Cabinet to grant an ACE award. The justification shall:

(a) Explain the reason or reasons for the granting of the award; and

(b) Include a certification by the appointing authority that:

1. The criteria and limitations established in this section have been met; and

2. Sufficient funds are available within the department's or office's current recurring base budget to support the award.

Section 11. Adoption Benefit Program. The provisions of the Adoption Benefit Program established in 101 KAR 2:120 shall apply to an employee in the unclassified service.

MARY ELIZABETH BAILEY, Secretary

ANDY BESHEAR, Governor

APPROVED BY AGENCY: December 13, 2024

FILED WITH LRC: December 16, 2024 at 10:35 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2025, at 10:00 a.m. at 501 High Street, Frankfort, Kentucky 40601.

VOLUME 51, NUMBER 8– February 1, 2025

Individuals interested in being heard at this hearing shall notify this agency in writing 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on March 31, 2025. 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: Rosemary Holbrook, Executive Director, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone: (502) 564-7430, fax: (502) 564-0224, email: RosemaryG.Holbrook@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rosemary Holbrook

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the compensation plan and pay incentives for employees in unclassified service.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the compensation plan and pay incentives for employees in the unclassified service.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.155 requires the Secretary of Personnel to promulgate administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (t) and (u). KRS 18A.110 requires the secretary to promulgate comprehensive administrative regulations for the unclassified service. KRS 18A.202 authorizes the secretary to implement work-related incentive programs for state employees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation ensures the consistent application and handling of compensation and pay incentives for employees in unclassified service.

(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 authority to allow retention of salary upon demotion is changed from the appointing authority to the Personnel Cabinet Secretary. For a critical position premium, the number authorized increases from one to three in an office or department. Finally, minor changes are made to reentrance to state service, weekend premium, and ACE award language to clarify existing provisions.

(b) The necessity of the amendment to this administrative regulation: This amendment ensures the consistent application and handling of compensation for employees in unclassified service as compared to their counterparts in the classified service.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 18A.155 requires the Secretary of Personnel to promulgate administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (t) and (u). KRS 18A.110 requires the secretary to promulgate comprehensive administrative regulations for the unclassified service.

(d) How the amendment will assist in the effective administration of the statutes: This amendment ensures the consistent application and handling of compensation for employees in unclassified service as compared to their counterparts in the classified service.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: KRS Chapter 18A employees in unclassified positions within executive branch agencies and their employing agencies are subject to the provisions of 101 KAR 3:045.

(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 amendments will require agencies to submit requests for salary retention after demotion to the Personnel Cabinet Secretary for review/approval. The regulation is also amended to permit agencies to apply the current critical position premium to three positions, as opposed to only on position.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Cost increases or decreases would be determined based on the requested action.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It is anticipated that the amendments will help address salary compression that sometimes occurs at the agencies regarding salary retention upon demotion. Also, the regulation is amended to permit agencies to apply the current critical position premium to three positions, as opposed to only one position. It is also anticipated that these amendments will assist agencies by clarifying application of existing provisions.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing agency funds will be used for implementation and enforcement.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation, as amended, is not anticipated to generate any new or additional fees or funding.

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

(9) TIERING: Is tiering applied? No. This administrative regulation treats all impacted entities the same.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.155 requires the Secretary of Personnel to promulgate administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (t) and (u). KRS 18A.110 requires the secretary to promulgate comprehensive administrative regulations for the unclassified service. KRS 18A.202 authorizes the secretary to implement work-related incentive programs for state employees.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Personnel Cabinet is the promulgating agency. KRS Chapter 18A employees in unclassified positions within executive branch agencies and their employing agencies are subject to the provisions of 101 KAR 3:045.

(a) Estimate the following for the first year:

Expenditures: These changes could have some future cost reduction actions. Others permit some cost increases but only if the agency's budget can accommodate these actions.

Revenues: This administrative regulation does not generate revenue.

Cost Savings: This administrative regulation itself will not result in cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? These changes could have some future cost reduction actions. Others permit some cost increases but only if the agency's budget can accommodate these actions.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None

(a) Estimate the following for the first year:

Expenditures: Not applicable

Revenues: Not applicable

Cost Savings: Not applicable

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Not applicable

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

(a) Estimate the following for the first year:

Expenditures: Not applicable

Revenues: Not applicable

Cost Savings: Not applicable

(b) How will expenditures, revenues, or cost savings differ in subsequent years? Not applicable

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This administrative regulation does not have a significant fiscal impact.

(b) Methodology and resources used to determine the fiscal impact: The provisions of this administrative regulation were reviewed, and a significant fiscal impact was not identified.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) An overall negative or adverse major economic impact is not anticipated.

(b) The methodology and resources used to reach this conclusion: The provisions of this administrative regulation were reviewed, and a significant fiscal impact was not identified.

BOARDS AND COMMISSIONS Board of Medical Licensure (Amendment)

201 KAR 9:270. Professional standards for prescribing, dispensing, or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

RELATES TO: KRS 218A.205, 311.530-311.620, 311.840-311.862, 311.990

STATUTORY AUTHORITY: KRS 311.565(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licensees. KRS 218A.205(3)(a) and (b) require the board to establish mandatory prescribing and dispensing standards related to controlled substances. KRS 311.842(1)(b) requires that the board promulgate administrative regulations establishing professional standards for prescribing and administering controlled substances by physician assistants. This administrative regulation establishes the professional standards for any board licensee who prescribes, dispenses, or administers Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky. Nothing within this administrative regulation shall be interpreted to grant physician assistants authority to dispense Buprenorphine-Mono-Product or Buprenorphine-Combined-With-Naloxone, unless otherwise authorized by KRS 311.842.

Section 1. Applicability.

(1) Any licensee who prescribes, dispenses or administers, dispenses Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall comply with the standards of acceptable and prevailing medical practices established in this administrative regulation.

(2) A physician assistant shall only prescribe or administer Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone to the extent delegated by the supervising physician in the applications required under KRS 311.854 and 311.858. This administrative regulation, including any exemptions stated herein, shall not alter the prescribing limits established in KRS 311.858 or the requirement for delegation from a supervising physician established in KRS 311.854.

(a) Any change in the supervising physician application, including changes in practice address, scope of practice, or scope of delegated prescriptive authority, required under KRS 311.854 and 311.858 shall be reported in writing to the board within ten (10) days of the change.

(b) If the physician assistant's supervising physician changes or the supervising physician become restricted or suspended from the practice of medicine or osteopathy, the physician assistant shall cease prescribing or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone until the restriction or suspension is terminated or a new supervising physician is approved.

(c) Prescribing or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone without the applications required under KRS 311.854 and 311.858 shall constitute a violation of this administrative regulation and shall be grounds for an emergency order of restriction or suspension.

(3) The professional standards established in this administrative regulation shall not apply to prescribing or dispensing or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone:

(a) To a patient as part of the patient's hospice or end-of-life treatment;

(b) To a patient admitted to a hospital-based or hospital-affiliated emergency department while the patient is admitted therein;

(c) To a patient admitted to a licensed hospital, during and as part of a normal and expected part of the patient's course of care at that hospital;

(d) To a patient who is admitted to a level 3.5 or higher inpatient residential treatment facility with an on-sight medical director who is certified by the American Board of Addiction Medicine, the American Board of Preventive Medicine in addiction medicine, the American Board of Medical Specialties (ABMS) in addiction medicine, or an American Osteopathic Association (AOA) certifying board in addiction medicine, during and as part of a normal and expected part of the patient's course of care at that facility;

(e) To a patient who is a registered resident of a long-term care facility as defined in KRS 216.510; and

(f) For up to fourteen (14) days, to a patient who has undergone a major surgery, being any operative or invasive procedure or delivery, or has suffered a significant physical trauma, being any acute, blunt, blast or penetrating bodily injury that has a risk of death, physical disability or impairment.

Section 2. Minimum Qualifications.

~~(1) [—for— Prescribing, Dispensing, or Administering Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone. Except as provided in Section 3 of this administrative regulation,] A licensee shall not prescribe, dispense, or administer Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone unless that licensee possesses the minimum qualifications established in this section.~~

~~[(1)] [The licensee shall obtain and maintain in good standing a waiver and license as issued by the Drug Enforcement Administration (DEA) to prescribe Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for the treatment of opioid use disorder in the Commonwealth of Kentucky.]~~

(2) The licensee shall successfully complete the approved educational programs required by this subsection.

(a) The prescribing licensee shall be a DEA-licensed prescriber of controlled substances, including Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone, and shall have completed any and all courses deemed necessary by the DEA~~[obtained Buprenorphine certification through completion of a Substance Abuse and Mental Health Services Administration ("SAMHSA") certified course].~~

(b) For each three (3) year continuing education cycle, each DEA-licensed prescriber of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall complete at least twelve (12) hours of continuing medical education certified in Category I specific to addiction medicine as part of the required continuing medical education hours set forth in 201 KAR 9:310 and 201 KAR 9:360.

~~[(3)] [The licensee shall enroll in the Kentucky Health Information Exchange to the extent necessary to query and pull information from the Kentucky Health Information Exchange. The licensee shall not report the prescribing, dispensing, or administering Buprenorphine-Mono-Product or Buprenorphine-~~

~~Combined with Naloxone for medically supervised withdrawal or as maintenance treatment for a patient diagnosed with opioid use disorder into the Kentucky Health Information Exchange unless otherwise required by law.~~

~~Section 3.~~~~[Section 2.]~~ Professional Standards for Prescribing, Dispensing, or Administering Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for Medically-Supervised Withdrawal or the Treatment of Opioid Use Disorder.

(1)

(a) Except as provided in paragraph (b) of this subsection, transmucosal Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall only be prescribed, dispensed, or administered for medically-supervised withdrawal or as a maintenance treatment for a patient diagnosed with opioid use disorder.

(b) Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall not be used for the treatment of pain or any other condition, unless delivered in a Federal Drug Administration (FDA) approved form and for an FDA approved purpose.

(2) Buprenorphine-Mono-Product shall not be prescribed, dispensed, or administered for medically-supervised withdrawal or as a maintenance treatment for a patient diagnosed with opioid use disorder, except:

(a) To a pregnant patient;

(b) To a patient with demonstrated hypersensitivity to naloxone;

or

(c) As administered under supervision in a physician's office or other healthcare facility, including hospitals, urgent care settings, surgical care centers, residential treatment facilities, and correctional facilities[; or]

~~[(d) [To a patient transitioning from methadone to buprenorphine, limited to a period of no longer than one week].~~

(3)

~~[(a) If [Except as provided in paragraph (b) of this section,] Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone is [shall not be] prescribed, dispensed, or administered to a patient who is also being prescribed other controlled substances or other substances subject to abuse or misuse beyond a period of three (3) months, then the licensee shall obtain and document a formal provider-to-provider or patient-to-provider [benzodiazepines, other sedative hypnotics, stimulants or other opioids, without] consultation of a physician who is certified by the American Board of Addiction Medicine, the American Board of Preventive Medicine in addiction medicine, the American Board of Medical Specialties (ABMS) in addiction medicine [psychiatry], or an American Osteopathic Association (AOA) certifying board in addiction medicine or a physician who has completed an addiction psychiatry fellowship [psychiatry].~~

~~[(b) A licensee may prescribe, dispense, or administer Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone to a patient who is also being prescribed benzodiazepines, other sedative hypnotics, stimulants, or other opioids, without consultation in order to address an extraordinary and acute medical need not to exceed a combined period of thirty (30) days.]~~

~~(4) [Except as provided in Section 3 of this administrative regulation,] Each licensee who prescribes, dispenses, or administers Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for medically-supervised withdrawal or for the treatment of opioid use disorder shall fully comply with the professional standards established in this subsection.~~

(a) Prior to or at least within two (2) weeks of initiating treatment, the prescribing, dispensing, or administering licensee shall:

1. Obtain and record a complete and appropriate evaluation of the patient which shall at a minimum include:

- a. The patient's history of present illness;
- b. The patient's history of substance use;
- c. The patient's social and family history;
- d. The patient's past medical and psychiatric histories;
- e. A focused physical examination of the patient;
- f. Offer screening with counseling for HIV and hepatitis serology;

and

g. Arranging appropriate laboratory tests, which shall include a CBC, a drug screen, and a CMP;

2. Obtain the patient's consent and authorizations in order to obtain the patient's prior medical records.

a. Upon receipt of the medical records, the prescribing, dispensing, or administering licensee shall review and incorporate the information from the records into the evaluation and treatment of the patient.

b. If the prescribing, dispensing, or administering licensee is unable, despite best efforts, to obtain the patient's prior medical records, the licensee shall document those efforts in the patient's chart;

3. Obtain and review a KASPER report for that patient for the twelve (12) month period immediately preceding the initial patient encounter and appropriately utilize that information in the evaluation and treatment of the patient;

4. Explain treatment alternatives and the risks and the benefits of treatment with Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone to the patient;

5. Obtain written informed consent from the patient in a manner that meets professional standards; and

6. If the patient is a female of child-bearing age and ability, ~~[meet the requirements of paragraph (b) of this subsection.]~~

~~(b) [Except as provided in Section 3 of this administrative regulation, the requirements of this paragraph shall apply to the treatment of a female of child-bearing age and ability.]~~

~~[1.] [Prior to initiating treatment, the licensee shall require that the patient submit to a pregnancy test and, if pregnant,] the licensee shall offer to screen for pregnancy and provide counseling as to the risk of neonatal abstinence syndrome which shall be consistent with current SAMHSA guidance. If the patient is pregnant, the prescribing, dispensing, or administering licensee shall refer the patient to an obstetrician or maternal-fetal medicine specialist for prenatal care, unless the licensee assumes management of the prenatal care.~~

~~[2.]~~

~~[a.] [Unless the licensee is certified by the American Board of Addiction Medicine, the American Board of Preventive Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry or an obstetrician or maternal-fetal medicine specialist, a licensee who prescribes, dispenses, or administers Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone to a patient who is pregnant or breastfeeding shall first obtain and document consultation with another independent physician that the potential benefit of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone use outweighs the potential risk of use.]~~

~~[b.] [The consultation shall be obtained from a physician who is certified by the American Board of Addiction Medicine, the American Board of Preventive Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry or from an obstetrician or maternal-fetal medicine specialist.]~~

(c) Except as provided by paragraph (d) of this subsection, while initiating treatment with Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone, the licensee shall comply with the requirements of this paragraph.

1. The licensee shall recommend to the patient an in-office observed ~~initiation~~~~[induction]~~ protocol, particularly if the patient is on ~~fantanyl~~ or methadone.

a. Except as provided in clause b. of this subparagraph, the licensee shall supervise the in-office observed ~~initiation~~~~[induction]~~ protocol and shall ensure that resources are available to manage precipitated withdrawal.

b. If an in-office observed ~~initiation~~~~[induction]~~ does not occur, the licensee shall appropriately record the circumstances in the patient chart and shall educate the patient about the potential for precipitated withdrawal. The licensee shall be responsible for the coordination and implementation of a plan to manage precipitated withdrawal outside of an in-office observed initiation.

2. The licensee shall assess for and document the presence or absence of opioid withdrawal before the first dose is given by using a standardized instrument, such as the clinic opioid withdrawal scale (COWS) or other similarly recognized instrument.

3. The licensee shall initiate treatment with a dose not to exceed the dose equivalency of four (4) milligrams buprenorphine generic tablet, which:

a. May be followed by subsequent doses~~[if withdrawal persists];~~ and

b. Shall not exceed the dose equivalency of sixteen (16) milligrams buprenorphine generic tablet on the first day of treatment.

(d) If the patient is transferred from another treatment provider and has previously experienced withdrawal without a relapse and has not had a lapse in treatment, the licensee shall:

1. Not rely solely on the patient's self-reported history but shall comply with the standards set forth in Section 2(4) of this administrative regulation~~[Document that fact];~~

2. Make reasonable attempts to obtain records from the prior treatment provider;

3. Educate the patient about the potential for precipitated withdrawal; and

4.~~[3.]~~ Make an informed and independent clinical decision to continue maintenance treatment of the patient on the same or less dosage as established by the previous treatment provider and then as provided in paragraph (e) of this subsection.

(e) After initial initiation~~[induction]~~ of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone, the licensee shall meet the requirements established in this paragraph.

1. If the licensee prescribes, dispenses, or administers Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone medication, the licensee shall implement a treatment plan that requires objective behavioral modification by the patient. The behavioral modification shall include the patient's participation in a behavioral modification program that may include counseling or a twelve (12) step facilitation.

2. The licensee shall prescribe, dispense, or administer to the patient an amount of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone that:

a. Is necessary to minimize craving and opiate withdrawal;

b. Does not produce opiate sedation; and

c. ~~[Except as provided in subclauses (i) through (iv) of this clause,]~~ Is to be taken no more frequently than twice~~[once]~~ daily;

~~[(i)] [If the patient is pregnant, is to be taken no more than twice daily;]~~

~~[(ii)] [If the patient is receiving a daily dosage of less than 16mg, is to be taken no more than twice daily;]~~

~~[(iii)] [If the patient is simultaneously engaged in cancer treatment, hospice or palliative care, is to be taken bid or tid; or]~~

~~[(iv)] [If the patient is undergoing a major surgery, being any operative or invasive procedure or delivery, or has suffered a significant physical trauma, being any acute, blunt, blast or penetrating bodily injury that has a risk of death, physical disability or impairment, is to be taken bid or tid for up to fourteen (14) days;]~~ and

d. Is able only to supply the patient until the next licensee visit, which shall be scheduled as required by subparagraph 3. of this paragraph.

3.

a. The licensee shall ensure that the patient is seen by a licensed clinical healthcare professional with prescribing authority:

(i) No later than ten (10) days after initiation~~[induction]~~ and then at intervals of no more than ten (10) days for the first month after initiation~~[induction]~~; and

(ii) At intervals of no more than fourteen (14) days for the second month after initiation~~[induction]~~.

b.

(i) If the patient demonstrates objective signs of ~~[positive]~~ treatment progress, the licensee shall ensure that the patient is seen at least once monthly thereafter.

(ii) If two (2) years after initiation of treatment, the patient is being prescribed Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for opioid use disorder and the patient has demonstrated objective signs of ~~[positive]~~ treatment progress,

including documented evidence that the patient has been compliant with the treatment plan and all treatment directives for at least two (2) years, then the licensee may require that the patient be seen only by the licensee at least once every three (3) months.

(iii) The licensee shall see the patient in shorter intervals if the patient demonstrates any noncompliance with the treatment plan.

c. If extenuating circumstances arise that require a patient to unexpectedly reschedule a physician visit, the licensee shall make best efforts to see the patient as soon as possible and document the circumstances in the patient chart.

4. At least every three (3) months after initiation of treatment, the licensee shall evaluate the patient to determine whether the patient's dosage should be continued or modified and shall appropriately document that evaluation and clinical reasoning in the patient's chart.

5. At least once every three (3) months, the licensee shall obtain KASPER reports to help guide the treatment plan.

a. If the KASPER indicates any unexpected~~[abnormal]~~ findings, the licensee shall incorporate those findings into appropriate clinical reasoning to support the continuation or modification of treatment and shall accurately document the same in the patient record.

b. Appropriate clinical reasoning may include adjustment of dose strength, adjustment of frequency of visits, increased drug screening, a consultation with a specialist, or an alternative treatment.

c. Every twelve (12) months following initiation of treatment, if a patient's prescribed daily therapeutic dosage exceeds the dose equivalency of sixteen (16) milligrams buprenorphine generic tablet per day and the licensee is not certified by the American Board of Addiction Medicine, the American Board of Preventive Medicine in addiction medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry, then the licensee shall ~~[obtain a]~~ refer the patient for a formal consultation with~~[from]~~ a physician who is certified by the American Board of Addiction Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or a physician who has completed an addiction psychiatry fellowship for an opinion as to whether continued treatment and dosage is appropriate and shall accurately document the results of that consultation in the patient chart. The formal consultation may occur via telehealth if it would meet the same standards of acceptable and prevailing evaluative practices of a physical in-person evaluation.

d. The licensee shall adjust dosages according to the individual patient's condition and within acceptable and prevailing medical standards, with the goal of improving the patient's quality of life and ability to function in the community.

e. Every twelve (12) months following initiation of treatment, the licensee shall evaluate for and document the medical necessity for continued treatment at the established dose.

f. The licensee shall ensure that the patient is drug tested. A patient in early stages of treatment shall be tested at least once weekly and as the patient becomes more stable in treatment, the frequency of drug testing may be decreased, but shall be performed at least on a monthly basis. Individual consideration may be given for less frequent testing if a patient is in sustained remission. If the patient returns to substance use after a period of abstinence, the licensee shall resume the early treatment testing schedule, in conjunction with an adapted or intensified treatment plan.

(i) Except as in subsection (a), each drug screen shall at a minimum screen for buprenorphine, methadone, opioids, THC, benzodiazepines, amphetamines, and cocaine. On intake and at least once a year thereafter, the licensee shall obtain a random and unannounced comprehensive drug screen that shall also screen for gabapentin and illicit substances commonly used in the geographical region.

(ii) If a drug screen indicates any unexpected~~[abnormal]~~ findings, the licensee shall incorporate those findings into appropriate clinical reasoning to support the continuation or modification of treatment and shall accurately document the same in the patient record.

VOLUME 51, NUMBER 8– February 1, 2025

(iii) Appropriate clinical reasoning may include adjustment of dose strength, adjustment of frequency of visits, increased drug screening with urine confirmation, a consultation with a specialist, or an alternative treatment.

6. If at any time during treatment, the licensee observes patterns of unexpected results in the patient's urine drug screens or KASPER data, then the licensee shall:

a. Refer the patient out to a higher level of care; or

b. Increase the intensity of treatment and continue to monitor for unexpected urine drug screen results and KASPER data.

7. The licensee shall document a plan for handling any lost or stolen medication, which shall not provide for the automatic replacement of medication prior to the specified interval date.

~~[Section 3.] [Use of transmucosal buprenorphine-mono-product or buprenorphine-combined-with-naloxone for treatment of opioid use disorder in an emergency situation or inpatient setting.]~~

~~[(1)] [In an emergency, including in a hospital emergency department or similar outpatient urgent care setting, or in an inpatient setting, licensees may offer and initiate buprenorphine treatment to patients who present with opioid use disorder, without meeting the requirements established in Sections 1 and 2 of this administrative regulation and to the extent permitted by federal law, if:]~~

~~[(a)] [The licensee has determined that the use of buprenorphine-mono-product or buprenorphine-combined-with-naloxone will not result in a harmful interaction with other medications or substances in the patient's system, including benzodiazepines, sedative hypnotics, carisoprodol, or tramadol;]~~

~~[(b)] [The licensee obtains and documents written informed consent from the patient specific to risks and benefits of buprenorphine treatment; and]~~

~~[(c)] [The licensee provides the patient with written instructions and contact information for appropriate follow up care, including bridge-provider services, residential treatment providers, and outpatient treatment providers.]~~

~~[(2)] [The licensee shall initiate buprenorphine treatment under an observed induction protocol with an initial dose not to exceed the dose equivalency of four (4) milligrams buprenorphine generic tablet, which may be followed by subsequent doses, up to a maximum of twenty-four (24) milligrams buprenorphine generic tablet, if withdrawal persists and is not improving.]~~

Section 4. Professional Standards for Documentation of Patient Assessment, Education, Treatment Agreement and Informed Consent, Action Plans, Outcomes, and Monitoring.

(1) Each licensee prescribing, dispensing, or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-With-Naloxone shall obtain and document all relevant information in a patient's medical record in a legible manner and in sufficient detail to enable the board to determine whether the licensee is conforming to professional standards for prescribing, dispensing, or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-With-Naloxone and other relevant professional standards set forth in this administrative regulation.

(2) If a licensee is unable to conform to professional standards for prescribing, dispensing, or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-With-Naloxone as set forth in this administrative regulation due to circumstances beyond the licensee's control, or the licensee makes a professional determination that it is not appropriate to comply with a specific standard, based upon the individual facts applicable to a specific patient's diagnosis and treatment, the licensee shall document those circumstances in the patient's record and only prescribe, dispense, or administer Buprenorphine-Mono-Product or Buprenorphine-Combined-With-Naloxone to the patient if the patient record appropriately justifies the prescribing, dispensing, or administering of Buprenorphine-Mono-Product or Buprenorphine-Combined-With-Naloxone under the circumstances and in accordance with SAMHSA guidelines as set forth in: Substance Abuse and Mental Health Services Administration, Medications for Opioid Use Disorder, Treatment Improvement Protocol (TIP) Series 63,

Publication No. PEP21-01-002[PEP20-02-01-006], Rockville, MD: Substance Abuse and Mental Health Services Administration, 2021[2020].

Section 5. Violations. Failure to comply with or a violation of the professional standards established in Sections 2, 3 and 4 of this administrative regulation shall constitute a "departure from, or failure to conform to the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky," in violation of KRS 311.850(1)(p) and (s), KRS 311.595(12) and (9), as illustrated by KRS 311.597(4), and may constitute a violation of KRS 311.595(9), as illustrated by KRS 311.597(3), subjecting the licensee to sanctions authorized by KRS 311.595 and 311.850.

Section 6. Incorporation by Reference.

(1) Substance Abuse and Mental Health Services Administration, "Medications for Opioid Use Disorder, Treatment Improvement Protocol (TIP) Series 63, Publication No. PEP21-01-002[PEP20-02-01-006]", 2021[2020].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(3) This material may also be obtained on the board's Web site at kbml.ky.gov.

WILLIAM C. THORNBURY, M.D., PRESIDENT

APPROVED BY AGENCY: December 12, 2024

FILED WITH LRC: January 10, 2025 at 1:54 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 26, 2025, at 9:00 a.m., at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. 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 March 31, 2025. 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: Leanne K. Diakov, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502)764-2613, fax (502) 429-7118, email leanne.diakov@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leanne K. Diakov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for prescribing, dispensing or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-With-Naloxone in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish acceptable and prevailing medical standards for prescribing, dispensing or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-With-Naloxone in the Commonwealth of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish requirements for Board licensees prescribing, dispensing or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-With-Naloxone in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish requirements for individual Board licensees prescribing, dispensing or

administering Buprenorphine-Mono-Product or Buprenorphine-Combined-With-Naloxone in the Commonwealth of Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation amendment carves out exceptions for use of the products in certain clinical settings, deletes licensure and education requirements no longer required by federal law, and increases ease of access in various manners (such as no longer requiring pregnancy test before initiating treatment).

(b) The necessity of the amendment to this administrative regulation: It was necessary to amend the regulation in order to ensure that the regulation reflects updated and widely recognized acceptable and prevailing practice standards in an ever-developing area of medical practice and to increase patient access to quick and appropriate treatment.

(c) How the amendment conforms to the content of the authorizing statutes: This amended regulation acts specifically to further clarify and update the acceptable and prevailing medical practices for prescribing, dispensing or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This amended regulation acts specifically to further clarify and update the acceptable and prevailing medical practices for prescribing, dispensing or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect all physicians and physician assistants licensed in the Commonwealth of Kentucky who prescribe, dispense or administer Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

(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: Physicians and physician assistants will be required to follow the professional standards for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with the requirements of this administrative regulation known to the Board.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits to the physician and physician assistant include having updated professional standards for prescribing, dispensing or administering Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone which will help curb the prescription drug epidemic in the Commonwealth of Kentucky and increase patient access to appropriate treatment.

(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: None.

(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 of fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.205(3)(a) and (b), 311.565(1)(a) and 311.842(1)(b).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Board of Medical Licensure.

(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 is no anticipated change in expenditures, revenues or costs associated with this amended 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? There is no anticipated change in expenditures, revenues or costs associated with this amended regulation.

(4) Identify additional regulated entities not listed in questions (2) or (3): Physicians (MD/DOs) and Physician Assistants (PAs)

(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 is no anticipated change in expenditures, revenues or costs associated with this amended regulation.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: The amendment of this administrative regulation will not have a major fiscal impact on state or local government or regulated entities.

(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 amendment of 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: N/A

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. N/A

(2) State compliance standards. See KRS 218A.205, 311.565 and .595/.597 and KRS 311.840 and .842.

(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? This amended regulation matches federal law where applicable and provides more specific guidance that is absent from federal law.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Kentucky's Legislature mandates that this agency establish and enforce acceptable and prevailing practices related to the prescribing, dispensing and administering of controlled substances in the Commonwealth of Kentucky, a unique state interest. There is no corresponding federal mandate or interest.

BOARDS AND COMMISSIONS

**Board of Nursing
(Amendment)**

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;

(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 relevant 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).

(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

VOLUME 51, NUMBER 8– February 1, 2025

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) Nurses shall earn, the following one (1) time continuing education requirements, subject to the applicable timeframes established in subsection (8) of this section.:

(a) A minimum of one and one-half (1.5) contact hours in pediatric abusive head trauma as required by KRS 314.073(6);

(b) 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

(d) 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. Chronic toxic stress and secondary traumatic stress potentially increasing the incidence of suicide amongst nurses;

2. 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. Systems of care, evidence-informed approaches, and best practices to reduce suicide rates; and

4. 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) A licensee shall maintain records to substantiate methods used to validate competency.

(b) All records shall be retained for at least five (5) years following the current licensure period.

(2)

(a) 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 the nurse portal at [https://\[cebroker.com\]kbn.ky.gov](https://[cebroker.com]kbn.ky.gov).

(b) 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.

(c) 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)

(a) 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.

(b) 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.

(4) 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.

(5) 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.

(6) 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.

(1) 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.

(2) The review shall be based on generally accepted standards of adult education and shall be applicable to the nurse's role.

(3) 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.

VOLUME 51, NUMBER 8– February 1, 2025

(4) 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.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, 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>.

AUDRIA DENKER, President, Board of Nursing

APPROVED BY AGENCY: December 19, 2024

FILED WITH LRC: January 2, 2025 at 10:11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 24, 2025, at 10:00 AM at Kentucky Board of Nursing, 312 Whittington Parkway, Ste 300, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by March 17, 2025, 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 March 31, 2025. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 338-2851, Jeffrey.Prather@ky.gov Or submit a comment at: <https://secure.kentucky.gov/formservices/Nursing/PendReg>

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes Continuing Education (CE) requirements for nurses, as required by KRS 314.073 and 314.131.

(b) The necessity of this administrative regulation: CEs are mandated by KRS 314.073 and 314.131.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting CEs for required training on subjects to maintain competency and the audit requirements.

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

(a) How the amendment will change this existing administrative regulation: The amendment removes requirement that licensees who are audited use a private third-party entity to house certifications to provide proof of continuing education compliance.

(b) The necessity of the amendment to this administrative regulation: The board the capability to bring this storage function in-house in its licensee management system Optimal Regulatory Board System (ORBS), without relying upon an outside additional private vendor.

(c) How the amendment conforms to the content of the authorizing statutes: By clarifying CE audit requirements in accordance with KRS 314.073 and 314.131.

(d) How the amendment will assist in the effective administration of the statutes: By bringing the CE audit process in-house, which will

facilitate the CE audit process management and streamline its administration.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All nurses licensed by the Board, approximately 100,000.

(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: If audited, nurses will need to provide evidence of meeting CE requirements via the board's nurse portal.

(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 licensees. The service will be provided as part of existing fees.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with statutes and regulations and continued competency will be housed by the board, in one location, along with other licensee information.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

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

(9) TIERING: Is tiering applied? Tiering is not applicable.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. Kentucky Revised Statutes 314.073, 314.131(1), (2).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Board of Nursing.

(a) Estimate the following for the first year:

Expenditures: No expenditures to estimate.

Revenues: No revenues to estimate.

Cost Savings: No cost savings.

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

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

(a) Estimate the following for the first year:

Expenditures: No expenditures to estimate.

Revenues: No revenues to estimate.

Cost Savings: No cost savings.

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

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

(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 difference to expenditures, revenues, or cost savings. N/A

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: None.

(b) Methodology and resources used to determine the fiscal impact: None.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in

questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have a major economic impact.

(b) The methodology and resources used to reach this conclusion: None. There will be no additional cost to the licensee, or the entities identified in state units, local entities, or regulated entities discussed in (2) – (4).

**Board of Emergency Medical Services
(Amendment)**

202 KAR 7:410. Advanced Practice Paramedics.

RELATES TO: KRS 12.355, 72.020, 311A.025, 311A.050-311A.100, 311A.120-311A.135, 311A.142, 311A.170, 311A.185, 311A.190, 446.400

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.120, 311A.125, 311A.135, 311A.170

NECESSITY, FUNCTION, AND CONFORMITY: KRS ~~311A.170~~~~[311A.025(2)]~~ requires the Kentucky Board of Emergency Medical Services to promulgate administrative regulations establishing the educational requirements, testing requirements, credentialing, and licensure requirements of advanced practice paramedics. This administrative regulation establishes those requirements.

Section 1. Licensure of Advanced Practice Paramedics. In accordance with this administrative regulation, the board office shall issue an advanced practice paramedic license to an individual certified as a community paramedic,~~[or] wilderness paramedic, critical care paramedic, flight paramedic, or tactical paramedic.~~

Section 2. Certification of Community Paramedics.

~~[(1)] [An individual shall be eligible to enroll as a student in a community paramedic education and training program if the applicant:]~~

~~[(a)] [Holds a current unrestricted license as a paramedic in Kentucky or holds a current unrestricted certification with the NREMT as a Nationally Registered Paramedic (NRP);]~~

~~[(b)] [Is not currently subject to disciplinary action pursuant to KRS Chapter 311A that would prevent certification; and]~~

~~[(c)] [Meets all additional requirements established by the EMS-TEI;]~~

~~(1)[(2)] Individuals desiring initial board certification as a community paramedic shall:~~

~~(a) Hold a current unrestricted license as a paramedic in Kentucky;~~

~~(b) Not currently be subject to disciplinary action pursuant to KRS Chapter 311A that would prevent certification;~~

~~[(b)] [Successfully complete all EMS-TEI requirements for the community paramedic education and training program, which shall include all requirements of the International Board of Specialty Certification (IBSC) to test for IBSC certification as a community paramedic (CP-C);]~~

~~(c) Submit a course completion certification from an education and training program which minimally meets the International Board of Specialty Certification (IBSC) Community Paramedicine Content Outline topic areas;~~

~~(d)[(e)] Submit proof of current~~[Obtain]~~ certification as a community paramedic (CP-C) by the International Board of Specialty Certification (IBSC);~~

~~[(d)] [If operating under a board approved community paramedic pilot program, obtain IBSC certification as a community paramedic by no later than January 1, 2026; and]~~

~~(e) Submit a completed Advanced Practice Paramedic~~[-Community Paramedic]~~ Certification Application in KEMSIS; and~~[-]~~~~

~~(f) Pay the fee pursuant to 202 KAR 7:030.~~

~~(2)[(3)] To be eligible for renewal of a community paramedic certification, a community paramedic shall:~~

~~(a) Meet the requirements for paramedic licensure renewal in accordance with 202 KAR 7:401;~~

~~(b) Submit a completed Advanced Practice Paramedic~~[-Community Paramedic Certification]~~ Renewal Application in KEMSIS;~~

~~(c) Pay the renewal fee pursuant to 202 KAR 7:030; and~~

~~(d) Maintain~~[Submit to the board]~~ written evidence of:~~

~~1. Current certification by the International Board of Specialty Certification (IBSC) as a community paramedic (CP-C); or~~

~~2. At least fifty (50) hours of continuing education in the International Board of Specialty Certification (IBSC) Community Paramedic Content Outline topic areas.~~

~~[2.] [At least fifteen (15) hours of continuing education on the following subject areas unique to community paramedicine:]~~

~~[a.] [Community based needs;]~~

~~[b.] [Interdisciplinary collaboration;]~~

~~[c.] [Patient centric care;]~~

~~[d.] [Wellness and safety;]~~

~~[e.] [Preventative care and education for patient or client and caregiver; or]~~

~~[f.] [Ethical and legal consideration preventative care and patient education.]~~

~~(3)[(4)] An application for renewal of community paramedic certification shall be denied if:~~

~~(a) Prior to the certification expiration date, the applicant has not met the requirements of this section; or~~

~~(b) The applicant has been subjected to disciplinary action that prevents certification renewal at the time of application.~~

~~[(5)] [An individual seeking reciprocity as a community paramedic shall:]~~

~~[(a)] [Meet the requirements for paramedic reciprocity in accordance with 202 KAR 7:401;]~~

~~[(b)] [Have a current certification from the International Board of Specialty Certification (IBSC) as a community paramedic (CP-C); and]~~

~~[(c)] [Submit to the board a completed Advanced Practice Paramedic-Community Paramedic Certification Application in KEMSIS.]~~

Section 3. Certification of Wilderness Paramedics.

~~[(1)] [An individual shall be eligible to enroll as a student in a wilderness paramedic education and training program if the applicant:]~~

~~[(a)] [Holds a current unrestricted license as a paramedic in Kentucky or holds a current unrestricted certification with the NREMT as a Nationally Registered Paramedic (NRP);]~~

~~[(b)] [Is not currently subject to disciplinary action pursuant to KRS Chapter 311A that would prevent certification; and]~~

~~[(c)] [Meets all additional requirements established by the EMS-TEI;]~~

~~(1)[(2)] Individuals desiring initial board certification as a wilderness paramedic shall:~~

~~(a) Hold a current unrestricted license as a paramedic in Kentucky;~~

~~(b) Not currently be subject to disciplinary action pursuant to KRS Chapter 311A that would prevent certification;~~

~~[(b)] [Successfully complete all EMS-TEI requirements for the wilderness paramedic education and training program, which shall include all requirements of the International Board of Specialty Certification (IBSC) to test for IBSC certification as a wilderness paramedic (WC-P), or, successfully complete a wilderness medicine upgrade course equivalent to Wilderness First Responder or higher from an organization approved by the board that provides certification in wilderness medicine;]~~

~~(c) Submit a course completion certificate from an education and training program which minimally meets the International Board of Specialty Certification (IBSC) Wilderness Paramedic Content Outline topic areas;~~

~~(d)[(e)] Submit proof of~~[Obtain a]~~ certification as a wilderness paramedic (WP-C) from the International Board of Specialty Certification (IBSC);~~[-and]~~~~

~~(e)[(d)] Submit a completed Advanced Practice Paramedic~~[-Wilderness Paramedic]~~ Certification Application in KEMSIS; and~~[-]~~~~

~~(f) Pay the fee pursuant to 202 KAR 7:030.~~

~~(2)[(3)] To be eligible for renewal of a wilderness paramedic certification, a wilderness paramedic shall:~~

~~(a) Meet the requirements for paramedic licensure renewal in accordance with 202 KAR 7:401;~~

VOLUME 51, NUMBER 8– February 1, 2025

(b) Submit a completed Advanced Practice Paramedic-~~Wilderness Paramedic Certification~~ Renewal Application in KEMSIS;

(c) Pay the renewal fee pursuant to 202 KAR 7:030; and

(d) ~~Maintain~~~~Submit to the board~~ written evidence of:

1. ~~Current~~~~current~~ certification by the International Board of Specialty Certification (IBSC) as a wilderness paramedic (WP-C); or

2. At least fifty (50) hours of continuing education in the International Board of Specialty Certification (IBSC) Wilderness Paramedic Content Outline topic areas.

~~(3)~~~~(4)~~ An application for renewal of a wilderness paramedic certification shall be denied if:

(a) Prior to the certification expiration date, the applicant has not met the requirements of this section; or

(b) The applicant has been subjected to disciplinary action that prevents certification renewal at the time of application.

~~[(5) [An individual seeking reciprocity as a wilderness paramedic shall:]~~

~~[(a) [Meet the requirements for paramedic reciprocity in accordance with 202 KAR 7:401;]~~

~~[(b) [Have a current certification from the International Board of Specialty Certification (IBSC) as a wilderness paramedic (WP-C);]~~

~~[(c) [Satisfy the requirements of subsection (2) of this section; and]~~

~~[(d) [Submit to the board a completed Advanced Practice Paramedic-Wilderness Paramedic Certification Application in KEMSIS.]]~~

Section 4. Certification of Critical Care Paramedics.

(1) Individuals desiring initial board certification as a critical care paramedic shall:

(a) Hold a current unrestricted license as a paramedic in Kentucky;

(b) Not currently be subject to disciplinary action pursuant to KRS Chapter 311A that would prevent certification;

(c) Submit a course completion certificate from an education and training program which minimally meets the International Board of Specialty Certification (IBSC) Critical Care Paramedic Content Outline topic areas;

(d) Submit proof of current certification as a critical care paramedic (CCP-C) from the International Board of Specialty Certification (IBSC);

(e) Submit a completed Advanced Practice Paramedic Certification Application in KEMSIS; and

(f) Pay the fee pursuant to 202 KAR 7:030.

(2) To be eligible for renewal of a critical care paramedic certification, a critical care paramedic shall:

(a) Meet the requirements for paramedic licensure renewal in accordance with 202 KAR 7:401;

(b) Submit a completed Advanced Practice Paramedic Renewal Application in KEMSIS;

(c) Pay the renewal fee pursuant to 202 KAR 7:030; and

(d) Maintain written evidence of:

1. Current certification by the International Board of Specialty Certification (IBSC) as a critical care paramedic (CCP-C); or

2. At least fifty (50) hours of continuing education in the International Board of Specialty Certification (IBSC) Critical Care Paramedic Content Outline topic areas.

(3) An application for renewal of a critical care paramedic certification shall be denied if:

(a) Prior to the certification expiration date, the applicant has not met the requirements of this section; or

(b) The applicant has been subjected to disciplinary action that prevents certification at the time of application.

Section 5. Certification of Flight Paramedics.

(1) Individuals desiring initial board certification as a flight paramedic shall:

(a) Hold a current unrestricted license as a paramedic in Kentucky;

(b) Not currently be subject to disciplinary action pursuant to KRS Chapter 311A that would prevent certification;

(c) Submit a course completion certificate from an education and training program which minimally meets the International Board of Specialty Certification (IBSC) Flight Paramedic Content Outline topic areas;

(d) Submit proof of current certification as a flight paramedic (FP-C) from the International Board of Specialty Certification (IBSC);

(e) Submit a completed Advanced Practice Paramedic Certification Application in KEMSIS; and

(f) Pay the fee pursuant to 202 KAR 7:030.

(2) To be eligible for renewal of a flight paramedic certification, a flight paramedic shall:

(a) Meet the requirements for paramedic licensure renewal in accordance with 202 KAR 7:401;

(b) Submit a completed Advanced Practice Paramedic Renewal Application in KEMSIS;

(c) Pay the renewal fee pursuant to 202 KAR 7:030; and

(d) Maintain written evidence of:

1. Current certification by the International Board of Specialty Certification (IBSC) as a flight paramedic (FP-C); or

2. At least fifty (50) hours of continuing education in the International Board of Specialty Certification (IBSC) Flight Paramedic Content Outline topic areas.

(3) An applicant for renewal of a flight paramedic certification shall be denied if:

(a) Prior to the certification expiration date, the applicant has not met the requirements of this section; or

(b) The applicant has been subjected to disciplinary action that prevents certification renewal at the time of application.

Section 6. Certification of Tactical Paramedics.

(1) Individuals desiring initial board certification as a tactical paramedic shall:

(a) Hold a current unrestricted license as a paramedic in Kentucky;

(b) Not currently be subject to disciplinary action pursuant to KRS Chapter 311A that would prevent certification;

(c) Submit a course completion certificate from an education and training program which minimally meets the International Board of Specialty Certification (IBSC) Tactical Paramedic Content Outline topic areas;

(d) Submit proof of current certification as a tactical paramedic (TP-C) from the International Board of Specialty Certification (IBSC);

(e) Submit a completed Advanced Practice Paramedic Certification Application in KEMSIS; and

(f) Pay the fee pursuant to 202 KAR 7:030.

(2) To be eligible for renewal of a tactical paramedic certification, a tactical paramedic shall:

(a) Meet the requirements for paramedic licensure renewal in accordance with 202 KAR 7:401;

(b) Submit a completed Advanced Practice Paramedic Renewal Application in KEMSIS;

(c) Pay the renewal fee pursuant to 202 KAR 7:030; and

(d) Maintain written evidence of:

1. Current certification by the International Board of Specialty Certification (IBSC) as a tactical paramedic (TP-C); or

2. At least fifty (50) hours of continuing education in the International Board of Specialty Certification (IBSC) Tactical Paramedic Content Outline topic areas.

(3) An application for renewal of a tactical paramedic certification shall be denied if:

(a) Prior to the certification expiration date, the applicant has not met the requirements of this section; or

(b) The applicant has been subjected to disciplinary action that prevents certification renewal at the time of application.

Section 7. Transition for Currently Certified Providers.

(1) Notwithstanding sections 2(1)(c), 3(1)(c), 4(1)(c), 5(1)(c), or 6(1)(c) of this administrative regulation, proof of a successful course completion certification shall not be required for initial licensure and certification if:

(a) At the time of application, the applicant is certified as a community paramedic, wilderness paramedic, critical care

paramedic, flight paramedic, or tactical paramedic by the International Board of Specialty Certification (IBSC); and

(b) The application is submitted on or before September 30, 2026.

(2) Notwithstanding section 2(1)(d) of this administrative regulation, proof of current certification as a community paramedic (CP-C) by the International Board of Specialty Certification (IBSC) shall not be required for initial licensure and certification as a community paramedic if:

(a) At the time of application, the applicant is operating under a board-approved community paramedic pilot program; and

(b) The application is submitted on or before September 30, 2026.

(3) Notwithstanding section 4(1)(d) of this administrative regulation, proof of current certification as a critical care paramedic (CCP-C) from the International Board of Specialty Certification (IBSC) shall not be required for initial licensure and certification as a critical care paramedic if:

(a) At the time of application, the applicant has a board-issued critical care paramedic endorsement; and

(b) The application is submitted on or before September 30, 2026.

Section 8. Advanced Practice Paramedic License and Certification Renewal for Active-Duty Members of the Armed Forces. A licensed advanced practice paramedic, in good standing, who is a member of the Armed Forces of the United States and called to active duty by presidential order pursuant to 10 U.S.C. 121 and 12304 shall have his or her advanced practice paramedic license and certification renewed in accordance with KRS 12.355 upon submission of the Military Extension Application.

Section 9. Certification and Continuing Education Validation and Audits.

(1) All continuing education for advanced practice paramedics shall be validated by entities authorized to conduct continuing education pursuant to 202 KAR 7:601.

(2) The board office may audit an advanced practice paramedic's continuing education record and IBSC certification. The advanced practice paramedic shall submit the documentation requested within ten (10) business days of receipt of the board office's request.

(3) If documentation of IBSC certification or continuing education hours consistent with this administrative regulation are not received using the board-approved submission process within ten (10) business days upon receipt of the board's request, the advanced practice paramedic license and certification shall be deemed to have lapsed and the individual shall reapply for licensure and certification through reinstatement, if eligible.

(4) The ten (10) business days for submission shall not apply to investigations pursuant to KRS Chapter 311A.

(5) Each advanced practice paramedic shall maintain documentation of all IBSC certifications and all continuing education for three (3) years from the date of completion.

Section 10.[Section—4.] Expiration of Advanced Practice Paramedic License and Certification.

(1) A board-issued advanced practice paramedic license and a board-issued certification as a community paramedic,~~[or] wilderness paramedic, critical care paramedic, flight paramedic, or tactical paramedic~~ shall lapse or expire upon lapse or expiration of the individual's board-issued paramedic license pursuant to KRS 311A.095.

(2) An individual whose board-issued advanced practice paramedic license and board-issued certification as a community paramedic,~~[or] wilderness paramedic, critical care paramedic, flight paramedic, or tactical paramedic~~ has lapsed or expired shall cease providing the specialty care authorized by the lapsed or expired license and certification.

Section 11.[Section—5.] Scope of Practice.

(1) An advanced practice paramedic may perform~~[shall provide]~~ care consistent with the skills, procedures, and techniques

established in the current board-approved EMS Advanced Practice Paramedic Scope of Practice document.

(2) Assessment of techniques, skills, and procedures of an advanced practice paramedic shall be subject to the board-approved agency medical protocols adopted by the advanced practice paramedic's agency.

(3) Each agency that adopts skills, procedures, and techniques established in the current board-approved EMS Advanced Practice Paramedic Scope of Practice document shall implement and maintain a policy requiring annual clinical competency assessments for employees licensed as advanced practice paramedics.

Section 12.[Section—6.] Exemptions to this Administrative Regulation. The advanced practice paramedic licensure and certification requirements established by this administrative regulation shall not apply to: United States military members, National Guard personnel, or employees of the United States government if the individual provides services:

(1) On land owned by the United States government;

(2) In facilities owned by the United States government;

(3) In the performance of official duties under federal law; or

(4) As part of assistance for a mass casualty or disaster incident pursuant to federal law or an official state assistance request.

Section 13.[Section—7.] Public Notice of Negative Action. The board office shall cause to be published on the board's Web site the name of an advanced practice paramedic who:

(1) Is fined;

(2) Is placed on probationary status;

(3) Is placed on restricted status;

(4) Is suspended; or

(5) Has had their license or certification revoked.

Section 14.[Section—8.] Surrender of Advanced Practice Paramedic License and Certification.

(1) An advanced practice paramedic surrendering his or her license as an advanced practice paramedic and certification as a community paramedic,~~[or] wilderness paramedic, critical care paramedic, flight paramedic, or tactical paramedic~~ shall:

(a) Submit~~[submit]~~ a completed Advanced Practice Paramedic License and Certification Surrender Application in KEMSIS; and~~[-]~~

(b) Pay the fee pursuant to 202 KAR 7:030.

(2) Upon surrendering an advanced practice paramedic license and applicable certification, the surrendering individual shall immediately give notice to his or her agency's chief operations or service director.

Section 15. Reinstatement of Advanced Practice Paramedic License and Certification.

(1) An advanced practice paramedic whose license and certification has lapsed or expired may reinstate his or her advanced practice paramedic license and certification by submitting to the board:

(a) A completed Advanced Practice Paramedic License and Certification Reinstatement Application in KEMSIS;

(b) The reinstatement fee pursuant to 202 KAR 7:030;

(c) Proof of current unrestricted license as a paramedic in Kentucky;

(d) Proof of previous licensure as an advanced practice paramedic in Kentucky; and

(e) Proof of current IBSC certification as a community paramedic, wilderness paramedic, critical care paramedic, flight paramedic, or tactical paramedic.

(2) The applicant for reinstatement shall undergo a background check pursuant to KRS 311A.100, which shall be:

(a) Statewide in scope for an applicant with a current license or certification in Kentucky;

(b) Less than six (6) months old when the applicant submits to the board all requirements for certification; and

(c) Provided by a vendor approved by the board.

(3) The applicant for reinstatement shall bear the burden of proof of previous licensure and certification in Kentucky if previous certification or licensure is in dispute.

(4) An applicant who is ineligible for certification pursuant to KRS 311A.050 through 311A.090 shall be ineligible for reinstatement.

Section 16.[Section 9.] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Advanced Practice Paramedic Certification Application", (12/2024), in KEMSIS, <http://kemsis.ky.gov>;

(b) "Advanced Practice Paramedic License and Certification Reinstatement Application", (12/2024), in KEMSIS, <http://kemsis.ky.gov>;

(c) "Advanced Practice Paramedic License and Certification Surrender Application", (12/2024), in KEMSIS, <http://kemsis.ky.gov>;

(d) "Advanced Practice Paramedic Renewal Application", (12/2024), in KEMSIS, <http://kemsis.ky.gov>;

~~[(a)] ["Advanced Practice Paramedic – Community Paramedic Certification Application", in KEMSIS, <http://kemsis.ky.gov>];~~

~~[(b)] ["Advanced Practice Paramedic – Community Paramedic Certification Renewal Application", in KEMSIS, <http://kemsis.ky.gov>];~~

~~[(c)] ["Advanced Practice Paramedic License and Certification Surrender Application", in KEMSIS, <http://kemsis.ky.gov>];~~

~~[(d)] ["Advanced Practice Paramedic – Wilderness Paramedic Certification Application", in KEMSIS, <http://kemsis.ky.gov>];~~

~~[(e)] ["Advanced Practice Paramedic – Wilderness Paramedic Certification-Renewal Application", in KEMSIS, <http://kemsis.ky.gov>; and]~~

~~[(f)] "EMS Advanced Practice Paramedic Scope of Practice", document, (10/2024), kbems.ky.gov;:]~~

(f) "International Board of Specialty Certification (IBSC) Community Paramedicine Content Outline", (2019);

(g) "International Board of Specialty Certification (IBSC) Critical Care Paramedic Content Outline", (2016);

(h) "International Board of Specialty Certification (IBSC) Flight Paramedic Content Outline", (2020);

(i) "International Board of Specialty Certification (IBSC) Tactical Paramedic Content Outline", (2016);

(j) "International Board of Specialty Certification (IBSC) Wilderness Paramedic Content Outline", (2022).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 500 Mero Street, 5th Floor 5SE32, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN R. HOLDER, Chair, Board of Emergency Medical Services

APPROVED BY AGENCY: December 12, 2024

FILED WITH LRC: January 8, 2025 at 1:07 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 26, 2025, at 1:00 PM ET at the Kentucky Board of Emergency Medical Services, 500 Mero Street, 5th Floor 5SE32, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 March 31, 2025. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: John K. Wood, Legal Counsel, Kentucky Board of Emergency Medical Services, 163 E. Main Street, Suite 200, Lexington, Kentucky 40507, Phone: (859) 225-4714, Fax: (859) 225-1493, Email: administrativeregulations@wgmfirm.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John K. Wood

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 311A.070 requires the board to promulgate administrative regulations establishing the educational requirements, testing requirements, credentialing, and licensure requirements of advanced practice paramedics. This administrative regulation establishes those requirements.

(b) The necessity of this administrative regulation: KRS 311A.070 requires the board to promulgate administrative regulations establishing the educational requirements, testing requirements, credentialing, and licensure requirements of advanced practice paramedics. This administrative regulation is necessary to establish those requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.070 and 311A.030 by establishing the educational requirements, testing requirements, credentialing, and licensure requirements of advanced practice paramedics.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.070 requires the board to promulgate administrative regulations establishing the educational requirements, testing requirements, credentialing, and licensure requirements of advanced practice paramedics. This administrative regulation will assist in the effective administration of the foregoing statute by establishing those requirements.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes the licensure and certification requirements for critical care paramedics, flight paramedics, and tactical paramedics. This amendment also removes the existing prerequisites to be eligible to enroll in a community paramedic or wilderness paramedic education and training program. To be eligible for initial licensure and certification under this amendment, applicants must complete an education and training program covering the topic areas outlined by the International Board of Specialty Certification (IBSC) for the applicable type of advanced practice paramedic. To be eligible for renewal under this amendment, an advanced practice paramedic must either maintain current IBSC certification or take at least 50 hours of continuing education covering the applicable IBSC topic areas. For paramedics who are currently certified by the IBSC, who are operating under a community paramedic pilot program, or who have a critical care endorsement, this amendment provides a process to transition those paramedics to licensed and certified advanced practice paramedics. Paramedics who are currently certified by the IBSC as a community, wilderness, critical care, flight, or tactical paramedic are not required to submit a course completion certificate for initial licensure and certification, so long as they apply for an advanced practice paramedic license and certification by September 30, 2026. Paramedics operating under a board-approved community paramedic pilot program are not required to submit proof of current IBSC certification as a community paramedic for initial certification and licensure, so long as they apply for an advanced practice paramedic certification by September 30, 2026. Paramedics who have a critical care endorsement are not required to submit proof of current IBSC certification as a critical care paramedic for initial licensure and certification, so long as they apply for an advanced practice paramedic certification by September 30, 2026. Finally, this amendment includes a renewal provision for active duty military in accordance with KRS 12.355, provisions governing validation and audits of certifications and continuing education, a requirement that agencies adopt a policy requiring annual clinical competency assessments for their advanced practice paramedics, and establishes requirements for reinstating and surrendering an advanced practice paramedic license and certification.

FISCAL IMPACT STATEMENT

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish the requirements for advanced practice paramedics.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 311A.170 requires the Board to promulgate administrative regulations establishing the requirements of advanced practice paramedics, including community, critical care, flight, tactical, and wilderness paramedics. This amendment conforms to the content of KRS 311A.170 by establishing those requirements.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of KRS 311A.170 by establishing the requirements for licensure and certification as advanced practice paramedic.

(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 advanced practice paramedics and paramedics seeking licensure and certification as an advanced practice paramedic.

(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: Paramedics will be required to satisfy all requirements of this administrative regulation to obtain and maintain an advanced practice paramedic license and specialty certification. Advanced practice paramedics will be required to comply with the requirements of this administrative regulation to maintain their advanced practice paramedic license and certification(s).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with this administrative regulation will cost advanced practice paramedics seeking to renew their specialty certification(s) \$10 for each certification, as established in 202 KAR 7:030.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will enable paramedics to become licensed advanced practice paramedics and certified community, wilderness, critical care, flight, and/or tactical paramedics if the requirements of this administrative regulation are satisfied. Paramedics will benefit from being able to obtain specialty certifications and the public will benefit from having access to care provided by advanced practice paramedics.

(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 cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the administrative body 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 general appropriations will be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is currently no fee for initial licensure and certification as an advanced practice paramedic. However, under 202 KAR 7:030, there is a \$10 renewal fee for each advanced practice paramedic certification. No additional funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: By referencing the renewal fee established in the amendment to 202 KAR 7:030 filed contemporaneously with this administrative regulation, this regulation indirectly establishes a \$10 renewal fee for each advanced practice paramedic certification. Additional fees may be added in a future amendment to 202 KAR 7:030.

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because this amendment applies equally to all advanced practice paramedics and paramedics seeking licensure and certification as an advanced practice paramedic.

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.070 requires the board to promulgate administrative regulations establishing the educational requirements, testing requirements, credentialing, and licensure requirements of advanced practice paramedics. This administrative regulation establishes those requirements.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Board of Emergency Medical Services.

(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 should not affect the Board's expenditures, revenues, or costs.

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

(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 costs to affected entities other than administrative costs that may be incurred in recruiting and maintaining personnel.

(4) Identify additional regulated entities not listed in questions (2) or (3): Advanced Practice Paramedics

(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 administrative regulation will require an expenditure of \$10 to renew each advanced practice paramedic certification.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: No fiscal impact is anticipated as a result of this administrative regulation, other than the administrative costs that may be incurred in recruiting and maintaining personnel.

(b) Methodology and resources used to determine the fiscal impact: No fiscal impact is anticipated as a result of this administrative regulation, other than the administrative costs that may be incurred in recruiting and maintaining personnel.

(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 affected entities.

(b) The methodology and resources used to reach this conclusion: No fiscal impact is anticipated as a result of this administrative regulation, other than the administrative costs that may be incurred in recruiting and maintaining personnel.

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)**

301 KAR 1:201. Taking of fish by traditional fishing methods.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations regarding the buying, selling and transporting of fish and wildlife, the restriction of

VOLUME 51, NUMBER 8— February 1, 2025

places where taking is permitted, and the application of administrative regulations to a limited area or to the entire state. KRS 150.470(1) authorizes the department to promulgate administrative regulations regarding daily limits, and size limits for fish. This administrative regulation establishes fish size limits, daily limits, and possession limits for fishing.

Section 1. Statewide Limits and Requirements.

(1) A person taking fish from public or private waters using traditional fishing methods shall observe the daily limits and size limits established in paragraphs (a) through (l) of this subsection, except as established in Sections 2 through 6 of this administrative regulation or pursuant to 301 KAR 1:180:

(a) Black bass daily limit, six (6).

1. Largemouth bass and smallmouth bass size limit, twelve (12) inches.

2. Kentucky bass and Coosa bass, no size limit;

(b) Rock bass daily limit, fifteen (15); no size limit;

(c) Sauger, walleye, and any hybrid thereof daily limit, singly or in combination, six (6); size limit, fourteen (14) inches;

(d) Muskellunge daily limit, one (1); size limit, thirty (30) inches;

(e) Chain pickerel daily limit, five (5); no size limit;

(f) White bass and hybrid striped bass daily limit, singly or in combination, fifteen (15); size limit, no more than five (5) fish in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer;

(g) Striped bass daily limit, five (5); size limit, fifteen (15) inches;

(h) Crappie daily limit, twenty (20); no size limit;

(i) Trout.

1. No culling statewide.

2. Rainbow trout daily limit, eight (8); no size limit.

3. Brown trout daily limit, one (1); size limit, sixteen (16) inches.

4. Brook trout, catch and release only.

5. Cutthroat trout daily limit, one (1); size limit, twenty (20) inches;

(j) Redear sunfish daily limit, twenty (20); no size limit;

(k) Paddlefish daily limit, two (2); no size limit; and

(l) Catfish daily limit is unlimited; no size limit, except that only one (1) trophy catfish of each species may be harvested daily.

(2) The possession limit shall be two (2) times the daily limit, except as established in Section 2 of this administrative regulation.

(3) A person shall release grass carp caught from a lake owned or managed by the department.

(4) A person shall release any:

(a) Lake sturgeon; or

(b) Alligator gar.

(5) A person shall release fish:

(a) Below the minimum size limits established by this administrative regulation;

(b) Within a protected slot limit established by this administrative regulation; or

(c) Of a particular species if a person already possesses the daily limit for that species.

(6) A person shall not possess more than one (1) daily limit of processed or unprocessed fish while:

(a) Fishing;

(b) On the shoreline; or

(c) On the water.

(7) A fishing tournament organizer or representative, excluding a tournament angler, may possess more than the daily limit of tournament caught fish:

(a) At the weigh-in site;

(b) At the release site; or

(c) While transporting live fish from a remote weigh-in site back to the water body of origin for release.

(8) A fishing tournament organizer or representative, excluding a tournament angler, may possess more than the daily limit of unprocessed tournament caught fish that expired at the sites established in subsection (7) of this section for subsequent disposal by one (1) of the methods established in paragraphs (a) through (c) of this subsection:

(a) Bagged, sealed, and placed in a garbage dump;

(b) Donated to a charity for the purpose of human consumption; or

(c) Transferred to a conservation officer or another agent of the department.

(9) A person shall not remove the head or tail of any fish for which a size limit or daily limit exists while:

(a) Fishing;

(b) On the shoreline; or

(c) On the water.

(10) A person may possess sport fish below the size limit or beyond the possession limit if the person:

(a) Obtains the fish from a licensed fish propagator or other legal source; and

(b) Retains a receipt or other written proof that the fish were legally acquired.

(11) A person shall release all caught trout unless the person:

(a) Has a valid trout permit;

(b) Is exempted from trout permit requirements pursuant to KRS 150.170(2); or

(c) Is fishing in a licensed pay lake stocked with trout by the lake operator.

(12) A person fishing in an artificial bait-only area shall not attach any of the items established in paragraphs (a) through (h) of this subsection to the artificial bait:

(a) An insect;

(b) Minnow;

(c) Fish egg;

(d) A worm;

(e) Corn;

(f) Cheese;

(g) Cut bait; or

(h) A similar organic bait substance including dough bait and putty or paste-type bait designed to attract fish by taste or smell.

(13) The fishing season shall be open year-round.

Section 2. Exceptions. All other provisions of this administrative regulation shall apply to the bodies of water listed in this section, with the exceptions established in subsections (1) through (7)(74) of this section.

(1) Bad Branch, Letcher County. A person shall only fish with artificial bait with a single hook;

(2) ~~[Barkley Lake.]~~

~~[(a)] [Largemouth bass and smallmouth bass size limit, fifteen (15) inches.]~~

~~[(b)] [Crappie size limit, ten (10) inches;]~~

~~[(3)] Barren River and tributaries upstream from confluence with the Green River, including Barren River Lake. Smallmouth bass size limit, fifteen (15) inches;~~

~~[(3)] [(4)] Barren River Lake.~~

(a) Crappie size limit, ten (10) inches.

(b) Largemouth and smallmouth bass size limit, fifteen (15) inches.

(c) Blue and channel catfish aggregate daily limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.

(d) Barren River Lake shall extend up:

1. Barren River to the Highway 100 bridge;

2. Long Creek to the Highway 100 bridge;

3. Beaver Creek to the Highway 1297 bridge;

4. Skaggs Creek to the Mathews Mill Road bridge; and

5. Peter Creek to the Peter Creek Road bridge;

~~[(4)] [(5)] Beaver Lake, Anderson County.~~

(a) A person shall not possess shad or use shad as bait.

(b) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

~~[(5)] [(6)] Beech Fork Reservoir, Powell County.~~

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Bluegill daily limit, fifteen (15);

~~[(6)] [(7)] Bert Combs Lake, Clay County.~~

(a) A person shall not possess shad or use shad as bait.

(b) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;

~~[(7)] [(8)] Beulah Lake, Jackson County. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;~~

VOLUME 51, NUMBER 8– February 1, 2025

- ~~(8)~~~~(9)~~ Boltz Lake, Grant County.
- (a) A person shall not possess shad or use shad as bait.
- (b) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;
- ~~(9)~~~~(40)~~ Briggs Lake, Logan County. A person shall not possess shad or use shad as bait;
- ~~(10)~~~~(44)~~ Buckhorn Lake.
- (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
- (b) Muskellunge size limit, forty (40) inches.
- (c) Crappie size limit, nine (9) inches;
- ~~(11)~~~~(42)~~ Carnico Lake, Nicholas County.
- (a) Largemouth bass size limit, fifteen (15) inches.
- (b) Sunfish daily limit, fifteen (15);
- ~~(12)~~~~(43)~~ Carr Creek Lake.
- (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
- (b) Crappie size limit, nine (9) inches.
- (c) Blue and channel catfish aggregate daily limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches;
- ~~(13)~~~~(44)~~ Carter Caves State Park Lake, Carter County.
- (a) Fishing shall be during daylight hours only.
- (b) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.
- (c) A person shall not possess shad or use shad as bait;
- ~~(14)~~~~(45)~~ Cave Run Lake.
- (a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.
- (b) Smallmouth bass size limit, eighteen (18) inches.
- (c) Muskellunge size limit, forty (40) inches.
- (d) Cave Run Lake shall extend up:
1. Scott's Creek to the Highway 801 culvert;
 2. Beaver Creek to the Highway 1274 culvert;
 3. North Fork Creek to the confluence of Craney Creek;
 4. Licking River to the Highway 772 bridge; and
 5. Ramey Creek to include the pool of water north of Highway 801;
- ~~(15)~~~~(46)~~ Cedar Creek Lake, Lincoln County. Largemouth bass size limit, twenty (20) inches; daily limit, one (1);
- ~~(16)~~~~(47)~~ Chimney Top Creek, Wolfe County. A person shall only fish with artificial bait;
- ~~(17)~~~~(48)~~ [Clear Fork, tributary of the Gasper River. A person shall release all sportfish;]
- ~~(19)~~ Corinth Lake, Grant County.
- (a) A person shall not possess shad or use shad as bait.
- (b) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;
- ~~(18)~~~~(20)~~ [Cumberland Lake.]
- ~~(a)~~
- ~~[1.] [Largemouth bass size limit, fifteen (15) inches.]~~
- ~~[2.] [Smallmouth bass size limit, eighteen (18) inches.]~~
- ~~[3.] [Striped bass size limit, twenty-two (22) inches; daily limit, two (2).]~~
- ~~[4.] [Crappie size limit, ten (10) inches.]~~
- ~~(b)~~ [Cumberland Lake shall extend up:]
- ~~[1.] [The Cumberland River to Cumberland Falls;]~~
- ~~[2.] [The Big South Fork to Devil's Jump;]~~
- ~~[3.] [The Rockcastle River to The Narrows; and]~~
- ~~[4.] [The Laurel River to Laurel River Dam;]~~
- ~~(24)~~ Cumberland River upstream from Cumberland Falls and all tributaries. Smallmouth bass size limit, fifteen (15) inches;
- ~~(19)~~~~(22)~~ Cumberland River from Wolf Creek Dam downstream to the Kentucky-Tennessee state line and tributaries, except Hatchery Creek in Russell County as established in subsections ~~(36)~~~~(39)~~ and ~~(37)~~~~(40)~~ of this section.
- (a) Brown trout size limit, twenty (20) inches; daily limit, one (1).
- (b) Brook trout size limit, fifteen (15) inches; daily limit, one (1).
- (c) Rainbow trout. There shall be a slot limit between fifteen (15) and twenty (20) inches; daily limit, five (5), which shall not include more than one (1) fish greater than twenty (20) inches.
- (d) A trout permit shall be required in order to fish the Cumberland River below Wolf Creek Dam to the Tennessee state

- line including the Hatchery Creek and all other tributaries upstream to the first riffle.
- (e) Chumming shall not be permitted in the Cumberland River below Wolf Creek Dam to the Tennessee state line, including the Hatchery Creek and all other tributaries upstream to the first riffle;
- ~~(20)~~~~(23)~~ Cumberland River below Lake Barkley[~~Lake~~]. Fishing is prohibited at the mouth of the lock chamber, as designated by signs;
- ~~(21)~~~~(24)~~ Dale Hollow Lake.
- (a) Smallmouth bass. There shall be a slot limit between sixteen (16) and twenty-one (21) inches. The daily limits shall not include more than one (1) fish less than sixteen (16) inches long and one (1) fish greater than twenty-one (21) inches long.
- (b) Walleye and walleye hybrids, daily limit, five (5); size limit, sixteen (16) inches.
- (c) Sauger daily limit, ten (10); size limit, fourteen (14) inches.
- (d) Rainbow trout and brown trout, no size limit; daily limit, seven (7), singly or in combination.
- (e) Largemouth bass size limit, fifteen (15) inches.
- (f) Black bass aggregate daily limit, five (5), no more than two (2) of which shall be smallmouth bass.
- (g) Crappie size limit, ten (10) inches; daily limit, fifteen (15);
- ~~(22)~~~~(25)~~ Dewey Lake.
- (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
- (b) Blue and channel catfish aggregate daily limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.
- (c) Muskellunge size limit, forty (40) inches;
- ~~(23)~~~~(26)~~ Dix River for two (2) miles downstream from Herrington Lake Dam. A person shall only fish with artificial bait;
- ~~(24)~~~~(27)~~ Doe Run Lake, Kenton County.
- (a) Largemouth bass size limit, fifteen (15) inches.
- (b) Channel catfish daily limit, four (4).
- (c) A person shall not possess shad or use shad as bait;
- ~~(25)~~~~(28)~~ Dog Fork, Wolfe County. A person shall only fish with an artificial bait with a single hook;
- ~~(26)~~~~(29)~~ Elkhorn Creek, downstream from the confluence of the North and South forks to the first shoal located 3,400 feet above its confluence with the Kentucky River, as posted with signs. Largemouth bass and smallmouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;
- ~~(27)~~~~(30)~~ Elmer Davis Lake, Owen County.
- (a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.
- (b) A person shall not possess shad or use shad as bait;
- ~~(28)~~~~(34)~~ Fishtrap Lake.
- (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
- (b) Crappie size limit, nine (9) inches.
- (c) Blue and channel catfish aggregate daily limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches;
- ~~(29)~~~~(32)~~ Floyd's Fork Creek, from Highway 60 downstream to Bardstown Road in Jefferson County. Largemouth and smallmouth bass size limit, fifteen (15) inches;
- ~~(30)~~~~(33)~~ Golden Pond at the Visitors' Center at Land Between the Lakes. Channel catfish daily limit, five (5); size limit, fifteen (15) inches;
- ~~(31)~~~~(34)~~ General Butler State Park Lake, Carroll County.
- (a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.
- (b) Channel catfish daily limit, four (4).
- (c) A person shall not possess shad or use shad as bait;
- ~~(32)~~~~(35)~~ Grayson Lake. Largemouth bass and smallmouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;
- ~~(33)~~~~(36)~~ Greenbo Lake, Greenup County.
- (a) A person shall not possess shad or use shad as bait.
- (b) Bluegill and sunfish daily limit, fifteen (15) fish;
- ~~(34)~~~~(37)~~ Green River from Green River Lake Dam and extending downstream to the end of the concrete wall. Fishing shall be limited to rod in hand using either:
- (a) An artificial bait with a single hook; or
- (b) Live bait attached to a single hook;

VOLUME 51, NUMBER 8— February 1, 2025

- ~~(35)~~~~(38)~~ Green River Lake.
(a) Crappie size limit, nine (9) inches.
(b) Muskellunge size limit, forty (40) inches.
(c) Green River Lake shall extend up:
1. Green River to the Snake Creek Boat Ramp;
2. Robinson Creek to the Highway 76 Bridge; and
3. Casey Creek to the Arnolds Landing Boat Ramp.
- ~~(36)~~~~(39)~~ Hatchery Creek, upper section as established by signs, Russell County. Rainbow trout, brown trout, and brook trout, no size limit; daily limit, five (5), singly or in combination;
~~(37)~~~~(40)~~ Hatchery Creek, lower section as established by signs, Russell County. A person fishing for trout shall:
(a) Only use artificial bait; and
(b) Release all trout;
- ~~(38)~~~~(41)~~ Highsplint Lake, Harlan County. Largemouth bass size limit, twenty (20) inches; daily limit, one (1);
~~(39)~~~~(42)~~ Jericho Lake, Henry County.
(a) Largemouth bass size limit, fifteen (15) inches.
(b) A person shall not possess shad or use shad as bait;
- ~~(40)~~~~(43)~~ Kentucky Lake and the canal connecting Kentucky Lake and Lake Barkley Lakes.
(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
(b) Crappie size limit, ten (10) inches;
~~(41)~~~~(44)~~ Kentucky River upstream of Lock and Dam 14, the North Fork and tributaries including Carr Fork below Carr Creek Lake, along with the Middle and South Forks and all tributaries. Smallmouth bass size limit, fifteen (15) inches;
~~(42)~~ Lake Barkley.
(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
(b) Crappie size limit, ten (10) inches;
~~(45)~~ [Kentucky River WMA, Boone Tract, excluding Benji Kinman Lake.]
[~~(a)~~] [Sunfish daily limit, fifteen (15);]
[~~(b)~~] [Cattfish daily limit, four (4);]
~~(43)~~~~(46)~~ Lake Blythe, Christian County. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;
~~(44)~~ Lake Cumberland.
(a)
1. Largemouth bass size limit, fifteen (15) inches.
2. Smallmouth bass size limit, eighteen (18) inches.
3. Striped bass size limit, twenty-two (22) inches; daily limit, two (2).
4. Crappie size limit, ten (10) inches.
(b) Cumberland Lake shall extend up:
1. The Cumberland River to Cumberland Falls;
2. The Big South Fork to Devil's Jump;
3. The Rockcastle River to The Narrows; and
4. The Laurel River to Laurel River Dam;
- ~~(45)~~~~(47)~~ Lake Chumley, and the department-owned property surrounding the lake, Boyle and Lincoln counties. Closed to public access from one-half (1/2) hour after sunset through one-half (1/2) hour before sunrise;
~~(46)~~~~(48)~~ Lake Malone, Muhlenberg and Logan counties. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;
~~(47)~~~~(49)~~ Lake Reba, Madison County. A person shall not possess shad or use shad as bait;
~~(48)~~~~(50)~~ Lake Shelby, Shelby County.
(a) Largemouth bass size limit, fifteen (15) inches.
(b) Channel catfish daily limit, four (4).
(c) A person shall not possess shad or use shad as bait;
~~(49)~~~~(51)~~ Laurel River Lake.
(a) Largemouth bass size limit, fifteen (15) inches.
(b) Smallmouth bass size limit, eighteen (18) inches; daily limit, two (2).
(c) Crappie size limit, nine (9) inches; daily limit, fifteen (15);
~~(50)~~~~(52)~~ Lincoln Homestead Lake, Washington County.
(a) A person shall not fish except during daylight hours.
(b) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.
(c) Channel catfish daily limit, four (4).
(d) A person shall not possess shad or use shad as bait;
~~(51)~~~~(53)~~ Marion County Lake. A person shall not possess shad or use shad as bait;
~~(52)~~~~(54)~~ McNeely Lake, Jefferson County.
(a) A person shall not possess shad or use shad as bait.
(b) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;
~~(53)~~~~(55)~~ Mill Creek Lake, Powell County.
(a) Largemouth bass size limit, fifteen (15) inches.
(b) A person shall not possess shad or use shad as bait;
~~(54)~~~~(56)~~ New Haven Optimist Lake, Nelson County.
(a) Largemouth bass size limit, fifteen (15) inches.
(b) Channel catfish daily limit, four (4).
(c) A person shall not possess shad or use shad as bait;
~~(55)~~~~(57)~~ Nolin River Lake shall extend up Bacon Creek to Highway 178 and to Wheelers Mill Road Bridge on the Nolin River.
(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
(b) Crappie size limit, ten (10) [nine (9)] inches;
~~(56)~~~~(58)~~ Ohio River.
(a) White bass, striped bass, and any hybrid thereof, daily limit, thirty (30); no more than four (4) in the daily limit shall be fifteen (15) inches or greater.
(b) The blue catfish daily limit shall be unlimited, except that no more than one (1) fish in the daily limit shall be thirty-five (35) inches or longer.
(c) The channel catfish daily limit shall be unlimited, except that no more than one (1) fish in the daily limit shall be twenty-eight (28) inches or longer.
(d) The flathead catfish daily limit shall be unlimited, except that no more than one (1) fish in the daily limit shall be thirty-five (35) inches or longer;
~~(57)~~~~(59)~~ Otter Creek, Meade County. Smallmouth and largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;
~~(58)~~~~(60)~~ Panbow Lake, Breathitt County. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;
~~(59)~~~~(61)~~ Parched Corn Creek, Wolfe County. A person shall only fish with an artificial bait with a single hook;
~~(60)~~~~(62)~~ Pennyryle Lake, Christian County. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches;
~~(61)~~~~(63)~~ Pikeville City Lake, Pike County. A person shall release largemouth bass;
~~(62)~~~~(64)~~ Rockcastle River WMA, all ponds collectively, Pulaski County.
(a) Largemouth bass size limit, fifteen (15) inches; daily limit, one (1).
(b) Bluegill and sunfish daily limit, ten (10).
(c) Catfish daily limit, four (4).
(d) Crappie daily limit, fifteen (15);
~~(63)~~~~(65)~~ Rough River Lake.
(a) Crappie size limit, ten (10) [nine (9)] inches.
(b) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.
(c) Rough River Lake shall extend up Rough River to the Highway 84 Bridge;
~~(64)~~~~(66)~~ Shanty Hollow Lake, Warren County. A person shall not possess shad or use shad as bait;
~~(65)~~~~(67)~~ Shillalah Creek, Bell County, outside the Cumberland Gap National Park. A person shall only fish with an artificial bait with a single hook;
~~(66)~~~~(68)~~ Spurlington Lake, Taylor County. A person shall not possess shad or use shad as bait;
~~(67)~~~~(69)~~ Sympson Lake, Nelson County. Largemouth bass size limit, fifteen (15) inches;
~~(68)~~~~(70)~~ Taylorsville Lake, including the impounded waters of the lake to Dry Dock Road Bridge on the Salt River.
(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

VOLUME 51, NUMBER 8— February 1, 2025

(b) Blue and channel catfish aggregate daily limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.
(c) Crappie size limit, ten (10) inches; daily limit, fifteen (15);
(69)(74) Trammel Creek, Allen County. Rainbow trout daily limit, five (5);

(70)(72) Willisburg Park Pond, Washington County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Catfish daily limit, four (4).

(c) Sunfish daily limit, fifteen (15);

(71)(73) Wood Creek Lake. Largemouth and smallmouth bass.

There shall be a slot limit between twelve (12) and fifteen (15) inches; and

(72)(74) Yatesville Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Blue and channel catfish aggregate daily limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.

Section 3. Daily Limits and Size Limits for Waters Containing Rockcastle Strain Walleye.

(1) Rockcastle Strain Walleye Waters.

(a) Barren River and tributaries upstream from confluence with the Green River, including Barren River Lake;

(b) Cumberland River and tributaries above Cumberland Falls;

(c) Kentucky River and tributaries upstream from Lock and Dam 14;

(d) Middle Fork Kentucky River and tributaries;

(e) North Fork Kentucky River and tributaries, including Carr Fork below Carr Creek Lake;

(f) South Fork Kentucky River and tributaries;

(g) Levisa Fork River and tributaries upstream from Fishtrap Lake, including Fishtrap Lake;

(h) Martins Fork Lake; ~~and~~

(i) Rockcastle River and tributaries; and

(j) Wood Creek Lake.

(2) There shall be a slot limit between eighteen (18) and twenty-six (26) inches and a daily limit of two (2) for walleye in the waters established in subsection (1) of this section.

Section 4. Seasonal Catch and Release for Trout.

(1) There shall be a catch and release trout season from October 1 through March 31 for the bodies of water established in subsection (3) of this section.

(2) A person shall:

(a) Only use artificial bait; and

(b) Release all trout.

(3) The streams established in paragraphs (a) through (o) of this subsection shall be open for the catch and release trout season:

(a) Bark Camp Creek in Whitley County;

(b) Beaver Creek from Highway 90 Bridge upstream to Highway 200 Bridge in Wayne County;

(c) Big Bone Creek within Big Bone Lick State Park in Boone County;

(d) Cane Creek in Laurel County;

(e) Casey Creek in Trigg County;

(f) Clear Creek from mouth upstream to 190 Bridge in Bell County;

(g) East Fork of Indian Creek in Menifee County;

(h) Elk Spring Creek in Wayne County;

(i) Floyd's Fork Creek in Jefferson County from Highway 60 downstream to Bardstown Road;

(j) Gunpowder Creek in Boone County;

(k) Left Fork of Beaver Creek in Floyd County from Highway 122 Bridge upstream to the headwater;

(l) Otter Creek in Meade County on the Fort Knox Reservation and Otter Creek Park;

(m) Rock Creek from the Bell Farm Bridge to the Tennessee state line in McCreary County;

(n) Trammel Creek in Allen County; and

(o) Swift Camp Creek in Wolfe County.

Section 5. Special Limits for Fishing Events.

(1) The commissioner may establish special limits for fishing events including:

(a) Size limits for selected species;

(b) Daily limits for selected species;

(c) Eligible participants; and

(d) Dates and times of special limits.

(2) An event sponsor shall post signs informing anglers of any special limits for a minimum of twenty-four (24) hours before the event.

Section 6. Daily Limits and Size Limits for Special Lakes and Ponds. The requirements established in subsections (1) through (5) of this section shall apply to all bodies of water established in the List of Special Lakes and Ponds:

(1) Largemouth bass size limit, fifteen (15) inches; daily limit, one (1);

(2) Catfish daily limit, four (4);

(3) Sunfish or bream daily limit, fifteen (15);

(4) Rainbow trout daily limit, five (5); and

(5) A person shall not possess shad or use shad as bait.

Section 7. Incorporation by Reference.

(1) "List of Special Lakes and Ponds", 2024 Edition is incorporated by reference.

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

RICH STORM, Commissioner

APPROVED BY AGENCY: January 15, 2025

FILED WITH LRC: January 15, 2025 at 9:42 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 27, 2025, 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 March 31, 2025. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jenny Gilbert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes size limits, daily limits, and possession limits for sport fish that may be taken from Kentucky waters.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to properly manage the sport fish populations of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations regarding the buying, selling and transporting of fish and wildlife, the restriction of places where taking is permitted, and the application of administrative regulations to a limited area or to the entire state. KRS 150.470(1) authorizes the department to promulgate administrative regulations regarding daily limits, and size limits for fish.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by limiting the number and size of fish that may be taken from Kentucky's waters. This will ensure that Kentucky's valuable sport fish populations are maintained at high levels.

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

(a) How the amendment will change this existing administrative regulation: This amendment will remove the special catch and release regulations on Clear Fork in Logan and Warren counties and return all sport fish to statewide regulations. This amendment will also remove the special 4-fish daily limit on Channel Catfish and 15-fish daily limit on sunfish for all ponds on the Kentucky River WMA, Boone Tract and place these species under statewide regulations. In addition, this amendment will increase the current 9-inch crappie size limit at Nolin River and Rough River lakes to 10 inches and add the Rockcastle River to the list of waterbodies with an 18- to 26-inch slot limit and 2-fish daily limit for walleye. As cleanups, "Barkley Lake" and "Cumberland Lake" were changed to "Lake Barkley" and "Lake Cumberland".

(b) The necessity of the amendment to this administrative regulation: Special catch and release regulations were placed on Clear Creek following a substantial fish kill in 2019 to protect the remaining fish populations. These populations have rebounded well, and the special regulations are no longer needed. The restricted daily limits placed on Channel Catfish and sunfish on the Kentucky River WMA, Boone Tract ponds were enacted when this area was first obtained. Since that time, the populations have remained strong and there is no longer a need for special regulations. Based on biological data and public interest, improvements in the crappie populations can be realized by allowing the fish to grow another inch before harvest is allowed. This should result in larger fish for anglers to catch. Finally, there are regulations in place that protect Kentucky's native strain walleye at several bodies of water across the state where efforts are being made to expand the population. The Rockcastle River is home to this native walleye, but currently does not have the protection the other water bodies have.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All anglers fishing at the water bodies referenced in (2)(a) above will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All anglers fishing at the water bodies and for the species identified in 2(a) above will have to follow the new regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost incurred by the anglers identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): At both Clear Creek and the Kentucky River WMA, Boone Tract ponds, anglers will now be allowed increased harvest opportunities and simplified regulations. At Nolin River Lake, Rough River Lake, and the Rockcastle River, anglers will benefit in the long run from a higher quality sport fishery due to protection to larger sizes for the crappie populations and potential increased reproduction for the Walleye population.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals fishing in Kentucky must abide by the same requirements.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations regarding the buying, selling and transporting of fish and wildlife, the restriction of places where taking is permitted, and the application of administrative regulations to a limited area or to the entire state. KRS 150.470(1) authorizes the department to promulgate administrative regulations regarding daily limits, and size limits for fish.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The promulgating agency is the Kentucky Department of Fish and Wildlife Resources. The agency's Divisions of Fisheries and Law Enforcement will be impacted by this amendment.

(a) Estimate the following for the first year:

Expenditures: There will be no cost to implement this administrative regulation for the first year.

Revenues: It is unknown if this administrative regulation could indirectly increase any fishing license sales during 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 will be no additional costs, revenues, or cost savings in subsequent years.

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

(a) Estimate the following for the first year:

Expenditures: There will be no cost to local entities in the first year as a result of this regulation amendment.

Revenues: It is unknown if this regulation amendment will result in any tourism revenue increase in the first year due to higher quality fisheries in these locations.

Cost Savings: There will be no cost savings to local entities in the first year as a result of this regulation amendment.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no increased expenditures or cost savings as the result of this regulation amendment in subsequent years. It is unknown if this regulation amendment will result in any tourism revenue increase in subsequent years due to higher quality fisheries in these locations.

(4) Identify additional regulated entities not listed in questions (2) or (3): There are no other regulated entities other than those listed in questions (2) and (3).

(a) Estimate the following for the first year:

Expenditures: NA

Revenues: NA

Cost Savings: NA

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

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: All anglers are required to purchase a fishing license to fish public lakes in Kentucky. The cost of the license is not based on existing fishing regulations, but more so on the age of the angler or the license package they are purchasing (ie. Sportsman's License, combined hunting and fishing license, etc.). Changes to fishing regulations will not have a bearing on fishing license cost or other associated fees.

(b) Methodology and resources used to determine the fiscal impact: This fiscal impact narrative was based on the statutes and administrative regulations pertaining to license fees and traditional fishing regulations.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have a negative major economic impact to the entities identified in question (2) - (4).

(b) The methodology and resources used to reach this conclusion: The primary entities affected by this regulation amendment are Kentucky anglers. Since changes in size and daily limit regulations do not impact the cost of purchasing a fishing license, there will be no major economic impact to these entities.

PUBLIC PROTECTION CABINET
Office of Claims and Appeals
Board of Tax Appeals
(Amendment)

802 KAR 1:010. Tax appeal procedures.

RELATES TO: KRS [42.027,]Chapter 13B, 49.220, 49.230, 49.240, 49.250[, EO 2020-708]

STATUTORY AUTHORITY: KRS 49.010, 49.020, 49.220(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 49.010(4)(b) authorizes the Office of Claims and Appeals to promulgate amend, and repeal suitable administrative regulations to carry out the provisions and purposes of the office's statutory authority. KRS 49.020(7)(a) grants the board the authority to promulgate, amend and repeal administrative regulations to carry out the provisions and purposes of the boards' statutory authority.[Executive Order 2020-708 ("Order") requires that the Kentucky Claims Commission be abolished and the Office of Claims and Appeals be immediately established within the Public Protection Cabinet, and to include the Board of Tax Appeals. The Order also sets forth the powers and duties of the Board of Tax Appeals, and authorizes the board to promulgate regulations necessary to immediately carry out the provisions and purposes of the Order and the board's statutory authority. KRS 49.020(5) authorizes the board to promulgate administrative regulations that are necessary to carry out the provisions and purposes of the board's statutory authority.] KRS 49.220(1) authorizes the board, with exclusive jurisdiction, to hear and determine appeals from final rulings, orders, and determinations of any agency of state or county government affecting revenue and taxation. This administrative regulation establishes the procedures governing the processing of appeals of taxes imposed by governmental entities[tax appeals].

Section 1. Definitions.

- (1) "Board" means the Board of Tax Appeals.
- (2) "Office" means the Office of Claims and Appeals.

Section 2. Rules for Filing Tax Appeals with the board.

(1) Initiation of tax appeal. A party wishing to appeal a final ruling, order, or determination of any agency of state or county government affecting revenue or taxation shall file a petition with the board for a formal hearing in accordance with KRS Chapter 13B.

(2) Timing. The initial petition of appeal shall be received by the board within thirty (30) days of the date of mailing of the final ruling, order, or determination of the agency of state or county government that is the subject of the appeal. If the determination is not mailed, then the initial petition shall be considered timely[as received] if received by the board within thirty (30) days of the date of issuance.

(a) An untimely appeal shall be dismissed.

(b) To dispute a finding by the board or its staff that a petition was untimely filed, a party may:

1. Provide evidence of when the envelope containing the mailing was entered into the postal service by providing the cancelled postmarked envelope or may provide information from the postal service concerning the date of the introduction of the envelope containing the mailing into the system; or

2. Provide any other evidence concerning when the final ruling, order, or determination was issued.

(c)[~~(b)~~] If the appeal is timely filed, but is otherwise deficient, the board, office, or hearing officer shall notify the petitioner of deficiencies and allow fifteen (15) business days to amend the petition.

(3) Format and content. A petition of appeal shall be legibly written, typed, or printed and contain:

(a) A statement of all relevant issues of fact and law;

(b) A statement certifying that the information contained in the petition of appeal is true and correct to the best knowledge of the petitioner or counsel, if represented by an attorney;

(c) The signature of the petitioner or the signature of counsel, if represented by an attorney;

(d) The petitioner's mailing address, telephone number, and email address;

(e) If represented by an attorney, the petitioner's attorney's name, mailing address, telephone number, and email address; and

(f) A copy of the final ruling, order, or determination to be reviewed.

(4) Upon receiving a petition of appeal, the board shall provide notice to:

(a) The appellee that an action has been filed;

(b) The petitioner that the petition of appeal has been received; and

(c) The petitioner's counsel, if represented by an attorney.

(5) Upon receiving a Petition of Appeal, the appellee or the appellee's attorney shall file an entry of appearance within thirty (30) days of the date of the notice of appeal provided by the board. The entry of appearance shall contain the mailing address, telephone number, and email address of the appellee and the appellee's attorney, if applicable.

Section 3. Rules Applicable to All Filings.

(1) Filings. All documents shall[may] be filed either:

(a) In person or by private delivery to Board of Tax Appeals, 500 Mero Street, 2 SC1, Frankfort, Kentucky 40601;

(b) By mail to the address listed above; or

(c) By electronic mail to taxappeals@ky.gov if the document can be sent in one (1) electronic message.

(2) Service.

(a) Any party who files a pleading or motion with the board and/or hearing officer shall notify all other parties to the appeal by serving upon each party a copy of the pleading or motion filed. A filed pleading or motion shall be accompanied by a certification stating:

1. That a copy has been served on each party, or if the party is represented by counsel, on the party's counsel; and

2. The method of service used.

(b) Service upon a party shall be made by delivering a copy to the attorney or party, by electronic mail, or by mailing it to the attorney or party at the last known address. Service is complete upon mailing, unless the serving party learns or has reason to know that it did not reach the person to be served. Service by electronic mail shall be considered complete when sent if properly addressed. Documents filed by electronic mail shall be considered received when sent if properly addressed.

Section 4. Representation in Proceedings before the board.

(1) If the appeal is by an individual, the individual may proceed without an attorney or engage counsel to provide representation.

(2) An individual who is not an attorney shall not be permitted to represent any other individual or legal entity who is a party to an appeal.

(3) In accordance with Supreme Court Rule 3.020, if the appealing party is a corporation, joint venture, partnership, LLC, estate, or any entity other than an individual as identified in subsection (1) of this section, the entity shall be represented by an attorney on all matters before the board, including the filing of the appeal.

(4) An attorney licensed to practice in another state, but not the Commonwealth of Kentucky, shall be permitted to represent a party

before the board if the attorney complies with Supreme Court Rule 3.030(2).

Section 5. Discovery.

(1) Discovery may be obtained without prior order of the board or hearing officer. Except to the extent the provisions of this section differ, the Kentucky Rules of Civil Procedure (CR) governing depositions and discovery shall apply.

(2) In addition to the provisions of CR 26 addressing opinions and use of expert witnesses:

(a) Absent a stipulation between the parties or an order issued by the board or hearing officer providing otherwise, and at least ninety (90) days before the date set for the hearing, a party shall disclose to the other party or parties the identity of any witness qualified as an expert by knowledge, skill, experience, training, or education the party may use at the hearing to provide expert testimony; or

(b) If the evidence is intended solely to contradict or rebut evidence on the same subject matter of a witness identified by another party, within thirty (30) days after the other party's disclosure.

(3) The board or hearing officer may deny, limit, or require discovery.

(4) If a party fails to comply with an order regarding discovery, the board or hearing officer may order that the:

(a) Matters that the requesting party was seeking to establish through discovery shall be taken as having been established for the purposes of the hearing;

(b) Noncomplying party shall be prohibited from introducing related documents or testimony at the hearing;

(c) Appeal be dismissed or relief be granted as requested by the opposing party;

(d) Appeal be stayed until the order is obeyed; or

(e) Noncomplying party, the advising attorney, or both pay the reasonable costs, including attorney's fees, caused by the failure to comply.

(5) A response to discovery under subsection (1) of this section shall not be filed with the board unless required by order of the board or hearing officer.

Section 6. Prehearing or Status Conference and Hearing Schedule.

(1) In any appeal assigned to a board member or hearing officer, the board or hearing officer may schedule a prehearing or status conference. The prehearing or status conference may be conducted by telephone or other electronic means upon reasonable notice to all parties, which consists of prior notice of not less than five (5) days, unless otherwise agreed to by the parties.

(2) A prehearing or status conference may be used to set a hearing date, discuss jurisdictional matters, settlement possibilities, discovery, preparation of stipulations, clarification of issues, rulings on witnesses, taking of evidence, issuance of subpoenas, mediation, and other matters that will promote the orderly and prompt conduct of the hearing.

(3) If the board member or hearing officer and parties cannot agree upon a hearing date, the board member or hearing officer shall set the matter for hearing no later than six (6) months from the date of the conference.

(4) Upon conclusion of the prehearing or status conference, the board member or hearing officer shall issue an order including all matters determined at the prehearing or status conference.

Section 7. Prehearing Filings.

(1) At least thirty (30) days prior to the hearing, a party shall file with the board or hearing officer a:

(a) Prehearing summary that contains a:

1. Summary of the party's position on any issue of fact in dispute;

2. Summary of the party's position on any issue of law raised by the appeal; and

3. Written statement of facts to which the party agrees and any facts which a party does not dispute;

(b) List of the names, addresses, and phone numbers (if known) of all witnesses the party expects to call to testify as a witness at the hearing;

(c) Copy of all exhibits that the party intends to introduce at the hearing;

(d) Proposed findings of fact and conclusions of law; and

(e) Proposed final order if the appeal is heard by the board, or a proposed recommended order if the appeal is heard by a hearing officer.

(2) The prehearing filings required by this section shall satisfy the requirements under KRS 13B.090(3) establishing a party's right to inspect a list of witnesses and documentary or tangible evidence at least five (5) days prior to the hearing. The board may issue a prehearing order modifying discovery procedures or deadlines, or mandating additional requirements for prehearing filings.

(3) The parties may file proposed findings of fact and conclusions of law.

Section 8. Motion Practice.

(1) Any party may file a motion. Any party affected by a motion or pleading may file a response to the motion or pleading within twenty (20)~~thirty (30)~~ days from the date on which the motion or pleading was served.

(2) A moving party may file a reply to another party's response. The reply shall be filed within fifteen (15) days from the date the response was served. Other replies or responses shall not be filed, unless prior approval is granted by the board or hearing officer.

Section 9. Briefs.

(1) A party shall file with the board ~~and~~^{or} hearing officer any brief required by order of the board or hearing officer.

(2) The board or hearing officer may require a party to file a post-hearing brief or to supplement at any time a brief already filed to assist in adjudicating the hearing. A brief shall include the signature of the party, or the party's counsel.

Section 10. Summary Disposition.

(1) At any time after the commencement of an appeal, a party may move for a summary disposition of the whole or a part of the appeal by filing a motion that:

(a) Asserts that there are no disputed material facts as to one (1) or more of the issues before the board or hearing officer;

(b) Includes a statement specifying which material facts are undisputed. Assertions of a material undisputed fact or facts may be submitted to the board or hearing officer through affidavits or responses made by another party to any discovery request, including answers to interrogatories, admissions, and depositions. Facts stated in the petition of appeal, including exhibits attached to the petition, may be relied upon as undisputed material facts by the appellee; and

(c) States that any issue before the board or hearing officer for which summary disposition is sought is a matter of legal, and not factual, interpretation.

(2) Response.

(a) Within twenty (20) days after a party moves for summary disposition, any other party may file a response presenting the party's position on issues of law and fact, which shall include any affidavit, written response to discovery requests, deposition testimony, or statements in the Petition of Appeal, demonstrating the party's assertion that a material fact or facts are disputed.

(b) Failure of a nonmoving party to respond within twenty (20) days to the motion for summary disposition or to request additional time to respond to the motion may result in the board or hearing officer finding there are no disputed factual issues to be considered in deciding the legal issues.

(3) If the nonmoving party files a response to the motion for summary disposition, the moving party shall have ten (10) days to file a reply to the response.

(4) The board or hearing officer may grant a motion for summary disposition in whole or in part. If the board or hearing officer grants a summary disposition as to one (1) or more issues, but not all issues, then the remaining issues shall be heard by the board or

VOLUME 51, NUMBER 8– February 1, 2025

hearing officer in accordance with this administrative regulation and KRS Chapter 13B.

(5) When a hearing officer rules on a dispositive motion but such ruling does not dispose of the appeal, a party aggrieved by the determination of the hearing officer may request the board review the ruling within twenty (20) days of the issuance of the determination by the hearing officer. The non-moving party shall have a right to respond to the motion for board review and such shall be filed no later than fifteen (15) days following the filing of the motion for board review. The moving party shall have no right to reply.

Section 11. Other. Except as otherwise stated in KRS Chapter 49 or this administrative regulation, the conduct of hearings shall be governed by the procedures established in KRS Chapter 13B.

Section 12. The Certified Record of Proceedings. The official record of a matter before the board shall be forwarded by the clerk of the board to the Circuit Court, or other reviewing court, within twenty (20) days of the filing of a petition for judicial review, as provided in KRS 13B.140(3) and KRS 49.250. The record may be filed with the clerk of the court on an electronic storage device, including CD or USB flash drive.

Section 13. Subpoenas. The board, hearing officers, and parties shall use the form adopted by the board for the issuance of subpoenas, both in personam and duces tecum, and said form is herein incorporated by reference.

(1) Subpoenas may be issued by any person over the age of eighteen (18) and execution of service shall be attested to by completion of the "Proof of Service" portion of the form.

(2) Copies of any documents received in response to the issuance of a subpoena shall be furnished to all parties to the action.

(3) Prior to the issuance of a subpoena by a party or its counsel, such party shall request approval of the board or hearing officer for such issuance. The party shall not issue or serve the subpoena until approve by the board or hearing officer.

Section 14. Incorporation by Reference.

(1) "Subpoena", January 2025, is incorporated by reference;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Claims and Appeals, 500 Mero Street, 2 SC 1, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. and is available online at https://kycc.ky.gov/Newstatic_info.aspx?static_id=161.

FREDERICK HIGDON, Chairperson
JOHN HARDESTY, Executive Director

APPROVED BY AGENCY: January 14, 2025

FILED WITH LRC: January 15, 2025 at 10:32 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 am on March 27, 2025, in Room 247 CE of the Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. This hearing shall be conducted both in-person and virtually via Microsoft Teams videoconferencing. Individuals interested in attending the public hearing virtually may access the hearing at: https://teams.microsoft.com/l/meetupjoin/19%3ameeting_ZmM3NGRiODYtYjBmYi00ZWE4LTg1OWQtN2JjNjFkYzgZjcw%40thread.v2/0?context=%7b%22Tid%22%3a%22d77c7f4d-d767-461f-b625-0628792e9e2a%22%2c%22Oid%22%3a%22636ef07a-f33f-4378-b8ae-79c6f05a1438%22%7d. The Meeting ID is: 237 908 005 529. The Passcode is: 48N9bQ2U. For phone access, please dial +1 502-632-6289, 867966031# and enter the following Phone Conference ID: 867 966 031#. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 PM EST on March 31, 2025. 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: Linda Roberts Horsman, Staff Attorney, 500 Mero Street 2 SC 1, Frankfort, Kentucky 40601. Phone: 502-782-4644. Fax: 502-573-4817. Email: linda.horsman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Linda Roberts Horsman

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes guidance and procedures for persons appealing assessments of taxes from various levying agencies. The regulation also establishes procedures for the board in handling appeals which come before it.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 49.020, requiring the board to promulgate, amend, and repeal administrative regulations to carry out the purposes of the board's statutory authority, found in KRS 49.190-KRS 49.250. It also is necessary in order to incorporate by reference new forms for use by the agency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with KRS 49.010(4)(b) and 49.020(7)(a), which authorizes the promulgation of regulations to carry out the duties of the Board of Tax Appeals. KRS 49.020(7) authorizes the Board of Tax Appeals to issue subpoenas.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulation will assist the Board of Tax Appeals, its staff, and those appearing before it in understanding the procedures employed by the board in hearing and adjudicating the appeals which come before it.

(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 clarify the procedures for filing and the processing of matters filed before the board, makes motion practice deadlines uniform, and establishes procedures for issuance of subpoenas.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify and improve procedures regarding filing and distribution of pleadings; reduce the time to file some responsive motions leading to quicker resolution of appeals; encourage filing of proposed findings of fact and conclusions of law, which will result in quicker resolution of appeals; provide for the filing of certified records on flash drives which is more efficient; and provide a subpoena form in line with subpoenas issued within the Court of Justice.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Public Protection Cabinet, the Office of Claims and Appeals, the Board of Tax Appeals, taxpayers, and taxing entities.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None known, the changes made herein attempt to simplify or clarify processes and do not add any additional steps or procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no expected expenditures because of this administrative regulation. Current staff will implement the provisions once promulgated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The cabinet, office and board will have better oversight and control of appeal procedures as they are clearly more delineated; taxpayers and representatives of taxing entities will have more insight into the appellate procedures.

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

(a) Initially: None. Current staff and agency funds will provide implementation.

(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: Current agency budgetary funding will be used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted 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 49.010(4)(b), KRS 49.020(7), KRS 49.220, KRS 13B.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The promulgating agency is the Office of Claims and Appeals. The amendment will affect the Public Protection Cabinet, Office of Claims and Appeals, the Board of Tax Appeals, the Department of Revenue, county Property Valuation Administrators, and other state or local taxing agencies.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: There will be minor cost savings for the Office of Claims and Appeals through filing administrative records via thumb drive or CD, thereby avoiding the cost of printing large administrative records.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? See 2(a).

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): County and local taxing agencies.

(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? See answer to (3)(a).

(4) Identify additional regulated entities not listed in questions (2) or (3): Individuals and businesses filing claims with the Kentucky Board of Tax Appeals.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None other than the cost of postage due to the ability to file claims through the online portal.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? See 4(a).

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This regulation will have a negligible fiscal impact. It may result in small cost savings for the Office of Claims and Appeals through eliminating the need to print and mail voluminous administrative records to the Circuit Court Clerk.

(b) Methodology and resources used to determine the fiscal impact: The agency estimated the fiscal impact using cost projections

and calculations for expenditures under the existing regulation compared to this amendment.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) . It will not have a negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion: See 5(b).

PUBLIC PROTECTION CABINET Office of Claims and Appeals Board of Claims (Amendment)

802 KAR 2:010. Negligence claims before the Board of Claims.

RELATES TO: KRS[~~42.027~~] 49.020, 49.040, 49.090, 49.120[~~, EO 2020-708~~]

STATUTORY AUTHORITY: KRS 49.010(4)(b), KRS 49.020(7)(a)(5)

NECESSITY, FUNCTION, AND CONFORMITY: [~~Executive Order 2020-708 ("Order") requires that the Kentucky Claims Commission be abolished and that the Board of Claims, and the Office of Claims and Appeals be established. The Order also sets forth the powers and duties of the Board of Claims and the Office of Claims and Appeals and authorizes the board to promulgate emergency regulations necessary to carry out the provisions and purposes of the Order and the board's statutory authority.~~] KRS 49.020(7)(a)(5) authorizes the board to promulgate administrative regulations that are necessary to carry out the provisions and purposes of the board's statutory authority. KRS 49.020(5)220(1) authorizes the board, with exclusive jurisdiction, to investigate, hear proof, and to compensate persons for damages sustained to either person or property as a proximate result of negligence on the part of the Commonwealth, any of its cabinets, departments, bureaus, or agencies, or any of its officers, agents, or employees while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies. This administrative regulation establishes the procedures governing these claims.

Section 1. Definition.

(1) "Board" means the Board of Claims.

(2) "Office" means the Office of Claims and Appeals.

Section 2. Filing Claims. Form and content. A claim shall be legibly written, typed, or printed on the Board of Claims claim form, or submitted through the online portal, and contain:

(1) The name, address, telephone number, and email address of the claimant;

(2) The amount of the claim; and

(3) A statement of the facts that:

(a) Show the claimant may be entitled to relief pursuant to KRS 49.010 through 49.180; and

(b) Enables the agency against which a claim is made to investigate the claim and prepare its defense; ~~and~~

(4) The signature of the claimant and counsel for claimant, if any, and[-]

(5) Additional documents and attachments, if necessary for a full statement of the claim.

Section 3. Rules Applicable to All Filings.

(1) Filings. All claims shall be filed either:[~~All documents may be filed:~~]

(a) In person or by private delivery to the Board of Claims, 500 Mero Street, 2 SC1, Frankfort, Kentucky 40601;

(b) By mail to the address listed above; or

(c) By electronic mail to <mailto:negligenceclaims@ky.gov>, if the document can be sent in one (1) electronic message; or[-]

(d) Through the Board's online claim filing portal: <https://kycc.ky.gov/NegClaim/>.

(2) Service.

(a) Any party who files a pleading or motion with the board or hearing officer shall notify all other parties to the claim by serving upon each party a copy of the pleading or motion filed. A filed pleading or motion shall be accompanied by a certification stating:

1. That a copy has been served on each party, or if the party is represented by counsel, on the party's counsel; and
2. The method of service used.

(b) Service upon a party shall be made by delivering a copy to the attorney or party, electronic mail, or by mailing it to the attorney or party at the last known address. Service is complete upon mailing[;] unless the serving party learns or has reason to know that it did not reach the person to be served. Service by electronic mail shall be considered complete when sent if properly addressed. Documents filed by electronic mail shall be considered received when sent if properly addressed.

(3) Extension of time. An extension of time to file a response, motion, other pleading, brief, proposed finding of fact, or conclusion of law shall be granted:

- (a) On agreement of the parties; or
- (b) Upon a showing of good cause.

Section 4. Representation in Proceedings before the Board.

(1) If the claim is by an individual, the individual may proceed without an attorney or engage counsel to provide representation.

(2) An individual who is not an attorney shall not be permitted to represent any other individual or legal entity who is a party to the claim.

(3) In accordance with Supreme Court Rule 3.020, if the claimant is a corporation, joint venture, partnership, LLC, estate, or any entity other than an individual as identified in subsection (1), the entity shall be represented by an attorney on all matters before the board, including filing the claim.

(4) An attorney admitted to practice in another state, but not the Commonwealth of Kentucky, shall be permitted to represent a party before the board if the attorney complies with Supreme Court Rule 3.030(2).

(5) If an attorney is not identified in the claim form or is later retained to represent a claimant after the filing of the claim form, the attorney shall enter an appearance in the record within ten (10) days of being retained.

Section 5. Response to Claims.

(1) Upon receipt of a completed claim, the board shall submit a copy of each claim to the head of the agency against which the claim is filed, or the attorney representing the agency against which the claim is filed.

(2) The agency against which a claim has been filed shall respond to the board and the claimant within thirty (30) days of receiving the claim.

(3) If the agency against which a claim is filed admits liability in its response, a final order shall be entered.

Section 6. Claims Not Requiring a Hearing Under KRS 49.090(3).

(1) If the agency against which a claim is filed fails to respond within thirty (30) days, the board or a board member assigned by the chair shall:

- (a) Enter a show cause order;
- (b) Recommend an order of dismissal; or
- (c) Deem the facts contained in the claim admitted and render an award.

(2) If the response filed by the agency denies negligence in a claim not requiring a hearing pursuant to KRS 49.090(3), the board or board member shall decide the claim and render a decision.

(3) Within fourteen (14) days of the decision, any party may request a full board review by written notice to the board.

Section 7. Claims Requiring a Hearing under KRS 49.090(3).

(1) If the agency fails to respond within thirty (30) days, the board shall issue a show cause order or the matter shall be assigned to a hearing officer.

(2) If the response filed by the agency denies negligence in a claim requiring a hearing pursuant to KRS 49.090(3), a hearing

officer shall be assigned, and notice of the assignment shall be provided to the parties.

Section 8. Prehearing or Status Conference and Hearing Schedule.

(1) The hearing officer shall schedule a prehearing or status conference, which may be conducted by telephone or other electronic means:

- (a) Within thirty (30) days of the assignment of the claim; and
- (b) Upon reasonable notice to all parties, which consists of prior notice of not less than five (5) days, unless agreed to otherwise by the parties.

(2) The hearing officer may convene the prehearing or status conference or order the affected state agency to convene the conference.

(3) A prehearing or status conference may be used to discuss jurisdictional matters, settlement possibilities, discovery, preparation of stipulations, clarification of issues, rulings on witnesses, taking of evidence, issuance of subpoenas, mediation, and other matters that will promote the orderly and prompt conduct of the hearing.

(4) The hearing officer and the parties shall set an agreed date for the hearing at the prehearing or status conference. If the hearing officer and parties cannot agree upon a hearing date, the hearing officer shall set the matter for hearing no later than six (6) months from the date of the conference, unless the parties have otherwise agreed to hold the claim in abeyance.

(5) Upon conclusion of the prehearing or status conference, the hearing officer shall issue an order including all matters determined at the prehearing or status conference.

(6) The hearing officer shall notify the board of the date and time for the hearing. The office shall:

- (a) Reserve a place within the proper venue to conduct the hearing;
- (b) Select a method by which to record the proceedings, which may include court reporter, audio recording, or audiovisual recording[a court reporter to be present at the hearing to record the proceedings]; and
- (c) Notify the parties and the court reporter, if applicable, of the date, time, and place of the hearing.

Section 9. Motion Practice.

(1) Any party may file a motion.

(2) Any party affected by a motion or pleading may file a response to the motion or pleading within twenty (20)[thirty (30)] days from the date on which the motion or pleading was served.

(3) A moving party may file a reply to another party's response. The reply shall be filed within ten (10)[fifteen (15)] days from the date the response was served. Other replies or responses shall not be filed[;] unless prior approval is granted by the board or hearing officer.

(4) If a response is not filed within twenty (20)[thirty (30)] days, the board or hearing officer shall issue an order on the motion within sixty (60) days of the date the response was due.

Section 10. Discovery.

(1) Discovery may be obtained without prior order of the board or hearing officer. Except to the extent the provisions of this Section differ, the Kentucky Rules of Civil Procedure (CR) governing depositions and discovery shall apply.

(2) In addition to the provisions of CR 26 addressing opinions and use of expert witnesses:

(a) Absent a stipulation between the parties or an order issued by the board providing otherwise, and at least ninety (90) days before the date set for the hearing, a party shall disclose to the other party or parties the identity of any witness qualified as an expert by knowledge, skill, experience, training, or education the party may use at the hearing to provide expert testimony; or

(b) If the evidence is intended solely to contradict or rebut evidence on the same subject matter of a witness identified by another party, within thirty (30) days after the other party's disclosure.

(3) The board or hearing officer may deny, limit, or require discovery.

(4) If a party fails to comply with an order regarding discovery, the board or hearing officer may order that the:

(a) Matters that the requesting party was seeking to establish through discovery shall be taken as having been established for the purposes of the hearing;

(b) Noncomplying party shall be prohibited from introducing related documents or testimony at the hearing;

(c) Claim be dismissed or relief be granted as requested by the opposing party;

(d) Claim be stayed until the order is obeyed; or

(e) Noncomplying party, the advising attorney, or both pay the reasonable costs, including attorney's fees, caused by the failure to comply.

(5) A response to discovery under subsection (1) of this section shall not be filed with the board unless required by order of the board or hearing officer.

Section 11. Briefs. A party shall file with the board ~~and~~ hearing officer any brief required by order of the board or hearing officer. The board or hearing officer may require a party to file a post-hearing brief or to supplement at any time a brief already filed to assist in adjudicating the hearing. A brief shall include the signature of the party, or the party's counsel.

Section 12. Summary Disposition. At any time after the commencement of the claim, a party may move for a summary disposition of the whole or a part of the claim by filing a motion that:

(1) Asserts that there are no disputed material facts as to one (1) or more of the issues before the board or hearing officer;

(2) Includes a statement specifying which material facts are undisputed. Assertions of a material undisputed fact or facts may be submitted to the board or hearing officer through affidavits or responses made by another party to any discovery request, including answers to interrogatories, admissions, and depositions. Facts stated in the claim, including exhibits, may be relied upon as undisputed material facts by the appellee; and

(3) States that any issue before the board or hearing officer for which summary disposition is sought is a matter of legal, and not factual, interpretation.

(4) Within twenty (20) days after a party moves for summary disposition, any other party may file a response presenting the party's position on issues of law and fact, which shall include any affidavit, written response to discovery requests, deposition testimony, or statements in the claim, demonstrating the party's assertion that a material fact or facts are disputed.

(5) If the nonmoving party files a response to the motion for summary disposition, the moving party shall have ten (10) days to file a reply to the response.

(6) The board or hearing officer may grant a motion for summary disposition in whole or in part. If the board or hearing officer grants a summary disposition as to one (1) or more issues, but not all issues, then the remaining issues shall be heard by the board or hearing officer in accordance with this administrative regulation and KRS Chapter 13B.

Section 13. Conduct of Hearing.

(1) Except as otherwise established in KRS Chapter 49, ~~the~~ administrative regulation, or an order from the board or hearing officer, the Kentucky Rules of Civil Procedure and the Kentucky Rules of Evidence apply to board proceedings. ~~[the conduct of hearings shall be governed by the procedures established in KRS Chapter 13B.]~~

(2) For purposes of discovery and motion practice, the Kentucky Rules of Civil Procedure shall apply to proceedings before the board.

(3) The board or hearing officer may, at its discretion, waive application of the Kentucky Rules of Evidence as justice so requires.

Section 14. Admission of Hearsay. Notwithstanding Section 13 of this administrative regulation, during a final hearing, the board or the hearing officer may admit hearsay evidence if it is the type that a reasonable and prudent person would rely upon in daily affairs. However, this evidence shall not be sufficient in itself to support the board or hearing officer's findings of fact unless it would be otherwise admissible over objections in a civil action.

Section 15. ~~[Section 14.]~~ Board Decision.

(1)

(a) Each contested claim requiring a hearing pursuant to KRS 49.090(2) shall be submitted to the board at its next meeting following the submission of the recommended order, except for Agreed Orders.

(b) The board shall issue its final order in accordance with KRS 49.080.

(c) The stated deadlines within which the board shall render a final order shall commence upon the last filing of any exceptions to the recommendation.

(2) The board, or a majority of its members, shall render a decision on each contested claim requiring a hearing pursuant to KRS 49.090(3) and each request for a full board review of a claim decided by an individual member.

(3) In rendering the final order, the board shall consider the record including the recommended order and any exceptions duly filed to the recommended order.

(4) The board may accept the recommended order of the hearing officer and adopt it as the final order of the board, or it may reject or modify, in whole or in part, the recommended order, or it may remand the matter, in whole or in part, to the hearing officer for further proceedings as appropriate.

(5) If the final order differs from the recommended order, it shall include separate statements of findings of fact and conclusions of law. The final order shall also include the date the board rendered the order, the date it was served on the parties, and to whom it was served, and a statement advising the parties fully of available appeal rights.

(6) Unless waived by the party, a copy of the final order shall be transmitted to each party or to his attorney of record.

(7) The matter shall be deemed finally adjudicated if:

(a) In a claim under \$2,500, no full board review has been requested; ~~or~~

(b) The claim has been the subject of full board review; or

(c) No judicial appeal has been filed.

Section 16. ~~[Section 15.]~~ Payment of Awards. Within thirty (30) days after an order of the Board of Claims making an award has become final, the agency making payment of the award shall furnish to the Board of Claims a copy of any check reflecting the payments.

Section 17. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Board of Claims claim form", January 2025;

(b) "Board of Claims subpoena form", January 2025; and,

(c) "Agency's Answer to the Claimant and Board of Claims form", January 2025.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Claims and Appeals, 500 Mero Street, 2 SC 1, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. and is available online at: https://kycc.ky.gov/Newstatic_info.aspx?static_id=160.

SAMUEL T. WRIGHT, III, Chairperson

JOHN HARDESTY, Executive Director

APPROVED BY AGENCY: January 14, 2025

FILED WITH LRC: January 15, 2025 at 10:32 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 am on March 27, 2025 in Room 247 CE of the Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Members of the public may attend the hearing in-person or via Microsoft Teams videoconferencing. Individuals interested in attending the public hearing virtually may access the hearing at: https://teams.microsoft.com/l/meetupjoin/19%3ameeting_ZmM3NGRiODYtYjBmYi00ZWE4LTg1OWQ0N2JjNjFkYzgzZjcw%40thread.v2/0?context=%7b%22Tid%22%3a%22d77c7f4d-d767-461f-b625-0628792e9e2a%22%2c%22Oid%22%3a%22636ef07a-f33f-4378-b8ae-79c6f05a1438%22%7d. The Meeting ID is: 237 908 005 529. The Passcode is: 48N9bQ2U. For phone access, please dial +1 502-632-6289, 867966031# and enter the following Phone Conference ID: 867 966 031#. Individuals interested in being heard at this hearing

shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 PM EST on March 31, 2025. Please 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: Shelby Bevins-Sullivan, Staff Attorney, 500 Mero Street, 2 SC 1, Frankfort, Kentucky 40601, Phone: (502) 782-3556. Fax: (502) 573-4817. Email: sbevinssullivan@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shelby Bevins-Sullivan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for filing a claim with the Board of Claims, shortens periods in which to file motions, incorporates by reference the claim form and subpoena form, updates statutory references, corrects grammatical errors, and adopts the Kentucky Rules of Civil Procedure and Kentucky Rules of Evidence for the purposes of discovery, use of evidence, and motion practice. It limits the use of hearsay evidence and permits, instead of requires, the Office of Claims and Appeals to hire court reporters for final hearings. It also removes references to the Kentucky Claims Commission, which was abolished in 2020.

(b) The necessity of this administrative regulation: The proposed amendments are necessary to provide clearer guidance to both claimants and practitioners regarding the Board of Claims' procedures and to update statutory and obsolete references. It also is necessary in order to incorporate by reference new forms for use by the agency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with KRS 12.080, which authorizes the Governor to prescribe general rules for the conduct of departments; and, KRS 49.020(7)(b) and KRS 49.010(4)(b), which authorize the promulgation of regulations to carry out the duties of the Board of Claims. KRS 49.020(7)(b) permits the Board of Claims to issue subpoenas. KRS 49.020(5) authorizes the Board of Claims to investigate, hear proof, and compensate persons for damages sustained as a result of negligence on the part of the Commonwealth, any of its cabinets, departments, bureaus, or agencies, and any of its officers, agents, or employees while acting within the scope of their employment by the Commonwealth or any of its agencies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendments will increase efficiency in having claims decided faster, promotes uniformity in timelines for motion practice, clarifies the admissibility of hearsay, adopts the Rules of Civil Procedure and Rules of Evidence for certain purposes, updates statutory references to comport with amendments to KRS 49.020 that were enacted since the regulations were promulgated, and reduces costs associated with hiring court reporters.

(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: See (1)(d).

(b) The necessity of the amendment to this administrative regulation: See (1)(b)

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Public Protection Cabinet, its Office of Administrative Hearings, the Office of Claims and Appeals, the Board

of Claims, all state cabinets, bureaus, and agencies, and any person or entity filing a claim with the Board of Claims and the Office of Claims and Appeals.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Office of Claims and Appeals and the Board of Claims will update all application forms, including its online portal, and its website. Other state cabinets and agencies and individuals and entities filing claims with the Board of Claims will need to familiarize themselves with the Board's new requirements and deadlines established in this amendment, in addition to the new forms incorporated by reference.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no expected expenditures because of this administrative regulation. Current staff will implement the provisions once promulgated. There should not be a significant cost to other affected individuals and entities to implement the amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Litigants will benefit from having shorter periods in which to file motions, responses, and replies, which will resolve claims faster by placing claims on the Board's monthly agendas sooner. Litigants will also benefit from having better guidance and uniformity on what actions, motions, and evidence can be presented to the Board. The Office of Claims and Appeals has a small portion of its budget dedicated to hiring court reporters. By permitting, instead of requiring, the Office of Claims and Appeals to hire a court reporter for final hearings, the Office will reduce said costs.

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

(a) Initially: None. Current staff and agency funds will provide implementation.

(b) On a continuing basis: None. The amendment likely will result in a small reduction of agency costs due to the reduced use of court reporters.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund appropriations will be used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted 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 49.010(4)(b), 49.020(7)(a), and 49.030-49.180.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The promulgating agency is the Office of Claims and Appeals. The amendment will affect the Public Protection Cabinet, Office of Claims and Appeals, the Board of Claims, and any state agency who is a party to a Board of Claims action.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: There will be minor cost savings for the Office of Claims and Appeals and other state agencies through not being required to hire court reporters for all administrative hearings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? See 2(a).

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None.

(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? See answer to (3)(a).

(4) Identify additional regulated entities not listed in questions (2) or (3): Individuals filing claims with the Kentucky Board of Claims

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None other than the cost of postage due to the ability to file claims through the online portal.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? See 4(a).

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This regulation will have a negligible fiscal impact. It may result in small cost savings for the Office of Claims and Appeals through eliminating the requirement to hire court reporters in all Board of Claims actions.

(b) Methodology and resources used to determine the fiscal impact: The agency estimates the fiscal impact using cost projections and calculations for expenditures under the existing regulation compared to this amendment.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) It will not have a negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion: See 5(b).

**PUBLIC PROTECTION CABINET
Office of Claims and Appeals
Crime Victims Compensation Board
(Amendment)**

802 KAR 3:010. Crime victims compensation.

RELATES TO: KRS[~~42.027,13B.100, 49.010, 49.020, 49.260 - 49.490, 216B.015, 216B.400~~, EO 2020-708]

STATUTORY AUTHORITY: KRS 49.010(4)(b), 49.020(7)(a), 49.300(1), 49.370(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: [~~Executive Order 2020-708 ("Order") requires that the Kentucky Claims Commission be abolished and the Office of Claims and Appeals be established to include the Crime Victims Compensation Board. The Order also sets forth the powers and duties of the Crime Victims Compensation Board and authorizes the board to promulgate regulations necessary to immediately carry out the provisions and purposes of the Order and the board's statutory authority.~~] KRS 49.020(1) and 49.300(1) authorize[authorizes] the Crime Victims Compensation Board to promulgate administrative regulations that are necessary to carry out the provisions of KRS 49.270 through 49.490. During the 2024 Regular Session, the General Assembly passed Senate Bill 319, which amended KRS 49.280, 49.310, 49.340 - 49.370, 49.400, and 216B.400. This administrative regulation establishes procedures for crime victims to file claims for compensation and further expounds on the requirements and provisions of the Crime Victims Compensation Board statutes.

Section 1. Definitions.[Definition.]

(1) "Board" means the Crime Victims Compensation Board.

(2) "Reckless" means a state of mind where the offender fails to perceive a substantial and unjustifiable risk that a particular result would occur.

(3) "Second Degree of Consanguinity" means individuals who are biologically related within two degrees to the victim, either ascending or descending.

(4) "Sexual Relationship" means a relationship in which the claimant and victim maintained a repeated and ongoing course of intimacy for an extended period.

(5) "Stepchild" means the biological or legally adopted offspring of the victim's legally-married spouse.

(6) "Stepparent" means the legal spouse of the victim's parent;

(7) "Stepsibling" means the biological or legally adopted offspring of the victim's stepparent.

(8) "Wanton" means a state of mind wherein the offender is aware of and consciously disregards a risk that a reasonable person in the same situation would not have disregarded.

Section 2. Claims Arising from Motor Vehicle Collisions. For purposes of a Crime Victims Compensation claim arising from injuries sustained in a vehicle accident, as established in KRS 49.280(3), the Board may find the vehicle operator acted recklessly or wantonly if:

(1) The vehicle operator is charged with or convicted of an offense related to the operation of the vehicle involving an element of recklessness or wantonness, including offenses under KRS 189A.010; or

(2) The vehicle operator was found to have, or admitted to having, operated a vehicle recklessly or wantonly in a criminal or civil action arising from the injury-causing incident.

Section 3. Eligible Claimants.

(1) The following individuals fall within the second degree of consanguinity:

(a) Parents of the victim;

(b) Children of the victim;

(c) Siblings and half-siblings of the victim;

(d) Grandparents of the victim; and

(e) Grandchildren of the victim.

(2) For purposes of KRS 49.310(1)(b), a surviving personal representative of the victim shall be a person appointed as the executor or administrator of the victim's estate by a competent court or a person legally authorized to act on the victim's behalf or on behalf of the victim's estate.

(3) To be eligible for an award due to maintaining a sexual relationship with the victim, the claimant shall demonstrate that:

(a) The claimant and victim engaged in consensual sexual intercourse more than once; and

(b) The sexual relationship was ongoing at the time the crime occurred.

(4) No more than two primary caregivers of the victim shall be eligible for an award pursuant to KRS 49.310(1)(e).

Section 4.[Section 2.] Filing Claims.

(1) A claim shall be:

(a) Legibly written, typed, or printed on the Crime Victims[Victim] Compensation Form;

(b) Signed by the claimant and the counsel representing the claimant, if any.

(2) A claim shall be filed by:

(a) In person or by private delivery to the Crime Victims Compensation Board, 500 Mero Street, 2 SC1, Frankfort, Kentucky 40601;

(b) [By] Mail to the address listed above; or

(c) [By] Electronic mail to crimevictims@ky.gov, if the document can be sent in one (1) electronic message.[:]

(d) Through the online claims portal at: <https://kycc.ky.gov/CVOnline/home>.

(3) If applying for lost wages or loss of support, a claim shall be supplemented by:

(a) A notarized Employment Verification form; and

(b) If requested by the Board staff:

1. A Physician Statement form; or

2. A Mental Health Counselor's Report form.

Section 5. Claim Tracking Portal.

(1) The tracking portal shall allow claimants to obtain status updates regarding their claim and progress of the claim's investigation.

VOLUME 51, NUMBER 8– February 1, 2025

(2) A claimant shall have access to the tracking portal within one (1) week of the filing of the claim.

(3) A claimant or victim's personally identifiable information shall remain secure and confidential. No information that may be used to determine whether an individual filed a claim with the Board shall be disclosed to unauthorized individuals.

Section 6. Timeframe for Processing Claims.

(1) A claim shall be considered filed on the date it is received by the Board either through the mail, personal delivery to the Board, the online claim portal, or the Board's official email.

(2) For claims filed after July 1, 2025, the claims investigator shall complete an investigative report on the claim within 120 days after it is assigned by the Board Clerk to the claims investigator.

(3) For claims filed after July 1, 2026, the claims investigator shall complete an investigative report on the claim within 90 days after it is assigned by the Board Clerk to the claims investigator.

Section 7. ~~Section 3.~~ Kentucky Medical Assistance Program.

(1) The Board shall cross-reference every claim with those claims that appear in the Kentucky Medical Assistance Program (KMAP) database maintained by the Cabinet for Health and Family Services.

(2) If a crime victim is covered by Medicare or Medicaid, the Board's staff will provide the Board a list of:

(a) All itemized medical charges for which the victim seeks compensation; and

(b) The victim's services covered by medical assistance as reported in KMAP.

(3) Upon making an award to a Medicaid-eligible crime victim, the Board shall not consider any medical bills submitted by or on behalf of the victim for any KMAP-covered services.

(4) If the Board makes an award to a victim who received medical assistance for a KMAP-covered service, the KMAP as final payor shall not be responsible for the payment of any portion of the claim awarded by the Board.

Section 8. Lump Sum Payments to Survivors of Sexual Abuse.

(1) For purposes of KRS 49.370(7), a claimant seeking an award under this provision shall submit the following:

(a) Proof the crime occurred more than ten (10) years prior to the date of filing of the claim;

(b) Proof that the sexual assault kit was collected;

(c) Proof of the collection date of the biological material;

(d) Proof the biological material went untested for an extended period; and

(e) Anecdotal proof of the damages incurred as a result of the crime.

(2) The victim shall not be required to provide proof of actual expenses incurred.

Section 9. Incarcerated and Confined Persons.

(1) Pursuant to KRS 49.330(4), a victim of criminally injurious conduct incarcerated in a correctional facility or confined in an institution maintained and operated by the Cabinet for Health and Family Services may apply for compensation upon release from the facility. This provision applies regardless if the criminally injurious conduct occurred during or prior to the individual's incarceration.

(2) A victim of criminally injurious conduct shall not apply for compensation during incarceration or confinement.

Section 10. Default Claims and Leave to Refile.

(1) If a claimant or victim fails to submit all required documentation within ninety (90) days of submitting the initial application, or within ninety (90) days after such a requirement is made by the Board, the claimant or victim shall be deemed in default.

(2) If the claimant or victim defaults on the claim, the Board may dismiss the claim with leave to refile.

(3) The claimant or victim may revive the claim by:

(a) Submitting a request to the Board Clerk via letter or email; and

(b) Providing copies of the previously required documents and information that were not submitted within the initial ninety-day (90) period; or

(c) Indicating to the Board Clerk that no such documents exist.

(4) The claimant or victim shall not be required to submit a new application or any documentation previously submitted to the Board.

Section 11. Appeals of Board Decisions.

(1) Following the issuance of a recommended order by a board member or the executive director, the claimant, victim, or offender shall have fifteen (15) days from the date the recommended order is served within which to file with the board exceptions to the recommended order.

(2) The claimant, victim, or offender shall have the right and opportunity to attend the board meeting at which the recommended order will be considered and shall have the opportunity to be heard prior to the Board issuing a final order on the matter.

(3) Pursuant to KRS 49.340(8), the claimant, victim, or offender aggrieved by a final order of the Board may appeal by filing a petition for judicial review in the county where the claim accrued or in Franklin Circuit Court, in accordance with KRS 13B.140.

Section 12. Decisions Based on Contributory Conduct.

(1) Denials, reductions, and reconsiderations of claims made pursuant to KRS 49.390(2) shall be based on a preponderance of the evidence. This standard of review also shall apply to the Board's analysis and deliberations regarding whether to apply contributory conduct in a claim under consideration. The Board shall consider the totality of the circumstances when assessing whether it is appropriate to consider contributory conduct to reduce or a deny a victim or claimant's claim.

(2) In denying, reconsidering, or reducing an award in accordance with KRS 49.390(2), the Board may consider the following:

(a) The victim's ability to have reasonably avoided the situation;

(b) The extent and nature of the victim's injuries;

(c) Exhibition or use of a deadly weapon;

(d) The proportionate responsibility between the victim and the alleged offender(s);

(e) The opinions and conclusions of law enforcement investigators assigned to the criminal case, if any;

(f) The legal opinions and conclusions from prosecutorial agencies regarding the presentation of criminal charges and assessment of affirmative defenses, if any;

(g) Whether there is a causal relationship between the victim's conduct and their injuries;

(h) Whether the results of the victim's conduct were reasonably foreseeable to the victim; and

(i) The degree of harm that occurred as a result of the criminally injurious conduct and whether future harm may occur if compensation is denied.

(3) Once the investigator completes his or her investigation and submits the investigation report to the assigned Board member, the Board member may review, among other available evidence, the opinions of law enforcement investigating officers and the prosecuting agency's assessment of evidence and application of affirmative defenses to determine whether there is a causal relationship between the criminally injurious conduct and the victim's conduct, and, if so, determine the proportionate responsibility of the victim and offender(s). Upon review, the Board member shall issue a recommended order, which shall include details regarding the assessment of contributory conduct, or remand the claim to the claims investigator if additional information is required to make a fully informed decision.

Section 13. Right to Counsel.

(1) A claimant shall have the right to retain counsel of their choosing.

(2) No counsel shall be appointed or provided by the Board to represent claimants.

VOLUME 51, NUMBER 8– February 1, 2025

Section 14.~~[Section 4.]~~ Attorney's Fees. If a claimant is represented by an attorney and the attorney so requests, the board, may, as a part of any award or by separate order subsequent to the award, allow a reasonable attorney's fee for the filing of a claim and any subsequent proceedings. Such~~[the]~~ fee shall not exceed fifteen (15) percent of the amount of the award, and shall be paid out of the award and not in addition to the award. No~~[An]~~ attorney, representing a claimant, shall not contract for or receive as a fee any sum larger than fifteen (15) percent of the amount of the award. Any fee contract in violation of this provision shall be void.

Section 15.~~[Section 5.]~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Crime Victim Compensation Form", January 2025.~~[August 2020.]~~

(b) "Employment Verification", August 2020;

(c) "Physician's~~[Physician]~~ Statement", August 2020;~~[and]~~

(d) "Mental Health Counselor's Report", August 2020;~~[and.]~~

(e) "Subpoena form", January 2025.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Claims and Appeals, 500 Mero Street~~[St]~~ 2SC1, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at https://kycc.ky.gov/newstatic_info.aspx?static_id=158.~~[http://cvcb.ky.gov/Pages/default.aspx.]~~

LANOLA PARSONS, Chairperson
JOHN HARDESTY, Executive Director

APPROVED BY AGENCY: January 14, 2025

FILED WITH LRC: January 15, 2025 at 10:32 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 am on March 27, 2025 in Room 247 CE of the Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Members of the public may attend the hearing in-person or via Microsoft Teams videoconferencing. Those interested in attending virtually may access the meeting with the following link: Individuals interested in attending the public hearing virtually may access the hearing at: https://teams.microsoft.com/l/meetupjoin/19%3ameeting_ZmM3NGRiODYtYjBmYi00ZWE4LTg1OWQ1N2JiNjFkYzgzZjcw%40thread.v2/0?context=%7b%22Tid%22%3a%22d77c7f4d-d767-461f-b625-0628792e9e2a%22%2c%22Oid%22%3a%22636ef07a-f33f-4378-b8ae-79c6f05a1438%22%7d. The Meeting ID is: 237 908 005 529. The Passcode is: 48N9bQ2U. For phone access, please dial +1 502-632-6289, 867966031# and enter the following Phone Conference ID: 867 966 031#. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 PM EST on March 31, 2024. Please 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: Shelby Bevins-Sullivan, Staff Attorney, 500 Mero Street, 2 SC 1, Frankfort, Kentucky 40601. Phone: (502) 782-3556. Fax: (502) 573-4817. Email: sbevinssullivan@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shelby Bevins-Sullivan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the procedures for crime victims wishing to file a claim for compensation. It also amends the Crime Victims Compensation Board application and newly incorporates by reference the Board's subpoena form.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 49.280, et seq., which was amended by Senate Bill 319 during the 2024 Regular Session.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with KRS 12.080, which authorizes the Governor to prescribe general rules for the conduct of departments; and, KRS 49.010(4)(b), 49.020(7)(a), and 49.300(1), which authorizes the promulgation of regulations to carry out the duties of the Office of Claims and Appeals and Crime Victims Compensation Board. KRS 49.020(7)(b) permits the Board to issue subpoenas. KRS 49.370(4) permits the Board to promulgate administrative regulations to establish guidelines for awards under that section.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulation establishes the eligibility criteria of claimants, clarification on how motor vehicle accidents constitute criminally injurious conduct, methods of filing a claim with the Board, process of refiling a claim after defaulting, requires the Board to enact a written policy regarding the evaluation of claims involving contributory conduct, and processing of claims involving the delayed testing of sexual assault kits.

(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: See (1)(d).

(b) The necessity of the amendment to this administrative regulation: See (1)(b)

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Public Protection Cabinet, the Office of Claims and Appeals, the Crime Victims Compensation Board, and any crime victim or individual filing a claim with the Crime Victims Compensation Board. The regulation also will affect victim advocates, law enforcement agencies, and victim service organizations that assist victims or family members of victims with filing Crime Victim Compensation claims.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Office of Claims and Appeals and the Crime Victims Compensation Board will update all application forms and its website to include the new and amended forms. Victims and victim service organizations and agencies will need to begin using the new claim form or online claim filing portal and familiarize themselves with the new procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Current staff will implement the provisions of this amendment once promulgated, but it is estimated to cost the Office of Claims and Appeals approximately \$650,000 to hire new staff to fully comply with the statutory changes enacted in Senate Bill 319 and handle the projected significant increase in claim volume, and an additional \$500,000-\$750,000 per year in additional claim payments. The amendment will not incur additional costs on victims or victim service organizations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): More types of individuals will be eligible for compensation that were previously ineligible; the online claim portal allows for easier filing and tracking the claim's progress, promoting greater transparency; and, claimants will be able to refile claims at any point instead of being barred from refiling for failing to provide all requested documents. The Office of Claims and Appeals will benefit from having more staff to handle increased claim volumes and will be better equipped to meet claimants' needs.

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

(a) Initially: Due to the projected increase in award payouts, the Crime Victims Compensation Board estimates that it will award an additional \$500,000-\$750,000 to claimants. Estimated costs for hiring new staff is \$650,000.

(b) On a continuing basis: See 5(a). Approximately \$500,000-\$750,000 per year in additional claim payments and \$650,000 per year for additional staff.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current agency budgetary funding, which consists of restricted funds, general funds, and federal Victims of Crime Act grant funds will be used to implement and enforce this administrative regulation. Likewise, cash transfers from the Department of Insurance may be used, if necessary.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted 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 13B.005 et seq., KRS 49.020(7)(a), KRS 49.300(1), 34 U.S.C. § 10101, 34 U.S.C. § 20101 – 20111, 34 U.S.C. § 20121 – 20131, 34 U.S.C. § 20134 – 20145, 28 C.F.R. § 94.101, et seq., and 66 Fed. Register 27158 (May 16, 2001).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Public Protection Cabinet, Office of Claims and Appeals. The Crime Victims Compensation Board is the promulgating agency.

(a) Estimate the following for the first year:

Expenditures: The administrative regulation should not directly create any additional expenses for any state agency after implementation. It only provides clarification on new eligibility criteria, updates the claim filing process, and incorporates by reference updated forms. The new regulation was promulgated in response to the passage of Senate Bill 319, which went into effect on July 15, 2024. Senate Bill 319 created new claim categories, created new classes of claimants, increased the overall maximum award available for each incident, and increased the maximum available awards in several categories of claims. It is therefore anticipated that the Board will receive a larger number of claims and there is therefore a need for the hiring of additional staff. It is estimated that the cost of additional staff hired will be approximately \$650,000. The cost of the additional award amounts will be \$500,000-\$750,000 annually.

Revenues: The administrative regulation should not create any additional revenues for any state or local government agency in the first year following implementation.

Cost Savings: In the first year following implementation, the administrative regulation should not result in any cost savings as it only provides clarification on new eligibility criteria, updates the claim filing process, and incorporates by reference updated forms.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The administrative regulation should not directly create any additional expenses for any state agency in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None.

(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? The administrative regulation should not create any additional expenditures, revenue, or cost savings in subsequent years for local entities.

(4) Identify additional regulated entities not listed in questions (2) or (3): Any person filing a claim with the Crime Victims Compensation Board and, indirectly, service providers who provide services that can be reimbursed by the board.

(a) Estimate the following for the first year:

Expenditures: N/A
Revenues: N/A
Cost Savings: N/A

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The administrative regulation should not create any additional expenditures, revenue, or cost savings in subsequent years for any entities.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: It is estimated that the Crime Victims Compensation Board will award an additional \$500,000-\$750,000 to claimants within the first year of the new statutory changes taking effect. Senate Bill 319 went into effect on July 15, 2024, increasing the overall maximum award the Board may award in a claim to \$50,000, the overall weekly award for lost earnings and loss of support to \$500.00, the overall funeral and burial expense award to \$10,000, and added new categories of expenses for which claimants may apply, such as replacement of windows and locks of the primary residence or business, rehabilitative and wellness practices, relocation and temporary housing, tattoo removal for victims of human trafficking, crime scene cleanup, among others. The Board expects that it will significantly increase payouts to claimants based on these new statutory changes. To hire new staff, it is estimated that it will cost approximately \$650,000. In total, it will cost approximately \$1,150,000 - \$1,400,000. It is important to note that the United States Department of Justice administers grants to crime victims compensation programs through the Victims of Crime Act ("VOCA"), 34 U.S. Code §20101, et seq., which reimburses state programs seventy-five percent (75%) of the amount programs pay out in state dollars for claims in a fiscal year. However, because of how the funding scheme operates, the Crime Victims Compensation Board does not receive the grant funds for two (2) years after the fiscal year concludes.

(b) Methodology and resources used to determine the fiscal impact: The number of additional employees which will be necessary to ensure efficient operation of the program and efficient processing of claims was determined by an analysis of the number of claims handled under the prior iteration of the statute by existing staff and an estimate of how many additional claims are expected to be filed due to the expansion of available claimants and the addition of additional claims categories which are expected to increase the number of claims filed with the Board appreciably.

(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) See 5(a). This regulation will not have an overall negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion: See 5(b).

**PUBLIC PROTECTION CABINET
Office of Claims and Appeals Kentucky Claims Commission
Crime Victims Compensation Board
(Amendment)**

802 KAR 3:020. Payment schedule for sexual assault examinations.

RELATES TO: KRS 49.020, 49.490, 216B.015, 216B.400, 403.707

STATUTORY AUTHORITY: KRS 49.010, 49.020, 49.300(1), 49.490, 216B.400(8), 216B.400(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 49.010(4)(b), 49.020(5), and 49.300(1) authorize[authorizes] the Crime Victims Compensation Board[commission] to promulgate administrative regulations to carry out the provisions and purposes of the Board[commission]. KRS 49.490 and 216B.400(8) require the Board[commission] to administer the sexual assault victim assistance fund and pay the cost of a sexual assault examination. This administrative regulation establishes the reimbursement schedule for performing a sexual assault forensic medical examination. The General Assembly passed Senate Bill 319 in its 2024 Regular Session, which amended KRS 216B.400 to expand the types of services for which hospitals and healthcare providers are prohibited from charging sexual assault victims, when the victims receive such services related to the sexual assault. Instead, KRS 216B.400 requires the Crime Victims Compensation Board, through its Sexual Assault Examination Program, to directly pay healthcare providers for such services at rates not exceeding the Medicaid reimbursement rate for the same or similar services. KRS 216B.400 requires the board to pay for such services at a rate to be determined by administrative regulations promulgated by the board after consultation with the Sexual Assault Response Team Advisory Committee.

Section 1. Sexual Assault Examination Program.

(1) Reimbursement for performing a sexual assault forensic-medical examination pursuant to 502 KAR 12:010 shall be for the actual amount billed and shall not exceed:

(a) The Medicaid reimbursement rate set by the Department for Medicaid Services on the date of filing[\$200] for a physician, sexual assault nurse examiner, or other qualified medical professional performing the examination;

(b) The Medicaid reimbursement rate set by the Department for Medicaid Services on the date of filing[\$250] for an examination facility for use of an emergency or examination room;

(c) The Medicaid reimbursement rate set by the Department for Medicaid Services on the date of filing[\$100] for an examination facility or laboratory that performed diagnostic laboratory testing; and

(d) The Medicaid reimbursement rate set by the Department for Medicaid Services on the date of filing[\$400] for an examination facility where administered medications and pharmaceuticals were prescribed as a result of the examination and as part of basic treatment.

(2) Reimbursement for additional services related to a sexual assault forensic-medical examination requiring HIV post-exposure prophylaxis shall be for the actual amount billed and shall not exceed [the following limitations]:

(a) The Medicaid reimbursement rate set by the Department for Medicaid Services on the date of filing[\$150] for three (3) follow-up examinations,~~[,] [not to exceed a total of fifty (50) dollars per examination];~~

(b) Laboratory testing:

1. The Medicaid reimbursement rate set by the Department for Medicaid Services on the date of filing[\$150] for initial testing conducted during the sexual assault examination in the examination facility; and

2. The Medicaid reimbursement rate set by the Department for Medicaid Services on the date of filing[\$215] for follow-up testing conducted during the three (3) follow-up examinations;~~[– not to exceed:]~~

~~[a.] [Fifty (50) dollars for testing conducted during day five (5) to day seven (7) of prophylactic treatment;]~~

~~[b.] [Ninety (90) dollars for testing conducted after day twelve (12) of prophylactic treatment; and]~~

~~[c.] [Seventy-five (75) dollars for testing conducted near or at the end of prophylactic treatment; and]~~

(c) Medications:

1. The Medicaid reimbursement rate set by the Department for Medicaid Services on the date of filing[\$800] for a twenty-eight (28) day supply of HIV prophylaxis medication~~[,] [not to exceed:]~~

~~[a.] [\$200 for the first seven (7) day supply; and]~~

~~[b.] [\$600 for the remaining twenty-one (21) day supply; and]~~

2. The Medicaid reimbursement rate set by the Department for Medicaid Services on the date of filing[Thirty (30) dollars] for a twenty-eight (28) day supply of anti-nausea medication; ~~and[.]~~

3. The Medicaid reimbursement rate set by the Department for Medicaid Services on the date of filing for all other forms of prophylactic or medically necessary medication administered as a result of the exam.

(d) Strangulation Assessments: The Medicaid reimbursement rate set by the Department for Medicaid Services on the date of filing for strangulation assessments for a physician, sexual assault nurse examiner, or other qualified medical professional performing the assessment.

(e) Other Tests and Services: The Medicaid reimbursement rate set by the Department for Medicaid Services on the date of filing for all other tests and services related to the assault, exam, or treatment performed on the date of the initial exam or within twelve (12) hours before or after the exam if treatment does not occur on calendar date of the exam.

(f) Children's Advocacy Centers: Exams performed by Children's Advocacy Centers, pursuant to 907 KAR 3:160, shall be reimbursed at a rate not to exceed the Medicaid reimbursement rate for such exams set by the Department for Medicaid Services on the date of filing.

Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "SAFE Exam/Treatment Billing Form", January 2025;

(b) "SAFE Evidentiary Report", January 2025;

(c) "Comprehensive Child Sexual Assault Medical Exam/Treatment Billing Form", January 2025;

(d) "HIV Post-Exposure Exam/Treatment Voucher", January 2025;

(e) "HIV Post-Exposure Initial Exam/Treatment Billing Form", January 2025;

(f) "HIV Post-Exposure First Follow-Up Exam/Treatment Billing Form", January 2025;

(g) "HIV Post-Exposure Second Follow-Up Exam/Treatment Billing Form," January 2025;

(h) "HIV Post-Exposure Third Follow-Up Exam/Treatment Billing Form," January 2025.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Claims and Appeals, 500 Mero St 2SC1, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at: https://kycc.ky.gov/Newstatic_info.aspx?static_id=159.

LANOLA PARSONS, Chairperson

JOHN HARDESTY, Executive Director

APPROVED BY AGENCY: January 14, 2025

FILED WITH LRC: January 15, 2025 at 10:32 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 27, 2025 in Conference Room 247 CE at the Mayo-Underwood Building located at 500 Mero Street, Frankfort, Kentucky 40601. The hearing shall be conducted both in-person and virtually via Microsoft Teams videoconferencing. Individuals interested in attending the public hearing virtually may access the hearing at: https://teams.microsoft.com/l/meetupjoin/19%3ameeting_ZmM3NGRiODYtYjBmYi00ZWELTg1OWQ0tN2JjNjFkYzgzZjcw%40thread.v2/0?context=%7b%22Tid%22%3a%22d77c7f4d-d767-461f-b625-0628792e9e2a%22%2c%22Oid%22%3a%22636ef07a-f33f-4378-b8ae-79c6f05a1438%22%7d. The Meeting ID is: 237 908 005 529. The Passcode is: 48N9bQ2U. For phone access, please dial +1 502-632-6289, 867966031# and enter the following Phone Conference ID: 867 966 031#. Individuals interested in attending this hearing shall notify this agency in writing 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed

administrative regulation. Written comments regarding this proposed administrative regulation will be accepted if received on or before 11:59 PM on March 31, 2025. Please send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Shelby Bevins-Sullivan, Staff Attorney, 500 Mero Street, 2 SC 1, Frankfort, Kentucky 40601. Phone: (502) 782-3556. Fax: (502) 573-4817. Email: sbevinssullivan@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shelby Bevins-Sullivan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement schedule for performing a sexual assault forensic medical examination, along with other services related to the sexual assault that are performed on the same date, or within twelve (12) hours, of the sexual assault exam. This regulation also incorporates by reference the following forms: (1) SAFE Exam/Treatment Billing Form; (2) SAFE Evidentiary Report; (3) Comprehensive Child Sexual Assault Medical Exam/Treatment Billing Form; (4) HIV Post-Exposure Exam/Treatment Voucher; (5) HIV Post-Exposure Initial Exam/Treatment Billing Form; (6) HIV Post-Exposure First Follow-Up Exam/Treatment Billing Form; (7) HIV Post-Exposure Second Follow-Up Exam/Treatment Billing Form; and, (8) HIV Post-Exposure Third Follow-Up Exam/Treatment Billing Form.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.400, which was amended by Senate Bill 319 during the 2024 Regular Session.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with KRS 12.080, which authorizes the Governor to prescribe general rules for the conduct of departments; and KRS 49.020(7)(a) and KRS 49.300(1), which authorize the promulgation of regulations to carry out the duties of the Crime Victims Compensation Board and the Sexual Assault Examination Program. KRS 216B.400(8)(a) requires the Crime Victims Compensation Board to pay healthcare providers for sexual assault examinations and related services they perform at a rate to be determined by the administrative regulations of the board after consultation with the Sexual Assault Response Team Advisory Committee. The same section requires the board to pay for such services at a rate not to exceed the Medicaid reimbursement rate for the same or similar services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendments establish the payment schedule for sexual assault examinations, strangulation assessments, prophylactic medical treatment, and any other service or test related to the sexual assault performed on the same date, or within twelve (12) hours, of the sexual assault exam. It will streamline the fee schedule, as the majority of services will be paid at the current Medicaid reimbursement rate.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendments will set payment amounts for the covered treatments, exams, and services to be paid at the Medicaid reimbursement rate on the date of filing.

(b) The necessity of the amendment to this administrative regulation: See 1(b).

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c).

(d) How the amendment will assist in the effective administration of the statutes: See 1(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Public Protection Cabinet, the Office of Claims and Appeals, the Crime Victims Compensation Board, victims of sexual assault, hospitals, and healthcare providers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Sexual Assault Examination Program will need to process claims that fall under KRS 216B.400(9) at the Medicaid reimbursement rate. The program also will have to make internal changes to process the new types of claims enacted under Senate Bill 319. Hospitals and other service providers will need to complete and submit the appropriate forms and supporting documentation that demonstrate the provider is eligible for reimbursement, and they will need to train relevant staff on the new types of services for which sexual assault victims cannot be billed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Crime Victims Compensation Board will pay up to \$2 million annually in additional award amounts due to the changes in Senate Bill 319 and this regulation. It will also cost approximately \$100,000 to hire new staff to administer the changes to the program from Senate Bill 319 and this regulation. It is difficult to assess the cost to healthcare providers to comply with this regulation. The cost will be minimal and will entail training staff and reworking internal systems to account for the new reimbursement amounts and ensure victims are not directly billed for qualifying services.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Hospitals and other service providers will be compensated up to the Medicaid reimbursement rate for eligible services, treatments, and tests performed when conducting sexual assault examinations, which will more fully compensate providers for such services than the prior, outdated reimbursement rates included in this regulation. Sexual assault victims will not be charged for a greater range of services, treatments, and tests, preventing further traumatization and harm to victims associated with financial burden.

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

(a) Initially: It is estimated that the Sexual Assault Examination Program will award up to \$2 million in additional awards to service providers due to the statutory changes enacted by Senate Bill 319, requiring eligible services to be reimbursed at the Medicaid reimbursement rate and greatly expanding the types of services and treatments that cannot be billed to victims. The new expenses include: (1) strangulation assessments; (2) prophylactic treatments; and (3) any other test, treatment, or service related to the sexual assault that was performed on the same date of the sexual assault exam. Hiring new staff is estimated to cost approximately \$100,000 to handle the anticipated significantly higher claim volume.

(b) On a continuing basis: Up to \$2 million annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current agency budgetary funding will be used to implement and enforce this administrative regulation, which consists of general, restricted, and federal fund appropriations. In addition, the Office of Claims and Appeals may receive cash transfers from the Department of Insurance, if needed.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted 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 49.020(7)(a), 49.300(1), 49.490, 216B.400, Victims of Crime Act ("VOCA"), 34 U.S. Code § 20101, et seq.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Public Protection Cabinet, Office of Claims and Appeals, Crime Victims Compensation Board, Sexual

Assault Examination Program is the promulgating agency. The Kentucky Cabinet for Health and Family Services, the Kentucky Justice and Public Safety Cabinet, and the Kentucky Sexual Assault Response Team Advisory Committee will be impacted by this administrative regulation.

(a) Estimate the following for the first year:

Expenditures: Approximately \$2 million in awards and \$100,000 for hiring new staff.

Revenues: This regulation is not projected to generate any revenue.

Cost Savings: Not applicable.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? It is difficult to ascertain how much the Sexual Assault Examination Program ("SAEP") will pay in subsequent years because Senate Bill 319 greatly expanded the types of expenses covered under the program. However, the SAEP estimates it will pay \$2 million in awards for the first year.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This proposed regulation will not affect local governmental entities.

(a) Estimate the following for the first year:

Expenditures: N/A.

Revenues: N/A.

Cost Savings: N/A.

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

(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: \$2 million in awards, \$100,000 for hiring additional staff.

(b) Methodology and resources used to determine the fiscal impact: The amount the SAEP pays out in a fiscal year depends on how many claims are filed during the fiscal year. Due to the expansions enacted in Senate Bill 319, the SAEP estimates paying \$2 million in awards during its first year and incurring \$100,000 in costs associated with hiring additional staff. Additionally, it is important to note that the United States Department of Justice administers grants to crime victims compensation programs through the Victims of Crime Act ("VOCA"), 34 U.S. Code § 20101, et seq., which reimburses state programs seventy-five percent (75%) of the amount programs pay out in state dollars for claims in a fiscal year. However, because of how the funding scheme operates, the Crime Victims Compensation Board does not receive the grant funds for two (2) years after the fiscal year ends.

(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 SAEP is projected to pay \$2 million in awards for sexual assault examination fees and associated treatment costs.

(b) The methodology and resources used to reach this conclusion: See (5)(b).

**PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Amendment)**

804 KAR 4:212. In-State Distilled Spirits Supplier License.

RELATES TO: KRS 243.030(35)

STATUTORY AUTHORITY: KRS 241.060; KRS 243.030(35)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060 authorizes the board to promulgate reasonable administrative regulations governing procedures relative to the applications for and revocations of licenses, and the supervision and control of the use, manufacture, sale, transportation, storage, advertising, and

trafficking of alcoholic beverages. KRS 243.030(35) authorizes the board to promulgate administrative regulations to provide for special licenses that the board finds necessary for the proper regulation and control of the traffic in distilled spirits and wine. This administrative regulation provides for the creation of an in-state distilled spirits supplier license to regulate the traffic in distilled spirits by resident owners and suppliers of distilled spirits brands.

Section 1. Definition. "In-state distilled spirits supplier" means a resident brand owner and supplier of distilled spirits products who does not operate a distillery, but through other legal means creates distilled spirits products to sell under its own brand name.

Section 2. License.

(1) An in-state distilled spirits supplier license shall authorize the licensee to:

(a) Sell distilled spirits under brands that the licensee owns, for which the licensee is the primary source of supply, or in which the licensee has an exclusive interest, at wholesale to wholesalers in the Commonwealth; and

(b) Advertise distilled spirits brands that the licensee is authorized to sell in accordance with KRS 244.130.

(2) An in-state distilled spirits supplier license shall not authorize the licensee to purchase, transport, store, or possess distilled spirits for the purposes of sale.

Section 3. Qualifications.

(1) To qualify for an in-state distilled spirits supplier license, the applicant shall:

(a) Reside in Kentucky;

(b) Be the owner, the primary source of supply, or have an exclusive interest in a particular brand of distilled spirits;

(c) Obtain a federal wholesaler's basic permit;

(d) Register with the Kentucky Department of Revenue; and

(e) Comply with all federal and state laws and regulations.

(2) An applicant that wishes to sell 50,000 or more gallons of distilled spirits shall:

(a) Complete the New License Application pursuant to 804 KAR 4:400 for an in-state distilled spirits supplier license via the department's Online portal at <https://abcportal.ky.gov/BELLEExternal>; and [Online In-State Distilled Spirits Supplier License Application for an in-state distilled spirits supplier license via the department's Online Portal at: <https://abc-portal.ky.gov/s/> following the Kentucky Alcoholic Beverage Control Licensing Portal Applicant/Licensee User Guide (Request or Apply) that depicts the application process through the department's online portal; and]

(b) Pay an annual fee equal to the amount of the fee for the out-of-state distilled spirits and wine supplier's license under KRS 243.030(30).

(3) An applicant that wishes to sell less than 50,000 gallons of distilled spirits shall:

(a) Complete the New License Application pursuant to 804 KAR 4:400 for a limited in-state distilled spirits supplier license via the department's Online portal at: <https://abcportal.ky.gov/BELLEExternal>[Complete the Online In-State Distilled Spirits Supplier License Application for a limited in-state distilled spirits supplier license via the department's Online Portal at: <https://abc-portal.ky.gov/s/> following the Kentucky Alcoholic Beverage Control Licensing Portal Applicant/Licensee User Guide (Request or Apply) that depicts the application process through the department's online portal; and]

(b) Pay an annual fee equal to the amount of the fee for the limited out-of-state distilled spirits and wine supplier's license under KRS 243.030(31).

Section 4. Prohibited substantial interests. An in-state distilled spirits supplier license applicant and in-state distilled spirits supplier licensee shall comply with 804 KAR 4:015 and for that purpose shall be considered a "manufacturer" as defined in 804 KAR 4:015.

Section 5. Brand Registration. In accordance with 804 KAR 4:410 and KRS 244.440, an in-state distilled spirits supplier licensee

VOLUME 51, NUMBER 8– February 1, 2025

shall register with the department all brands the licensee intends to sell in Kentucky.

Section 6. Taxes. An in-state distilled spirits supplier licensee shall pay all applicable taxes for the sales of its products.

Section 7. Direct Shipper Licenses. This administrative regulation shall not be interpreted to relate to direct shipper licenses.

~~[Section 8.] [Incorporation by Reference.]~~

~~[(1)] [The following material is incorporated by reference:]~~

~~[(a)] ["Online In-State Distilled Spirits Supplier License Application", December 2024; and]~~

~~[(b)] ["Kentucky Alcoholic Beverage Control Licensing Portal Applicant/Licensee User Guide (Request or Apply)", September 2021, depicting the application process through the department's online portal.]~~

~~[(2)] [This material may be inspected, copied, or obtained, subject to applicable copyright law, at Department of Alcoholic Beverage Control, 500 Mero Street, 2 NE 33, Frankfort, Kentucky] [40601, 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://abc.ky.gov/newstatic_info.aspx?static_ID=652.]~~

ALLYSON C TAYLOR, Commissioner

RAY PERRY, Secretary

APPROVED BY AGENCY: December 13, 2024

FILED WITH LRC: December 20, 2024 at 2:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 25, 2025, at 9:00 a.m. EST, at 500 Mero Street, Room 127CW, 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 March 31, 2025. 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: Joshua Newton, General Counsel, Department of Alcoholic Beverage Control, 500 Mero Street, 2 NE #226, Frankfort, Kentucky 40601, Phone: (502) 782-0770, Fax: (502) 564-4850, email Joshua.Newton@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joshua Newton

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation outlines the form to be used to apply for an in-state supplier license.

(b) The necessity of this administrative regulation: This regulation is necessary to guide members of the alcohol industry to the appropriate form to apply for an in-state supplier license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 243.030(35) authorizes the board to promulgate administrative regulations to provide for special licenses that the board finds necessary for the proper regulation and control of the traffic in distilled spirits and wine. This administrative regulation provides for the creation of an in-state distilled spirits supplier license to regulate the traffic in distilled spirits by resident owners and suppliers of distilled spirits brands.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The agency has the duty to provide the public with the opportunity to apply for alcohol licenses. This regulation points them to the appropriate form to apply for or renew an in-state supplier license.

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

(a) How the amendment will change this existing administrative regulation: The amendment outlines the in-state supplier license form accessible on the agency's online licensing portal.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the regulation to incorporate the agency's online in-state supplier license application form.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment reflects the updated forms to accomplish this statutory mandate.

(d) How the amendment will assist in the effective administration of the statutes: KRS 243.030(35) authorizes the board to promulgate administrative regulations to provide for special licenses that the board finds necessary for the proper regulation and control of the traffic in distilled spirits and wine. This administrative regulation provides for the creation of an in-state distilled spirits supplier license to regulate the traffic in distilled spirits by resident owners and suppliers of distilled spirits brands.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 39 non-distilling producers who hold an in-state supplier license. These businesses use the online portal to apply for and receive licenses to operate.

(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 alcohol producers listed will continue to apply online for initial and renewed in-state supplier licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are fees for licenses but there is no fee to access or utilize the online portal. There will be no new cost or expense to the applicants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By allowing online license application and renewal, these non-distilling producers have realized a positive impact in that the licenses are issued in a much quicker and streamlined process than paper forms and mail. This amendment merely updates and formally codifies the online applications and the licensing portal.

(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 agency as the licensing portal is built in-house.

(b) On a continuing basis: There are no additional continuing costs to the agency as the licensing portal is built in-house.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The agency utilizes licensing fees to meet its licensing and enforcement obligations.

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

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

(9) TIERING: Is tiering applied? There is no tiering applied as this amendment is simply to update forms used online for licensing applications and renewals.

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 241.060(1) authorizes the board to promulgate reasonable regulations involving licensing, and KRS 13A.110 provides a statutory mandate that forms for license applications be promulgated.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Department of Alcoholic Beverage Control.

(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 is to update forms incorporated by reference and will result in no changes to expenditures, revenues, or costs.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Local ABC administrators have access to the online portal for local approvals and denials. This amendment will not affect these 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? This amendment updates materials incorporated by reference and does not affect expenditures, revenues, or costs.

(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: 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 fiscal impact related to this amendment.

(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) This amendment, incorporating the online forms used to apply for and renew in-state supplier licenses, has no negative or adverse impact.

(b) The methodology and resources used to reach this conclusion: These forms make applying for and renewing licenses easier and faster while costing the applicant nothing to utilize them.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Amendment)

804 KAR 4:251. Special temporary licenses.

RELATES TO: KRS 243.260

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate reasonable administrative regulations governing procedures relative to applications for licensure. KRS 243.260 provides for the issuance of a special temporary license in wet territory to any regularly organized fair, exposition, racing association, or other party, when, in the opinion of the board a necessity for the license exists. This administrative regulation establishes application procedures and requirements for special temporary licenses.

Section 1. Definition. "Organized civic or community-sponsored event" means a public gathering of broad appeal where citizens are invited and encouraged to attend without significant cost of admission that is sponsored or acknowledged by the city or county government in which the event is conducted, including any convention, conference, celebration, pageant, parade, festival, fair, public display, commemoration, or other type of public assemblage conducted for the benefit and enjoyment of the general public.

Section 2. An applicant for a special temporary license pursuant to KRS 243.260 shall complete the ~~[online application process and submit their Online Special-]Temporary License Application electronically in accordance with 804 KAR 4:400 via[at] the department's Online[Kentucky Alcoholic Beverage Control] portal[:https://abeportal.ky.gov/BELLEExternal]. The applicant shall~~

complete and submit their application no later than five (5) working days prior to the date for which the license is requested.

Section 3. An applicant for a special temporary license pursuant to KRS 243.260 shall provide supplemental information as the ~~administrator[board] shall deem[find] necessary for proper review of the application.~~

Section 4. For purposes of the issuance of special temporary licenses pursuant to KRS 243.260, "necessity," in the opinion of the board, shall limit applicants to:

(1) A regularly organized fair, exposition, racing association, nonprofit organization, or political campaign function; or

(2) A for-profit individual, corporation, or organization if the license will be used in conjunction with an organized civic or community-sponsored event.

Section 5. For-profit individual, corporate, or organizational applicants for a temporary license in conjunction with an organized civic or community-sponsored event shall submit written or documentary evidence of the civic nature of the event, including promotional materials or news articles evidencing the local government's knowledge of, and support for, the event for which the applicant seeks a temporary license.

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

~~[(1)] ["Online Special Temporary License Application", February 2024, is incorporated by reference.]~~

~~[(2)] [This material may be inspected, copied, or obtained, subject to applicable copyright law, at Department of Alcoholic Beverage Control, 500 Mero Street, 2 NE 33, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.]~~

RAY PERRY, Secretary

ALLYSON C TAYLOR, Commissioner

APPROVED BY AGENCY: December 13, 2024

FILED WITH LRC: December 20, 2024 at 2:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 25, 2025, at 9:00 a.m. EST, at 500 Mero Street, Room 127CW, 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 March 31, 2025. 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: Joshua Newton, General Counsel, Department of Alcoholic Beverage Control Address: 500 Mero Street, 2 NE #226, Frankfort, Kentucky 40601, phone (502) 782-0770, fax (502) 564-4850, email Joshua.Newton@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joshua Newton

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation outlines the form to be used to apply for special temporary licenses.

(b) The necessity of this administrative regulation: This regulation is necessary to guide industry members and the public to the forms to apply for a special temporary license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board to promulgate reasonable administrative regulations governing procedures relative to applications for licensure. KRS 243.260 provides for the issuance of a special temporary license. This administrative regulation establishes application procedures and requirements for special temporary licenses.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The agency has

the duty to provide the public with the opportunity to apply for alcohol licenses. This regulation points them to the appropriate form to apply for a special temporary license.

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

(a) How the amendment will change this existing administrative regulation: The amendment outlines the special temporary license form accessible on the agency's online licensing portal.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the regulation to incorporate the agency's online special temporary license application form.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment reflects the updated forms to accomplish this statutory mandate.

(d) How the amendment will assist in the effective administration of the statutes: KRS 241.060(1) authorizes the board to promulgate reasonable administrative regulations governing procedures relative to applications for licensure. KRS 243.260 provides for the issuance of a special temporary license. This amendment updates the online form to apply for a special temporary license.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Entities across the state apply for special temporary licenses for all types of civic and charitable events. While it is not possible to determine an exact number, any organization, community, or business wishing to serve, sell, auction, or otherwise incorporate alcohol into their event will likely need a special temporary license.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed will continue to apply online for special temporary licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are fees for licenses but there is no fee to access or utilize the online portal. There will be no new cost or expense to the applicants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By allowing online license application these entities applying for special temporary licenses have realized a positive impact in that the licenses are issued in a much quicker and streamlined process than paper forms and mail. This amendment merely updates and formally codifies the online applications and the licensing portal.

(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 agency as the licensing portal is built in-house.

(b) On a continuing basis: There are no additional continuing costs to the agency as the licensing portal is built in-house.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The agency utilizes licensing fees to meet its licensing and enforcement obligations.

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

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

(9) TIERING: Is tiering applied? There is no tiering applied as this amendment is simply to update forms used online to apply for the special temporary license.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 241.060(1) authorizes the board to promulgate reasonable regulations involving licensing, and KRS 13A.110 provides a statutory mandate that forms for license applications be promulgated.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Department of Alcoholic Beverage Control.

(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 is to update forms incorporated by reference and will result in no changes to expenditures, revenues, or costs.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Local ABC administrators have access to the online portal for local approvals and denials. The change in the forms online will not affect these 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? This amendment updates materials incorporated by reference and does not affect expenditures, revenues, or costs.

(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: 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 fiscal impact related to this amendment.

(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) This amendment, incorporating the online forms used to apply for special temporary licenses, has no negative or adverse impact.

(b) The methodology and resources used to reach this conclusion: These forms make applying for and renewing licenses easier and faster while costing the applicant nothing to utilize them.

**PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Amendment)**

804 KAR 4:400. Applications incorporated by reference.

RELATES TO: KRS 241.060(1), 243.090, 243.380, 243.390, 243.630

STATUTORY AUTHORITY: KRS 241.060(1), 243.380, 243.390, 243.630

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate administrative regulations regarding matters over which the board has jurisdiction, including applications for licenses. KRS 243.380(2) and 243.390 require the board to promulgate an administrative regulation to establish the form of license applications. KRS 243.630(5) and (6) require licensees to apply in writing for department approval of the transfer of a license or a licensed business to a different premises or for the transfer of ten (10) percent or more ownership interest to

VOLUME 51, NUMBER 8– February 1, 2025

a new person or entity. This administrative regulation prescribes the form of license applications utilized by the department.

Section 1. Definition. "Online portal" means the department's online licensing management portal located at <https://abcportal.ky.gov/BELLEExternal>.

Section 2. Online Application for Alcoholic Beverage License.

(1) ~~[Except as established in Section 3 of this administrative regulation;]~~ An applicant for an alcoholic beverage license shall complete the New License Application~~[online application process and submit it electronically]~~ at the online portal~~[Online eServices Portal: <https://dppweb.ky.gov/eservices/>]~~.

(2) To renew a license pursuant to KRS 243.090 and 804 KAR 4:390, a licensee shall complete the License Renewal Application~~[online renewal application process and submit it electronically]~~ at the online portal~~[Online License Renewal Portal-KYBOS: <http://abc.ky.gov/Licensing/Pages/default.aspx>]~~.

Section 3.~~[Section 2.]~~ Transfer of Ownership Interest Application.

(1) A buyer seeking to acquire, or a licensee seeking to transfer ten (10) percent or more ownership interest in a licensed business shall complete ~~[and submit]~~ the Transfer of Ownership ~~[Interest]~~ Application at the online portal~~[for]~~~~[ownership interest transfers between legally recognized entities, where the licensee will remain]~~~~[the same]~~.

(2) Although a licensee is not required to file an application for ownership interest transfers of less than ten (10) percent, a licensee shall notify the department in writing of all ownership interest transfers of less than ten (10) percent of the licensed business at the online portal.

~~[Section 3.]~~ Written Application for Alcoholic Beverage License. If ~~unable to complete an online~~ application, an applicant shall complete and submit the appropriate application for the license type~~]~~~~[listed in subsections (1) to (8) in this section:]~~

- ~~[(1)]~~ Basic License Application;
- ~~[(2)]~~ License Renewal Application;
- ~~[(3)]~~ Transporter's License Application;
- ~~[(4)]~~ Out-of-State Supplier License Application;
- ~~[(5)]~~ Special Agent's or Solicitor's License Application;
- ~~[(6)]~~ Special Temporary License Application;
- ~~[(7)]~~ Additional License(s) Application; or
- ~~[(8)]~~ Transfer of Ownership Interest Application.

Section 4. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "New License Application" November 2024~~["Basic License Application", June 2017;]~~
- (b) "License Renewal Application", November 2024~~[June 2017;]~~
- (c) "Add Company" forms package~~[Transporter's License Application]", November 2024~~~~[June]~~~~[2017;]~~
- (d) "Affidavit~~[Out-of-State Supplier License Application]", November 2024~~~~[June 2017;]~~
- (e) "Instructions~~[Special Agent's or Solicitor's License Application]", November 2024~~~~[June 2017;]~~
- (f) "~~[Special]~~Temporary License Application", November 2024~~[June 2017;]~~
- (g) "Additional License~~[License(s)] Application", November 2024~~[June 2017;]~~~~
- (h) "Transfer of Ownership~~[Interest]~~Application", November 2024~~[June 2017; and]~~
- (i) "License Types List~~[Online eServices Portal]", November 2024~~[June]~~~~[2017; and]~~~~
- (j) "Online License Renewal Portal-KYBOS", June 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Alcoholic Beverage Control, 500 Mero St 2NE33, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site, <http://www.abc.ky.gov/>.

ALLYSON C TAYLOR, Commissioner

RAY PERRY, Secretary

APPROVED BY AGENCY: December 13, 2024

FILED WITH LRC: December 20, 2024 at 2:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 25, 2025, at 9:00 a.m. EST, at 500 Mero Street, Room 127CW, 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 March 31, 2025. 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: Joshua Newton, Title: General Counsel, Department of Alcoholic Beverage Control Address: 500 Mero Street, 2 NE #226, Frankfort, Kentucky 40601, Phone: (502) 782-0770, Fax: (502) 564-4850, Email: Joshua.Newton@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joshua Newton

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation outlines the forms to be used to apply for multiple types of alcohol licenses.

(b) The necessity of this administrative regulation: This regulation is necessary to guide members of the alcohol industry to the appropriate forms to apply for alcohol licenses or renew current licenses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 243.380(2) and 243.390 require the board to promulgate an administrative regulation to establish the form of license applications. KRS 243.630(5) and (6) require licensees to apply in writing for department approval of the transfer of a license or a licensed business to a different premises or for the transfer of ten (10) percent or more ownership interest to a new person or entity. This administrative regulation prescribes the form of license applications utilized by the department.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The agency has the duty to provide the public with the opportunity to apply for alcohol licenses. This regulation points them to the appropriate form for certain license types.

(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 outlines the forms accessible on the agency's online licensing portal.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the regulation to incorporate the agency's online application forms.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 243.380(2) and 243.390 require the board to promulgate an administrative regulation to establish the form of license applications. This amendment reflects the updated forms to accomplish this statutory mandate.

(d) How the amendment will assist in the effective administration of the statutes: KRS 243.380(2) and 243.390 require the board to promulgate an administrative regulation to establish the form of license applications. This amendment reflects the updated forms to accomplish this statutory mandate.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently over 18,000 entities licensed in Kentucky to traffic in alcohol. This includes producers, wholesalers and distributors, and retailers. These businesses use the online portal to apply for and receive licenses to operate.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity listed will continue to apply online for initial and renewed alcohol licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are fees for licenses but there is no fee to access or utilize the online portal. There will be no new cost or expense to the applicants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By allowing online license application and renewal, the entities in the alcohol industry have realized a positive impact in that the licenses are issued in a much quicker and streamlined process than paper forms and mail. This amendment merely updates and formally codifies the online applications and the licensing portal.

(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 agency as the licensing portal is built in-house.

(b) On a continuing basis: There are no additional continuing costs to the agency as the licensing portal is built in-house.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The agency utilizes licensing fees to meet its licensing and enforcement obligations.

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

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

(9) TIERING: Is tiering applied? There is no tiering applied as this amendment is simply to update forms used online for licensing applications and renewals.

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 241.060(1) authorizes the board to promulgate reasonable regulations involving licensing, and KRS 13A.110 provides a statutory mandate that forms for license applications be promulgated.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Department of Alcoholic Beverage Control.

(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 is to update forms incorporated by reference and will result in no changes to expenditures, revenues, or costs.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): Local ABC administrators have access to the online portal for local approvals and denials. This amendment will not affect these 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? This amendment updates materials incorporated by reference and does not affect expenditures, revenues, or costs.

(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: 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 fiscal impact related to this amendment.

(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) This amendment, incorporating the online forms used to apply for licenses and renew current licenses, has no negative or adverse impact.

(b) The methodology and resources used to reach this conclusion: These forms make applying for and renewing licenses easier and faster while costing the applicant nothing to utilize them.

PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control (Amendment)

804 KAR 4:410. Product registration and forms.

RELATES TO: KRS 13A.110, 241.060(1), 243.380, 243.390
STATUTORY AUTHORITY: KRS 241.060(1), 243.380,
243.390, 244.440, 244.585

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate administrative regulations regarding matters over which the board has jurisdiction.

Section 1. Product Registration. Licensees required to register product brands and flavors shall use the Online Product Registration Portal to complete the online registration process at: <https://www.productregistrationonline.com/GetStarted/Ky#selectPermit>.

Section 2. Forms. A person shall complete and submit the following additional forms as needed or requested by the department:

- (1) Dormancy Request Form;
- (2) Non-Transfer Affidavit Form; and
- (3) [~~Credit/Debit Payment Form;~~]
- [(4)] Refund Request Form[;]
- [(5)] [~~Law Book Order Form;~~]
- [(6)] [~~Speaker Request Form;~~]
- [(7)] [~~Minors on Premises Request Form;~~ and]
- [(8)] [~~Private Event Request Form~~].

Section 3. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "Online Product Registration Portal", June 2017;
- (b) "Dormancy Request Form", November 2024[~~June 2017~~];
- (c) "Non-Transfer Affidavit Form", June 2017; and
- [(d)] [~~"Credit/Debit Payment Form", June 2017;~~]
- [(e)] [~~"Refund Request Form", November 2024~~][~~June 2017~~];
- [(f)] [~~"Law Book Order Form", June 2017;~~]
- [(g)] [~~"Speaker Request Form", June 2017;~~]
- [(h)] [~~"Minors on Premises Request Form", June 2017;~~ and]
- [(i)] [~~"Private Event Request Form", June 2017~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Alcoholic Beverage Control, 500 Mero St 2NE33, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site: <http://www.abc.ky.gov>.

ALLYSON C TAYLOR, Commissioner
RAY PERRY, Secretary

APPROVED BY AGENCY: December 13, 2024

FILED WITH LRC: December 20, 2024 at 2:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 25,

VOLUME 51, NUMBER 8— February 1, 2025

2025, at 9:00 a.m. EST, at 500 Mero Street, Room 127CW, 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 March 31, 2025. 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: Joshua Newton, Title: General Counsel, Department of Alcoholic Beverage Control Address: 500 Mero Street, 2 NE #226, Frankfort, KY 40601, Phone: (502) 782-0770, Fax: (502) 564-4850, Email: Joshua.Newton@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joshua Newton Phone: 502-782-0770

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation outlines the forms to be used to register product brands and flavors.

(b) The necessity of this administrative regulation: This regulation is necessary to guide members of the alcohol industry to the appropriate forms to register product brands and flavors.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 244.440 and KRS 244.585 require producers and importers to register product brands and flavors before offered for sale in the state. KRS 13A.110 provides that the board shall include, in regulation, all forms which the department requires to be completed and filed. This administrative regulation prescribes product registrations and forms utilized by the department.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The agency has the duty to provide producers and importers the means necessary to register brands and flavors before offering them for sale in the state. This regulation points them to the appropriate form to comply with this requirement.

(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 outlines the brand registration forms accessible on the agency's website.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the regulation to incorporate the required brand registration forms.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment reflects the updated forms to accomplish this statutory mandate.

(d) How the amendment will assist in the effective administration of the statutes: KRS 244.440 and KRS 244.585 require producers and importers to register product brands and flavors before offered for sale in the state. KRS 13A.110 provides that the board shall include, in regulation, all forms which the department requires to be completed and filed. This administrative regulation prescribes product registrations and forms utilized by the department.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently over 220,000 brands registered in Kentucky. These brands are registered by businesses through use of the online portal.

(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 alcohol producers listed will continue to register their brands online.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs or expenses associated with brand registration.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By providing online brand registration, these entities have realized a positive impact in that brands are registered in a much quicker and streamlined process than paper forms and mail. This amendment merely updates and formally codifies the online registration process.

(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 agency for the brand registration site.

(b) On a continuing basis: There are no additional continuing costs to the agency.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The agency utilizes licensing fees to meet its licensing and enforcement obligations.

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

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

(9) TIERING: Is tiering applied? There is no tiering applied as this amendment is simply to update forms used online for licensing applications and renewals.

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 241.060(1) authorizes the board to promulgate reasonable regulations involving licensing, and KRS 13A.110 provides a statutory mandate that forms for license applications be promulgated.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Department of Alcoholic Beverage Control.

(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 is to update forms incorporated by reference and will result in no changes to expenditures, revenues, or costs.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): The change in the forms online 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? This amendment updates materials incorporated by reference and does not affect expenditures, revenues, or costs.

(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: 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 fiscal impact related to this amendment.

(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) This amendment,

incorporating the online forms used to apply for and renew direct-to-consumer shipping licenses, has no negative or adverse impact.

(b) The methodology and resources used to reach this conclusion: These forms make applying for and renewing licenses easier and faster while costing the applicant nothing to utilize them.

**PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(Amendment)**

804 KAR 4:415. Direct shipper license.

RELATES TO: KRS 243.027, 241.060(1)[243.028, 243.029]]

STATUTORY AUTHORITY: KRS 241.060, 243.027

NECESSITY, FUNCTION, AND CONFORMITY: KRS 243.027(4) requires the Department of Alcoholic Beverage Control to set forth [the requirements and] the form for a direct shipper license application. In relation to the direct shipper license, KRS 241.060(1) authorizes the Department only to promulgate an administrative regulation to establish the license application. This administrative regulation establishes the direct shipper license application.

Section 1. Qualifications. To qualify for a direct shipper license, the applicant shall:

(1) Hold a current license, permit, or other authorization to manufacture alcoholic beverages in the state where it is located or a current license in this state under KRS 243.212 or 243.215 to supply alcoholic beverages;

(2) ~~Submit to the department their~~[Provide a] current license, permit, or other authorization to manufacture, store, or supply alcoholic beverages in the state where the applicant is located via the department's online portal at <https://abcportal.ky.gov/BELLEExternal>;

(3) Complete the online New[direct shipper] License Application via the department's online[licensing] portal at <https://abcportal.ky.gov/BELLEExternal>;

(4) [Provide the address of the applicant's premises; and]

[5] Pay the annual license fee established in KRS 243.030(33).

Section 2. Incorporation by Reference.

(1) "Online Direct Shipper License Application", October 2021, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Department of Alcoholic Beverage Control, 500 Mero Street, 2 NE 33, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

ALLYSON C. TAYLOR, Commissioner

RAY PERRY, Secretary

APPROVED BY AGENCY: December 13, 2024

FILED WITH LRC: December 20, 2024 at 2:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 25, 2025, at 9:00 a.m. EST, at 500 Mero Street, Room 127CW, 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 March 31, 2025. 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: Joshua Newton, Title: General Counsel, Department of Alcoholic Beverage Control Address: 500 Mero Street, 2 NE #226, Frankfort, KY 40601, Phone: (502) 782-0770, Fax: (502) 564-4850, Email: Joshua.Newton@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joshua Newton

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation outlines the forms to be used to apply for a direct-to-consumer shipping license.

(b) The necessity of this administrative regulation: This regulation is necessary to guide members of the alcohol industry to the appropriate form to apply for a direct-to-consumer shipping license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 243.027 requires the Department of Alcoholic Beverage Control to set forth a form for a direct-to-consumer shipper license application.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The agency has the duty to provide the public with the opportunity to apply for alcohol licenses. This regulation points them to the appropriate form to apply for or renew a direct-to-consumer shipping license.

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

(a) How the amendment will change this existing administrative regulation: The amendment outlines the direct-to-consumer shipping form accessible on the agency's online licensing portal.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the regulation to incorporate the agency's online direct- to-consumer shipping application form.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment reflects the updated forms to accomplish this statutory mandate.

(d) How the amendment will assist in the effective administration of the statutes: KRS 243.027 requires the Department of Alcoholic Beverage Control to set forth a form for a direct-to-consumer shipping license application.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently over 880 entities licensed to ship alcohol into or out of Kentucky. This includes both in state and out of state producers. These businesses use the online portal to apply for and receive licenses to ship alcohol directly to consumers.

(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 alcohol producers listed will continue to apply online for initial and renewed direct- to-consumer alcohol shipping licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are fees for licenses but there is no fee to access or utilize the online portal. There will be no new cost or expense to the applicants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By allowing online license application and renewal, the producers who want to ship alcohol into or out of Kentucky have realized a positive impact in that the licenses are issued in a much quicker and streamlined process than paper forms and mail. This amendment merely updates and formally codifies the online applications and the licensing portal.

(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 agency as the licensing portal is built in-house.

(b) On a continuing basis: There are no additional continuing costs to the agency as the licensing portal is built in-house.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The agency utilizes licensing fees to meet its licensing and enforcement obligations.

VOLUME 51, NUMBER 8— February 1, 2025

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

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

(9) TIERING: Is tiering applied? There is no tiering applied as this amendment is simply to update forms used online for licensing applications and renewals.

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 241.060(1) authorizes the board to promulgate reasonable regulations involving licensing, and KRS 13A.110 provides a statutory mandate that forms for license applications be promulgated.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Kentucky Department of Alcoholic Beverage Control.

(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 is to update forms incorporated by reference and will result in no changes to expenditures, revenues, or costs.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): These entities will not be affected by this 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? This amendment updates materials incorporated by reference and does not affect expenditures, revenues, or costs.

(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: 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 fiscal impact related to this amendment.

(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) This amendment, incorporating the online forms used to apply for and renew direct-to-consumer shipping licenses, has no negative or adverse impact.

(b) The methodology and resources used to reach this conclusion: These forms make applying for and renewing licenses easier and faster while costing the applicant nothing to utilize them.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Health Care Policy (Amendment)

907 KAR 1:039. Hearing Program reimbursement provisions and requirements.

RELATES TO: KRS 205.520, 334.010, 334.040, 334.200, 334A.020(5), 42 C.F.R. 440.110, 447.200, 204

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement provisions and requirements for covered audiology services, hearing instruments, and related items provided to a Medicaid recipient who is not enrolled with a managed care organization.

Section 1. Definitions.

(1) "Audiologist" is defined by KRS 334A.020(2) [(5)].

(2) "CPT code" means a code used for reporting procedures and services performed by medical practitioners and published annually by the American Medical Association in Current Procedural Terminology.

(3) "Department" means the Department for Medicaid Services or its designee.

(4) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(5) "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 time.

(6) "Kentucky Medicaid Audiology Fee Schedule" means a list, located at <https://chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>, that:

(a) Contains the current reimbursement rates for audiology services established by the department in accordance with 907 KAR 1:038 and this administrative regulation; and

(b) Is updated at least annually to coincide with the quarterly updates made by the Centers for Medicare and Medicaid Services as required by 42 U.S.C. 1395m and 1395w-4 and 42 C.F.R. Part 414 ["Hearing instrument" is defined by KRS 334.010(4)].

(7) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(8) "Medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(9) "Participating audiologist" means an audiologist who:

(a) Is enrolled in the Medicaid Program pursuant to 907 KAR 1:672;

(b) Is currently participating in the Medicaid Program pursuant to 907 KAR 1:671; and

(c) Meets the audiologist requirements established in 907 KAR 1:038.

(10) "Participating specialist in hearing instruments" means a specialist in hearing instruments who:

(a) Is enrolled in the Medicaid Program pursuant to 907 KAR 1:672;

(b) Is currently participating in the Medicaid Program pursuant to 907 KAR 1:671; and

(c) Meets the specialist in hearing instruments requirements established in 907 KAR 1:038.

(11) "Recipient" is defined by KRS 205.8451(9).

(12) "Specialist in hearing instruments" is defined by KRS 334.010(11) [(9)].

(13) "Usual and customary charge" means the uniform amount that a provider bills to the general public for a specific covered benefit.

Section 2. General Reimbursement Requirements.

(1) For the department to reimburse for a service or item, the requirements of 907 KAR 1:038, Section 2, shall be met.

(2) The department shall not reimburse for:

(a) A service with a CPT code that is not listed on the Kentucky Medicaid Audiology [Department for Medicaid Services - Hearing Program] Fee Schedule as available at: <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>; or

VOLUME 51, NUMBER 8– February 1, 2025

(b) An item with an HCPCS code that is not listed on the Kentucky Medicaid Audiology [Department for Medicaid Services Hearing Program] Fee Schedule as available at: <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx>.

Section 3. Audiology Service Reimbursement. The department shall reimburse a participating audiologist for an audiology service at the lesser of the:

- (1) Audiologist's usual and customary charge for the service; or
- (2) Reimbursement established on the Kentucky Medicaid Audiology [Department for Medicaid Services Hearing Program] Fee Schedule as available at: <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx> for the service.

Section 4. Hearing Instrument Reimbursement.

(1) The department shall reimburse a participating specialist in hearing instruments or participating audiologist for a hearing instrument at the lesser of the:

(a) Provider's usual and customary charge for the hearing instrument; or

(b) Reimbursement established on the Kentucky Medicaid Audiology [Department for Medicaid Services Hearing Program] Fee Schedule as available at: <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx> for the hearing instrument.

(2) A hearing examination of a recipient by a physician and a recommendation for a hearing instrument for the recipient by an audiologist shall:

(a) Be required for the department to cover a hearing instrument; and

(b) Occur prior to the fitting of a hearing instrument.

(3)

(a) Except for an ear mold, an invoice for a hearing instrument, related supply, or accessory shall be submitted with the corresponding claim:

1. To the department; and

2. By the participating audiologist or participating specialist in hearing instruments who supplied the hearing instrument, related supply, or accessory.

(b) The department shall not require a participating audiologist or participating specialist in hearing instruments to submit an invoice for an ear mold.

Section 5. Ear Mold Reimbursement.

(1) The department shall reimburse a participating audiologist or participating specialist in hearing instruments for an ear mold at the lesser of the:

(a) Provider's usual and customary charge for the ear mold; or

(b) Reimbursement established on the Kentucky Medicaid Audiology [Department for Medicaid Services Hearing Program] Fee Schedule as available at: <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx> for the ear mold.

(2) The department shall limit reimbursement for an ear mold as consistent with the Kentucky Medicaid Audiology Fee Schedule, in conjunction with an ear examination, to:

~~[(a)] [One (1) ear mold per six (6) month period for a child aged three (3) years or under; or]~~

~~[(b)] [One (1) ear mold per twelve (12) month period for a child who is at least four (4) years of age.]~~

Section 6. Reimbursement for Hearing Instrument Batteries.

(1) The department shall reimburse a participating audiologist or participating specialist in hearing instruments for a hearing instrument battery at the lesser of the:

(a) Provider's usual and customary charge for the hearing instrument battery; or

(b) Reimbursement established on the Kentucky Medicaid Audiology [Department for Medicaid Services Hearing Program] Fee Schedule as available at: <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx> for the hearing instrument battery.

(2)

~~[(a)] The department shall reimburse [s reimbursement] for hearing instrument batteries [shall be limited to fifty-two (52) batteries per hearing instrument] [when dispensed with a:]~~

~~[(a)] [New hearing instrument; or]~~

~~[(b)] [Replacement hearing instrument].~~

[(b)] The department's reimbursement for hearing instrument batteries shall be consistent with manufacturer's recommendations and at regular intervals as necessary to ensure optimal functioning of the hearing instrument.

Section 7. Replacement Cord Reimbursement. The department shall reimburse a participating audiologist or participating specialist in hearing instruments for a replacement cord at the lesser of the:

(1) Provider's usual and customary charge for the replacement cord; or

(2) Reimbursement established on the Kentucky Medicaid Audiology [Department for Medicaid Services Hearing Program] Fee Schedule as available at: <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx> for the replacement cord.

Section 8. Hearing Instrument Repair Reimbursement. The department shall reimburse a participating audiologist or participating specialist in hearing instruments for hearing instrument repair at the lesser of the:

(1) Provider's usual and customary charge for the hearing instrument repair; or

(2) Reimbursement established on the Kentucky Medicaid Audiology [Department for Medicaid Services Hearing Program] Fee Schedule as available at: <https://www.chfs.ky.gov/agencies/dms/Pages/feesrates.aspx> for the hearing instrument repair.

Section 9. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse the same amount as established in this administrative regulation for a service or item covered pursuant to 907 KAR 1:038 and this administrative regulation.

Section 10. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

Section 11. Appeals. A provider may appeal a department decision as to the application of this administrative regulation in accordance with 907 KAR 1:671.

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

~~[(1)] [The "Department for Medicaid Services Hearing Program Fee Schedule", December 2013, 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, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. or online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.]~~

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 2, 2025

FILED WITH LRC: January 3, 2025 at 1:25 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 24, 2025, 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 March 17, 2025, 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 March 31, 2025. 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 or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement provisions and requirements for covered audiology services, hearing instruments, and related items provided to a Medicaid recipient who is not enrolled with a managed care organization.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the reimbursement provisions and requirements for covered audiology services, hearing instruments, and related items provided to a Medicaid recipient who is not enrolled with a managed care organization.

(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 reimbursement provisions and requirements for covered audiology services, hearing instruments, and related items provided to a Medicaid recipient who is not enrolled with a managed care organization.

(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 reimbursement provisions and requirements for covered audiology services, hearing instruments, and related items provided to a Medicaid recipient who is not enrolled with a managed care organization.

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

(a) How the amendment will change this existing administrative regulation: This amendment removes the annual limit to the number of hearing aid battery replacements that can be reimbursed by Medicaid. The amendment also updates the name of the relevant fee schedule to the "Kentucky Medicaid Audiology Fee Schedule".

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide Medicaid recipient access to reimbursement for hearing aid battery replacements.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by establishing the reimbursement provision for hearing instruments and related items provided to a Medicaid recipient.

(d) How the amendment will assist in the effective administration of the statutes: This amendment conforms to the content of authorizing statutes by establishing the reimbursement provision for hearing instruments and related items provided to a Medicaid recipient.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 219 providers registered as audiologists within the Kentucky 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: None.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): N/A, this amendment does not require additional action by the provider.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Providers will be able to receive reimbursement for additional battery replacements for certain devices.

(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? 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 194A.030(2), 194A.050(1), 205.520(3)

(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): DMS does not expect that local entities will be impacted by this regulation.

(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): Audiologists enrolled in the Medicaid program

(a) Estimate the following for the first year:

Expenditures: n/a The Department does not anticipate additional expenditures for regulated entities.

Revenues: n/a The Department does not anticipate additional revenues for regulated entities.

Cost Savings: The Department does not anticipate cost savings for the providers who are billing.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? DMS does not expect expenditures, revenues, or cost savings for other entities as a result of this regulation.

(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 contained in the administrative regulation allow for providers to more easily treat and manage the care of Medicaid recipients. Providers will be able to request reimbursement for additional products already used within the practice of audiology.

(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 contained in the administrative regulation allow for providers to request additional reimbursement.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. 440.110

(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. 440.110 establishes requirements for audiology services and establishes who may serve as a qualified audiologist.

(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 Medicaid Services Division of Fiscal Management (Amendment)

907 KAR 1:595. Model Waiver II service coverage and reimbursement policies and requirements.

RELATES TO: KRS 205.8451(9), 314.011, 314A.010(3)(a), 42 C.F.R. 400.203, 42 C.F.R. 440.70, 440.185, 42 U.S.C. 1396, 42 U.S.C. 1396n(c)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1315

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, to qualify for federal Medicaid funds. This administrative regulation establishes the service coverage and reimbursement policies and requirements relating to Model Waiver II services provided to a Medicaid-eligible recipient. These services are provided pursuant to a 1915(c) home and community based waiver granted by the U. S. Department for Health and Human Services in accordance with 42 U.S.C. 1396n(c).

Section 1. Definitions.

(1) "1915(c) home and community based waiver program" means a Kentucky Medicaid program established pursuant to and in accordance with 42 U.S.C. 1396n(c).

(2) "Department" means the Department for Medicaid Services or its designee.

(3) "Federal financial participation" is defined in 42 C.F.R. 400.203.

(4) "Home health agency" means an agency that is:

(a) Licensed in accordance with 902 KAR 20:081;

(b) Medicare certified; and

(c) Medicaid certified.

(5) "Licensed practical nurse (LPN)" is defined by KRS 314.011(9).

(6) "Model Waiver II services" means 1915(c) home and community based waiver program in-home ventilator services provided to a Medicaid-eligible recipient who:

(a) Is dependent on a ventilator; and

(b) Would otherwise require a nursing facility level of care in a hospital based nursing facility that will accept a recipient who is dependent on a ventilator.

(7) "MWMA" means the Kentucky Medicaid Waiver Management Application internet portal located at <https://www.chfs.ky.gov/agencies/dms/dca/Pages/mwma.aspx> (<http://chfs.ky.gov/dms/mwma.htm>).

(8) "Participant" means a recipient who qualifies for and is receiving Model Waiver II services in accordance with Section 2 of this administrative regulation.

(9) "Person-centered service plan" means a written individualized plan of services.

(10) "Private duty nursing agency" means a facility licensed to provide private duty nursing services:

(a) By the Cabinet for Health and Family Services, Office of Inspector General; and

(b) Pursuant to 902 KAR 20:370.

(11) "Recipient" is defined by KRS 205.8451(9).

(12) "Registered nurse (RN)" is defined by KRS 314.011(5).

(13) "Registered respiratory therapist (RT)" is defined by KRS 314A.010(3)(a).

(14) "Ventilator" means a respiration stimulating mechanism.

(15) "Ventilator dependent" means the condition or state of an individual who:

(a) Requires the aid of a ventilator for respiratory function; and

(b) Meets the high intensity nursing facility patient status criteria established in 907 KAR 1:022.

Section 2. Participant Eligibility and Related Policies.

(1)

(a) To be eligible to receive Model Waiver II services, an individual shall:

1. Be eligible for Medicaid pursuant to 907 KAR 20:010;

2. Require ventilator support for at least twelve (12) hours per day; and

3. Meet ventilator dependent patient status requirements established in 907 KAR 1:022.

(b) In addition to the individual meeting the requirements established in paragraph (a) of this subsection:

1. The individual or a representative on behalf of the individual shall:

a. Apply for 1915(c) home and community based waiver services via the MWMA;

b. Complete and upload into the MWMA a MAP - 115 Application Intake - Participant Authorization; and

c. Complete and upload into the MWMA a MAP - 116 Service Plan – Participant Authorization prior to or at the time the person-centered service plan is uploaded into the MWMA; and

2. A registered nurse on behalf of the individual applying for services shall:

a. Complete and upload into the MWMA:

(i) A MAP 350, Long Term Care Facilities and Home and Community Based Program Certification Form;

(ii) A person-centered service plan; and

(iii) A MAP-351A, Medicaid Waiver Assessment; and

b. Upload a MAP-10, Waiver Services – Physician's Recommendation, which shall be signed and dated by a physician.

(c) An individual's eligibility for Model Waiver II services shall begin upon receiving notification of approval from the department.

(2) For an individual to remain eligible for Model Waiver II services:

(a) The individual shall:

1. Maintain Medicaid eligibility requirements established in 907 KAR 20:010; and

2. Remain ventilator dependent pursuant to 907 KAR 1:022;

VOLUME 51, NUMBER 8– February 1, 2025

(b) A Model Waiver II level of care determination confirming that the individual qualifies shall be performed and submitted to the department every six (6) months; and

(c) A MAP-10[;] Waiver Services – Physician's Recommendation shall be:

1. Signed and dated by a physician every sixty (60) days on behalf of the individual; and

2. Uploaded into the MWMA after being signed and dated in accordance with subparagraph 1 of this paragraph, every sixty (60) days.

(3) A Model Waiver II service shall not be provided to a recipient who is:

(a) Receiving a service in another 1915(c) home and community based waiver program; or

(b) An inpatient of:

1. A nursing facility;

2. An intermediate care facility for individuals with an intellectual disability; or

3. Another facility.

(4) The department shall not authorize a Model Waiver II service unless it has ensured that:

(a) Ventilator dependent status has been met; and

(b) The service:

1. Is available to the recipient;

2. Will meet the need of the recipient; and

3. Does not exceed the cost of traditional institutional ventilator care.

Section 3. Provider Participation Requirements. To participate in the Model Waiver II program, a:

(1) Home health agency shall:

(a) Be a currently participating Medicaid provider in accordance with 907 KAR 1:671;

(b) Be currently enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and

(c) Meet the home and community based waiver service provider requirements established in:

1. 907 KAR 1:160; or

2. 907 KAR 7:010; or

(2) Private duty nursing agency shall:

(a) Be a currently participating Medicaid provider in accordance with 907 KAR 1:671;

(b) Be currently enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and

(c) Be a licensed private duty nursing agency in accordance with 902 KAR 20:370.

Section 4. Covered Services.

(1) The following shall be covered Model Waiver II services:

(a) Skilled nursing provided by:

1. A registered nurse; or

2. A licensed practical nurse; or

(b) Respiratory therapy.

(2) Model Waiver II services shall be provided by an individual employed by or under contract through a private duty nursing agency or home health agency as a:

(a) Registered nurse;

(b) Licensed practical nurse; or

(c) Registered respiratory therapist.

Section 5. Payment for Services. The department shall reimburse a participating home health agency or private duty nursing agency for the provision of covered Model Waiver II services as established in this section.

(1) Reimbursement shall be as established by the following table:

<u>Service</u>	<u>Unit</u>	<u>Base Rate</u> <u>Effective January</u> <u>1, 2025</u>
<u>Skilled Services by an LPN</u>	<u>15-minutes</u>	<u>\$11.58</u>
<u>Skilled Services by an RN</u>	<u>15-minutes</u>	<u>\$15.99</u>

<u>Skilled Services by an RN</u> <u>or LPN</u>	<u>15-minutes</u>	<u>\$15.99</u>
<u>Skilled Services by an RT</u>	<u>15-minutes</u>	<u>\$13.36</u>

~~(2) [based on a fixed fee for a unit of service provided for each covered service referenced in Section 4 of this administrative regulation with one (1) hour equal to one (1) unit of service.]~~

~~[(2)] [The fixed fee for skilled nursing services provided by:]~~

~~[(a)] [A registered nurse shall be thirty-one (31) dollars and ninety-eight (98) cents for each unit of service;]~~

~~[(b)] [A licensed practical nurse shall be twenty-nine (29) dollars and ten (10) cents for each unit of service; and]~~

~~[(c)] [A registered respiratory therapist shall be twenty-seven (27) dollars and forty-two (42) cents for each unit of service.]~~

~~[(3)] [Reimbursement shall not exceed sixteen (16) units of service per day.]~~

~~[(4)] Payment shall not be made for a service to an individual for whom it can reasonably be expected that the cost of the 1915(c) home and community based waiver program service furnished under this administrative regulation would exceed the cost of the service if provided in a hospital-based nursing facility.~~

Section 6. Maintenance of Records.

(1) A Model Waiver II service provider shall maintain:

(a) A clinical record for each participant, which shall contain:

1. Pertinent medical, nursing, and social history;

2. A person-centered service plan;

3. A copy of the MAP 350, Long Term Care Facilities and Home and Community Based Program Certification Form, signed by the participant or the participant's legal representative at the time of application or reapplication and each recertification thereafter;

4. Documentation of all level of care determinations;

5. All documentation related to prior authorizations including requests, approvals, and denials;

6. Documentation that the participant or legal representative was informed of the procedure for reporting complaints; and

7. Documentation of each service provided that shall include:

a. The date the service was provided;

b. The duration of the service;

c. The arrival and departure time of the provider, excluding travel time, if the service was provided at the participant's home;

d. Progress notes, which shall include documentation of changes, responses, and treatments utilized to evaluate the participant's needs; and

e. The signature of the service provider;

(b) Each MAP-10[;] Waiver Services – Physician's Recommendation submitted regarding the participant in accordance with Section 2 of this administrative regulation; and

(c) Incident reports as required by Section 7 of this administrative regulation if an incident with the participant occurs.

(2)

(a) Except as provided in paragraph (b) of this subsection, a clinical record or incident report shall be retained for at least six (6) years from the date that a covered service is provided.

(b) If the participant is a minor, a clinical record or incident report shall be retained for three (3) years after the participant reaches the age of majority under state law, if that is a longer time period than the time period required by paragraph (a) of this subsection.

(3) Upon request, a provider shall make information regarding service and financial records available to the:

(a) Department;

(b) Cabinet for Health and Family Services, Office of Inspector General or its designee;

(c) United States Department for Health and Human Services or its designee;

(d) General Accounting Office or its designee;

(e) Office of the Auditor of Public Accounts or its designee; or

(f) Office of the Attorney General or its designee.

Section 7. Incident Reporting.

(1)

(a) There shall be two (2) classes of incidents.

VOLUME 51, NUMBER 8— February 1, 2025

- (b) The following shall be the two (2) classes of incidents:
1. An incident; or
 2. A critical incident.
- (2) An incident shall be any occurrence that impacts the health, safety, welfare, or lifestyle choice of a participant and includes:
- (a) A minor injury;
 - (b) A medication error without a serious outcome; or
 - (c) A behavior or situation that is not a critical incident.
- (3) A critical incident shall be an alleged, suspected, or actual occurrence of an incident that:
- (a) Can reasonably be expected to result in harm to a participant; and
 - (b) Shall include:
 1. Abuse, neglect, or exploitation;
 2. A serious medication error;
 3. Death;
 4. A homicidal or suicidal ideation;
 5. A missing person; or
 6. Other action or event that the provider determines may result in harm to the participant.
- (4)
- (a) If an incident occurs, the Model Waiver II provider shall:
 1. Report the incident by making an entry into the MWMA that includes details regarding the incident; and
 2. Be immediately assessed for potential abuse, neglect, or exploitation.
 - (b) If an assessment of an incident indicates that the potential for abuse, neglect, or exploitation exists:
 1. The incident shall immediately be considered a critical incident;
 2. The critical incident procedures established in subsection (5) of this section shall be followed; and
 3. The Model Waiver II provider shall report the incident to the participant's registered nurse and participant's guardian, if the participant has a guardian, within twenty-four (24) hours of discovery of the incident.
- (5) If a critical incident occurs, the:
- (a) Individual who witnessed the critical incident or discovered the critical incident shall immediately:
 1. Act to ensure the health, safety, and welfare of the at-risk participant; and
 2. Report the critical incident by making an entry in the MWMA portal including details of the incident; and
 - (b) Model Waiver II provider shall:
 1. Conduct an immediate investigation and involve the participant's registered nurse in the investigation; and
 2. Prepare a report of the investigation, which shall be recorded in the MWMA portal and shall include:
 - a. Identifying information of the participant involved in the critical incident and the person reporting the critical incident;
 - b. Details of the critical incident; and
 - c. Relevant participant information including:
 - (i) A listing of recent medical concerns;
 - (ii) An analysis of causal factors; and
 - (iii) Recommendations for preventing future occurrences.
- (6) If a critical incident does not require reporting of abuse, neglect, or exploitation, the critical incident shall be reported via the MWMA within eight (8) hours of discovery.
- (7) If a death of a participant occurs, a Model Waiver II provider shall submit to the MWMA mortality data documentation within fourteen (14) days of the death including:
- (a) The participant's person-centered service plan at the time of death;
 - (b) Any current assessment forms regarding the participant;
 - (c) The participant's medication administration records from all service sites for the past three (3) months along with a copy of each prescription;
 - (d) Progress notes regarding the participant from all service elements for the past thirty (30) days;
 - (e) The results of the participant's most recent physical exam;
 - (f) All incident reports, if any exist, regarding the participant for the past six (6) months;

- (g) Any medication error report, if any exists, related to the participant for the past six (6) months;
 - (h) A full life history of the participant including any update from the last version of the life history;
 - (i) Names and contact information for all staff members who provided direct care to the participant during the last thirty (30) days of the participant's life;
 - (j) Emergency medical services notes regarding the participant if available;
 - (k) The police report if available;
 - (l) A copy of:
 1. The participant's advance directive, medical order for scope of treatment, living will, or health care directive if applicable; and
 2. The cardiopulmonary resuscitation and first aid card for any provider's staff member who was present at the time of the incident that resulted in the participant's death;
 - (m) A record of all medical appointments or emergency room visits by the participant within the past twelve (12) months; and
 - (n) A record of any crisis training for any staff member present at the time of the incident that resulted in the participant's death.
- (8) A Model Waiver II provider shall report a medication error by making an entry into the MWMA.

Section 8. Use of Electronic Signatures. The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

Section 9. Federal Financial Participation. The department's coverage of and reimbursement for Model Waiver II services pursuant to this administrative regulation shall be contingent upon:

- (1) Federal financial participation for the coverage and reimbursement; and
- (2) Centers for Medicare and Medicaid Services' approval for the coverage and reimbursement.

Section 10. Appeal Rights.

- (1) An appeal of a negative action regarding a Medicaid recipient shall be appealed in accordance with 907 KAR 1:563.
- (2) An appeal of a negative action regarding a Medicaid beneficiary's eligibility shall be appealed in accordance with 907 KAR 1:560.
- (3) An appeal of a negative action regarding a Medicaid provider shall be appealed in accordance with 907 KAR 1:671.

Section 11. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "MAP - 115 Application Intake - Participant Authorization", June 2015;
 - (b) "MAP 350, Long Term Care Facilities and Home and Community Based Program Certification Form", June 2015;
 - (c) "MAP-10 Waiver Services – Physician's Recommendation", June 2015;
 - (d) "MAP - 116 Service Plan – Participant Authorization", June 2015; and
 - (e) MAP-351A, Medicaid Waiver Assessment", July 2015.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law:
 - (a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or
 - (b) Online at the department's Web site at <https://www.chfs.ky.gov/agencies/dms/dca/Pages/mllws.aspx> [<http://www.chfs.ky.gov/dms/incorporated.htm>].

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 20, 2024

FILED WITH LRC: December 23, 2024

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 24, 2025, 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 March 17, 2025, 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 March 31, 2025. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan Scott or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the service coverage and reimbursement policies for the Medicaid Model Waiver II services. This program enables individuals who have nursing facility level of care needs primarily due to needing to be on a ventilator for at least twelve (12) hours per day to be able to receive services in the home rather than being admitted to a nursing facility.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the service coverage and reimbursement policies for the Medicaid Model Waiver II 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 service coverage and reimbursement policies for the Medicaid Model Waiver II services.

(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 service coverage and reimbursement policies for the Medicaid Model Waiver II 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 delete and update the reimbursement methodology to reflect the approval of new federal 1915(c) waivers. The approvals allow for higher reimbursement for providers, and this administrative regulation is being updated to reflect the higher reimbursement. Other amendments were made to conform to KRS 13A drafting requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update reimbursement methodology to new, higher rates approved by the federal government.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by implementing a federally approved rate increase.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists with the effective administration of the statutes by establishing a process to update increased federal reimbursement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: DMS anticipates that up to 100 recipients will utilize the services available under this waiver.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this

administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required, regulated entities will be able to bill and receive a higher reimbursement.

(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 in the expanded reimbursement available for this waiver.

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

(a) Initially: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(b) On a continuing basis: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Cabinet for Health and Family Services, Department for Medicaid Services

(a) Estimate the following for the first year:

Expenditures: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 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 anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): N/A

(a) Estimate the following for the first year:

Expenditures: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 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 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): Enrolled providers providing Model Waiver II services.

(a) Estimate the following for the first year:

Expenditures: DMS does not anticipate additional expenditures for regulated entities.

Revenues: Participating providers will benefit from increased reimbursement.

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 anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6. Future slots and increases will be dependent on the state budgeting process and federal reimbursement requirements.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6. Future slots and increases will be dependent on the state budgeting process and federal reimbursement requirements.

(b) Methodology and resources used to determine the fiscal impact: The department worked with interested parties to gain input and perspectives as well as completed a multiyear process working with a contracted third party to re-design the 1915(c) waivers and reimbursement.

(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: This administrative regulation will provide additional reimbursement for all 1915(c) providers.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. 441.305(b).

(2) State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

(3) Minimum or uniform standards contained in the federal mandate. Federal approval is for a limited number of waiver slots.

(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 Medicaid Services Division of Long Term Services and Supports (Amendment)

907 KAR 1:835. Michelle P. waiver services and reimbursement.

RELATES TO: KRS 17.165(1), (3), 202B.010(12)[205.520(3)], 205.5605, [205.5606], 205.5607, 205.635, 205.8451(9), 209.030, 311.840(3), 314.011(5), (9), 314.042, 319.010(6), 319.046, 319.053, 319.056, 319.064, 319A.010(3), (4), 327.010(2), 334A.020(9), 335.100, 335.300(2), 335.500(3), 369.101 to 369.120, 620.030, 34 C.F.R. Parts 300 to 399, 42 C.F.R. 400.203, 435.905(b), 483.430, 45 C.F.R. Parts 160, 162, 164, 440.180, 29 U.S.C. Chapter 16, 42 U.S.C. 1320d to 1320d-8

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606, 42 C.F.R. 440.180, 42 U.S.C. 1396a, 1396b, 1396d, 1396n

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 to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage and reimbursement provisions for Michelle P. waiver services.

Section 1. Definitions.

(1) "1915(c) home and community based waiver services program" means a Kentucky Medicaid program established pursuant to and in accordance with 42 U.S.C. 1396n(c).

(2) "ADHC" means adult day health care.

(3) "ADHC center" means an adult day health care center licensed in accordance with 902 KAR 20:066.

(4) "ADHC services" means health-related services provided on a regularly-scheduled basis that ensure optimal functioning of a participant who does not require twenty-four (24) hour care in an institutional setting.

(5) "Advanced practice registered nurse" or "APRN" means a person who acts within his or her scope of practice and is licensed in accordance with KRS 314.042.

(6) "Assessment team" means a team which:

(a) Conducts assessment or reassessment services; and

(b) Consists of:

1. Two (2) registered nurses; or

2. One (1) registered nurse and one (1) of the following:

a. A social worker;

b. A certified psychologist with autonomous functioning;

c. A licensed psychological practitioner;

d. A licensed marriage and family therapist; or

e. A licensed professional clinical counselor.

(7) "Behavior support specialist" means an individual who has:

(a) A master's degree from an accredited institution with formal graduate course work in a behavioral science; and

(b) At least one (1) year of experience in behavioral programming.

(8) "Blended services" means a nonduplicative combination of Michelle P. waiver services identified in Section 6 of this administrative regulation and participant-directed services identified in Section 7 of this administrative regulation provided pursuant to a participant's approved person-centered service plan.

(9) "Budget allowance" is defined by KRS 205.5605(1).

(10) "Certified psychologist" means an individual who is a certified psychologist in accordance with KRS 319.056.

(11) "Covered services and supports" is defined by KRS 205.5605(3).

(12) "DCBS" means the Department for Community Based Services.

(13) "Department" means the Department for Medicaid Services or its designee.

(14) "Developmental disability" means a severe, chronic disability that:

(a) Is attributable to:

1. Cerebral palsy or epilepsy; or

2. Any other condition, excluding mental illness, closely related to an intellectual disability resulting in impairment of general intellectual functioning or adaptive behavior similar to that of an individual with an intellectual disability and which requires treatment or services similar to those required by persons with an intellectual disability;

(b) Is manifested prior to the individual's 22nd birthday;

(c) Is likely to continue indefinitely; and

(d) Results in substantial functional limitations in three (3) or more of the following areas of major life activity:

1. Self-care;

2. Understanding and use of language;

3. Learning;

4. Mobility;

5. Self-direction; or

6. Capacity for independent living.

VOLUME 51, NUMBER 8– February 1, 2025

(15) "Direct care staff" means an individual hired by a Michelle P. waiver provider to provide services to the participant and who:

- (a)
 - 1.
 - a. Is eighteen (18) years of age or older; and
 - b. Has a high school diploma or GED; or
- 2.
 - a. Is twenty-one (21) years of age or older; and
 - b. Is able to communicate with a participant in a manner that the participant or participant's legal representative or family member can understand;

(b) Has a valid Social Security number or valid work permit if not a U.S. citizen;

- (c) Can understand and carry out simple instructions;
- (d) Has the ability to keep simple records; and
- (e) Is managed by the provider's supervisory staff.

(16) "Electronic signature" is defined by KRS 369.102(8).

(17) "Federal financial participation" is defined in 42 C.F.R. 400.203.

(18) "Home health agency" means an agency that is:

- (a) Licensed in accordance with 902 KAR 20:081; and
- (b) Medicare and Medicaid certified.

(19) "ICF-IID" means an intermediate care facility for individuals with an intellectual disability.

(20) "Intellectual disability" means an individual has:

- (a) Significantly sub-average intellectual functioning;
- (b) An intelligence quotient of seventy (70) or below;
- (c) Concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:

- 1. Communication;
- 2. Self-care;
- 3. Home living;
- 4. Social or interpersonal skills;
- 5. Use of community resources;
- 6. Self-direction;
- 7. Functional academic skills;
- 8. Work;
- 9. Leisure; or
- 10. Health and safety; and

(d) Had an onset prior to eighteen (18) years of age.

(21) "Intellectual disability professional" means an individual who:

(a) Has at least one (1) year of experience working with individuals with an intellectual or developmental disability;

(b) Meets the personnel and training requirements established in Section 2 of this administrative regulation; and

- (c)
 - 1. Is a doctor of medicine or osteopathy;
 - 2. Is a registered nurse; or
 - 3. Holds a bachelor's degree from an accredited institution in a human services field.

(22) "Level of care determination" means a determination that an individual meets the Michelle P. waiver service level of care criteria established in Section 5 of this administrative regulation.

(23) "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(24) "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

(25) "Licensed practical nurse" or "LPN" means a person who:

- (a) Meets the definition of KRS 314.011(9); and
- (b) Works under the supervision of a registered nurse.

(26) "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3).

(27) "Licensed psychological associate" means an individual who meets the requirements established in KRS 319.064.

(28) "Licensed psychological practitioner" means an individual who:

- (a) Meets the requirements established in KRS 319.053; or
- (b) Is a certified psychologist with autonomous functioning.

(29) "Licensed psychologist" means an individual who:

(a) Currently possesses a licensed psychologist license in accordance with KRS 319.010(6); and

(b) Meets the licensed psychologist requirements established in 201 KAR Chapter 26.

(30) "MWMA" means the Kentucky Medicaid Waiver Management Application internet portal located at <https://www.chfs.ky.gov/agencies/dms/dca/Pages/mwma.aspx> [<http://chfs.ky.gov/dms/mwma.htm>].

(31) "Normal babysitting" means general care provided to a child which includes custody, control, and supervision.

(32) "Occupational therapist" is defined by KRS 319A.010(3).

(33) "Occupational therapy assistant" is defined by KRS 319A.010(4).

(34) "Participant" means an individual who:

(a) Is a recipient as defined by KRS 205.8451(9);

(b) Meets the Michelle P. waiver service level of care criteria established in Section 5 of this administrative regulation; and

(c) Meets the eligibility criteria for Michelle P. waiver services established in Section 4 of this administrative regulation.

(35) "Participant-directed services" or "PDS" means an option established by KRS 205.5606 within the 1915(c) home and community based waiver services programs that allows participants to receive non-medical services in which the individual:

- (a) Assists with the design of the program;
- (b) Chooses the providers of services; and
- (c) Directs the delivery of services to meet his or her needs.

(36) "Patient liability" means the financial amount an individual is required to contribute toward cost of care in order to maintain Medicaid eligibility.

(37) "Person-centered service plan" means a written individualized plan of services for a participant that meets the requirements established in Section 8 of this administrative regulation.

(38) "Physical therapist" is defined by KRS 327.010(2).

(39) "Physical therapist assistant" means a skilled health care worker who:

- (a) Is certified by the Kentucky Board of Physical Therapy; and
- (b) Performs physical therapy and related duties as assigned by the supervising physical therapist.

(40) "Physician assistant" or "PA" is defined by KRS 311.840(3).

(41) "Plan of treatment" means a care plan used by an ADHC center.

(42) "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

(43) "Qualified professional in the area of intellectual disabilities" is defined by KRS 202B.010(12).

(44) "Registered nurse" or "RN" means a person who:

- (a) Meets the definition established in KRS 314.011(5); and
- (b) Has at least one (1) year of experience as a licensed practical nurse or a registered nurse.

(45) "Representative" is defined by KRS 205.5605(6).

(46) "Sex crime" is defined by KRS 17.165(1).

(47) "Social worker" means a person with a bachelor's degree in social work, sociology, or a related field.

(48) "Speech-language pathologist" is defined by KRS 334A.020(3).

(49) "State plan" is defined by 42 C.F.R. 400.203.

(50) "Supervisory staff" means an individual employed by the Michelle P. waiver provider who shall manage direct care staff and who:

(a)

1.

a. Is eighteen (18) years of age or older; and

b. Has a high school diploma or GED; or

2. Is twenty-one (21) years of age or older;

(b) Has a minimum of one (1) year experience in providing services to individuals with an intellectual or developmental disability;

(c) Is able to adequately communicate with the participants, staff, and family members;

(d) Has a valid Social Security number or valid work permit if not a U.S. citizen; and

(e) Has the ability to perform required record keeping.

(51) "Support broker" means an individual chosen by a participant from an agency designated by the department to:

VOLUME 51, NUMBER 8— February 1, 2025

(a) Provide training, technical assistance, and support to the participant; and

(b) Assist the participant in any other aspects of PDS.

(52) "Support spending plan" means a plan for a participant that identifies the:

(a) PDS requested;

(b) Employee name;

(c) Hourly wage;

(d) Hours per month;

(e) Monthly pay;

(f) Taxes;

(g) Budget allowance; and

(h) Twelve (12) month budget.

(53) "Violent crime" is defined by KRS 17.165(3).

Section 2. Non-PDS Provider Participation Requirements.

(1) In order to provide Michelle P. waiver services, excluding participant-directed services, a provider shall be:

(a) Licensed in accordance with:

1. 902 KAR 20:066 if an adult day health care provider;

2. 902 KAR 20:078 if a group home;

3. 902 KAR 20:081 if a home health agency; or

4. 902 KAR 20:091 if a community mental health center; or

(b) Certified by the department in accordance with 907 KAR 12:010 if the provider's type is not listed in paragraph (a) of this subsection.

(2) A Michelle P. waiver provider shall:

(a) Comply with:

1. 907 KAR 1:671;

2. 907 KAR 1:672;

3. 907 KAR 1:673;

4. This administrative regulation;

5. The Health Insurance Portability and Accountability Act, 42 U.S.C. 1320d-2, and 45 C.F.R. Parts 160, 162, and 164;

6. 42 U.S.C. 1320d to 1320d-8; and

7. The provider participation requirements for Supports for Community Living (SCL)[SCL] providers established in 907 KAR 12:010, Section 3;

(b) Not enroll a participant for whom the provider is unequipped or unable to provide Michelle P. waiver services; and

(c) Be permitted to accept or not accept a participant.

(3) In order to provide a Michelle P. waiver service in accordance with Section 4 of this administrative regulation, a Michelle P. waiver service provider:

(a) Shall, for a potential employee or volunteer, obtain the results of a Vulnerable Adult Maltreatment[~~Caregiver Misconduct~~] Registry check as described in 922 KAR 5:120 or an equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to employment or volunteerism; and

(b) May use Kentucky's national background check program established by 906 KAR 1:190 to satisfy the background check requirements of paragraph (a) of this subsection.

Section 3. Maintenance of Records.

(1) A Michelle P. waiver provider shall maintain:

(a) A clinical record in the MWMA for each participant that shall contain the following:

1. Pertinent medical, nursing, and social history;

2. A comprehensive assessment entered on form MAP 351, Medicaid Waiver Assessment, and signed by the:

a. Assessment team; and

b. Department;

3. A person-centered service plan completed in accordance with Section 8 of this administrative regulation;

4. A copy of the MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form, signed by the participant or his or her legal representative at the time of application or reapplication and each recertification thereafter;

5. The name of the case manager;

6. Documentation of all level of care determinations;

7. All documentation related to prior authorizations, including requests, approvals, and denials;

8. Documentation of each contact with, or on behalf of, a participant;

9. Documentation that the participant receiving ADHC services or legal representative was provided a copy of the ADHC center's posted hours of operation;

10. Documentation that the participant or legal representative was informed of the procedure for reporting complaints; and

11. Documentation of each service provided. The documentation shall include:

a. The date the service was provided;

b. The duration of the service;

c. The arrival and departure time of the provider, excluding travel time, if the service was provided at the participant's home;

d. Itemization of each service delivered;

e. The participant's arrival and departure time, excluding travel time, if the service was provided outside the participant's home;

f. Progress notes, which shall include documentation of changes, responses, and treatments utilized to meet the participant's needs; and

g. The signature of the service provider; and

(b) Fiscal reports, service records, and incident reports regarding services provided. The reports and records shall be retained for the longer of:

1. At least six (6) years from the date that a covered service is provided; or

2. For a minor, three (3) years after the participant reaches the age of majority under state law.

(2) Upon request, a Michelle P. waiver provider shall make information regarding service and financial records available to the:

(a) Department;

(b) Kentucky Cabinet for Health and Family Services, Office of Inspector General or its designee;

(c) United States Department for Health and Human Services or its designee;

(d) United States Government Accountability Office or its designee;

(e) Kentucky Office of the Auditor of Public Accounts or its designee; or

(f) Kentucky Office of the Attorney General or its designee.

Section 4. Participant Eligibility Determinations and Redeterminations.

(1) A Michelle P. waiver service shall be provided to a Medicaid-eligible participant who:

(a) Is determined by the department to meet the Michelle P. waiver service level of care criteria in accordance with Section 5 of this administrative regulation; and

(b) Would, without waiver services, be admitted to an ICF-IID or a nursing facility.

(2) To apply for participation in the program, an individual or individual's representative shall:

(a) Apply for 1915(c) home and community based waiver services via the MWMA; and

(b) Complete and upload into the MWMA a MAP – 115 Application Intake – Participant Authorization.

(3) The department shall perform a Michelle P. waiver service level of care determination for each participant at least once every twelve (12) months or more often if necessary.

(4) A Michelle P. waiver service shall not be provided to an individual who:

(a) Does not require a service other than:

1. An environmental and minor home adaptation;

2. Case management; or

3. An environmental and minor home adaptation and case management;

(b) Is an inpatient of:

1. A hospital;

2. A nursing facility; or

3. An ICF-IID;

(c) Is a resident of a licensed personal care home; or

(d) Is receiving services from another 1915(c) home and community based waiver services program.

(5) A Michelle P. waiver provider shall inform a participant or the participant's legal representative of the choice to receive:

- (a) Michelle P. waiver services; or
- (b) Institutional services.

(6) An eligible participant or the participant's legal representative shall select a participating Michelle P. waiver provider from which the participant wishes to receive Michelle P. waiver services.

(7) A Michelle P. waiver provider shall notify the department in writing electronically or in print of a participant's:

- (a) Termination from the Michelle P. waiver program;
- (b) Admission to an ICF-IID or nursing facility for less than sixty

(60) consecutive days;

(c) Return to the Michelle P. waiver program from an ICF-IID or nursing facility within sixty (60) consecutive days;

- (d) Admission to a hospital; or
- (e) Transfer to another waiver program within the department.

(8) Involuntary termination of a service to a participant by a Michelle P. waiver provider shall require:

(a) Simultaneous notice in writing electronically or in print to the participant or legal representative, the case manager or support broker, and the department at least thirty (30) days prior to the effective date of the action, which shall include:

- 1. A statement of the intended action;
- 2. The basis for the intended action;
- 3. The authority by which the action is taken; and
- 4. The participant's right to appeal the intended action through the provider's appeal or grievance process; and

(b) The case manager or support broker in conjunction with the provider to:

- 1. Provide the participant with the name, address, and telephone number of each current provider in the state;
- 2. Provide assistance to the participant in making contact with another provider;
- 3. Arrange transportation for a requested visit to a provider site;
- 4. Provide a copy of pertinent information to the participant or legal representative;
- 5. Ensure the health, safety, and welfare of the participant until an appropriate placement is secured;
- 6. Continue to provide supports until alternative services are secured; and
- 7. Provide assistance to ensure a safe and effective service transition.

Section 5. Michelle P. Waiver Service Level of Care Criteria.

(1) An individual shall be determined to have met the Michelle P. waiver service level of care criteria if the individual:

(a) Requires physical or environmental management or rehabilitation, and:

1. Has a developmental disability or significantly sub-average intellectual functioning;

2. Requires a protected environment while overcoming the effects of a developmental disability or sub-average intellectual functioning while:

- a. Learning fundamental living skills;
- b. Obtaining educational experiences which will be useful in self-supporting activities; or
- c. Increasing awareness of his or her environment; or

3. Has a primary psychiatric diagnosis if:

a. The individual possesses care needs listed in subparagraph 1 or 2 of this paragraph;

b. The individual's mental care needs are adequately handled in an ICF-IID; and

c. The individual does not require psychiatric inpatient treatment; or

(b) Has a developmental disability and meets the:

1. High-intensity nursing care patient status criteria pursuant to 907 KAR 1:022, Section 4(2); or

2. Low-intensity nursing care patient status criteria pursuant to 907 KAR 1:022, Section 4(3).

(2) An individual who does not require a planned program of active treatment to attain or maintain an optimal level of functioning shall not meet the Michelle P. waiver service level of care criteria.

(3) The department shall not determine that an individual fails to meet the Michelle P. waiver service level of care criteria solely due to the individual's age, length of stay in an institution, or history of previous institutionalization if the individual meets the criteria established in subsection (1) of this section.

Section 6. Covered Services.

(1) A Michelle P. waiver service shall:

(a) Be prior authorized by the department to ensure that the service or modification of the service meets the needs of the participant;

(b) Be provided pursuant to a person-centered service plan or, for a PDS, pursuant to a person-centered service plan and support spending plan;

(c) Except for a PDS, not be provided by a member of the participant's family. A PDS may be provided by a participant's family member; and

(d) Be accessed within sixty (60) days of the date of prior authorization.

(2) To request prior authorization, a provider shall submit to the department a:

(a) Completed MAP 10, Waiver Services Physician's Recommendation, that has been signed and dated by:

- 1. A physician;
- 2. An advanced practice registered nurse;
- 3. A physician assistant; or
- 4. An intellectual disability professional; and

(b) Person-centered service plan and MAP 351, Medicaid Waiver Assessment.

(3) Covered Michelle P. waiver services shall include:

(a) A comprehensive assessment, which shall:

1. Be completed by the department;

2. Identify a participant's needs and the services the participant or the participant's family cannot manage or arrange for on the participant's behalf;

3. Evaluate a participant's physical health, mental health, social supports, and environment;

4. Be requested by an individual seeking Michelle P. waiver services or the individual's family, legal representative, physician, physician assistant, APRN, or intellectual disability professional;

5. Be conducted by an assessment team; and

6. Include at least one (1) face-to-face home visit by a member of the assessment team with the participant and, if appropriate, the participant's family;

(b) A reassessment service, which shall:

1. Be completed by the department;

2. Determine the continuing need for Michelle P. waiver services and, if appropriate, PDS;

3. Be performed at least every twelve (12) months;

4. Be conducted using the same procedures used in an assessment service; and

5. Not be retroactive;

(c) Case management, which shall meet the requirements established in Section 9 of this administrative regulation, and which shall:

1. Consist of coordinating the delivery of direct and indirect services to a participant;

2. Be provided by a case manager who shall:

a. Arrange for a service but not provide a service directly;

b. Contact the participant monthly through a face-to-face visit at the participant's home, in the ADHC center, or the adult day training provider's location; and

c. Assure that service delivery is in accordance with a participant's person-centered service plan;

3. Not include a group conference;

4. Include documentation with a detailed monthly summary note in the MWMA, which includes:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the person-centered service plan;

VOLUME 51, NUMBER 8— February 1, 2025

c. The signature, date of signature, and title of the individual preparing the note; and

d. Documentation of at least one (1) face-to-face meeting between the case manager and participant, family member, or legal representative;

5. Include requiring a participant or legal representative to sign a MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form, at the time of application or reapplication and at each recertification to document that the individual was informed of the choice to receive Michelle P. waiver services or institutional services; and

6. Not be provided to a participant by an agency if the agency provides any other Michelle P. waiver service to the participant;

(d) A homemaker service, which shall consist of general household activities and shall:

1. Be provided by direct care staff;

2. Be provided to a participant:

a. Who is functionally unable, but would normally perform age-appropriate homemaker tasks; and

b. If the caregiver regularly responsible for homemaker activities is temporarily absent or functionally unable to manage the homemaking activities; and

3. Include documentation with a detailed note in the MWMA, which shall include:

a. The month, day, and year for the time period each note covers; and

b. The signature, date of signature, and title of the individual preparing the note;

(e) A personal care service, which shall:

1. Be age appropriate;

2. Consist of assisting a participant with eating, bathing, dressing, personal hygiene, or other activities of daily living;

3. Be provided by direct care staff;

4. Be provided to a participant:

a. Who does not need highly skilled or technical care;

b. For whom services are essential to the participant's health and welfare and not for the participant's family; and

c. Who needs assistance with age-appropriate activities of daily living; and

5. Include documentation with a detailed note in the MWMA, which shall include:

a. The month, day, and year for the time period each note covers;

b. The signature, date of signature, and title of the individual preparing the note; and

c. The beginning and ending time of service;

(f) An attendant care service, which shall consist of hands-on care that is:

1. Provided by direct care staff to a participant who:

a. Is medically stable but functionally dependent and requires care or supervision twenty-four (24) hours per day; and

b. Has a family member or other primary caretaker who is employed or attending school and is not able to provide care during working hours;

2. Not of a general housekeeping nature;

3. Not provided to a participant who is receiving any of the following Michelle P. waiver services:

a. Personal care;

b. Homemaker;

c. ADHC;

d. Adult day training;

e. Community living supports; or

f. Supported employment; and

4. Include documentation with a detailed note in the MWMA, which shall include:

a. The month, day, and year for the time period each note covers;

b. The signature, date of signature, and title of the individual preparing the note; and

c. Beginning and ending time of service;

(g) A respite care service, which shall be short term care based on the absence or need for relief of the primary caretaker and:

1. Be provided by direct care staff who provide services at a level that appropriately and safely meets the medical needs of the participant;

2. Be provided to a participant who has care needs beyond normal babysitting;

3. Be used no less than every six (6) months; and

4. Include documentation with a detailed note in the MWMA, which shall include:

a. The month, day, and year for the time period each note covers;

b. The signature, date of signature, and title of the individual preparing the note; and

c. The beginning and ending time of service;

(h) An environmental and minor home adaptation service, which shall be a physical adaptation to a home that is necessary to ensure the health, welfare, and safety of a participant and which shall:

1. Meet all applicable safety and local building codes;

2. Relate strictly to the participant's disability and needs;

3. Exclude an adaptation or improvement to a home that has no direct medical or remedial benefit to the participant;

4. Be submitted on a MAP 95 Request for Equipment Form that is uploaded into the MWMA for prior authorization; and

5. Include documentation with a detailed note in the MWMA, which shall include:

a. The month, day, and year for the time period each note covers; and

b. The signature, date of signature, and title of the individual preparing the note;

(i) Occupational therapy, which shall be:

1. A physician ordered evaluation of a participant's level of functioning by applying diagnostic and prognostic tests;

2. Physician-ordered services in a specified amount and duration to guide a participant in the use of therapeutic, creative, and self-care activities to assist the participant in obtaining the highest possible level of functioning;

3. Training of other Michelle P. waiver providers on improving the level of functioning;

4. Exclusive of maintenance or the prevention of regression;

5. Provided by an occupational therapist or an occupational therapy assistant supervised by an occupational therapist in accordance with 201 KAR 28:130; and

6. Documented with a detailed staff note in the MWMA, which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the person-centered service plan; and

c. The signature, date of signature, and title of the individual preparing the note;

(j) Physical therapy, which shall:

1. Be a physician-ordered evaluation of a participant by applying muscle, joint, and functional ability tests;

2. Be physician-ordered treatment in a specified amount and duration to assist a participant in obtaining the highest possible level of functioning;

3. Include training of other Michelle P. waiver providers on improving the level of functioning;

4. Be exclusive of maintenance or the prevention of regression;

5. Be provided by a physical therapist or a physical therapist assistant supervised by a physical therapist in accordance with 201 KAR 22:001 and 201 KAR 22:053; and

6. Be documented with a detailed monthly summary note in the MWMA, which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression or lack of progression toward outcomes identified in the person-centered service plan; and

VOLUME 51, NUMBER 8— February 1, 2025

- c. The signature, date of signature, and title of the individual preparing the note;
- (k) Speech language pathology services, which shall:
 1. Be a physician-ordered evaluation of a participant with a speech or language disorder;
 2. Be a physician-ordered habilitative service in a specified amount and duration to assist a participant with a speech and language disability in obtaining the highest possible level of functioning;
 3. Include training of other Michelle P. waiver providers on improving the level of functioning;
 4. Be provided by a speech-language pathologist; and
 5. Be documented with a detailed monthly summary note in the MWMA, which shall include:
 - a. The month, day, and year for the time period each note covers;
 - b. Progression, regression, and maintenance toward outcomes identified in the person-centered service plan; and
 - c. The signature, date of signature, and title of the individual preparing the note;
- (l) An adult day training service, which shall:
 1. Support the participant in daily, meaningful routines in the community;
 2. Stress training in:
 - a. The activities of daily living;
 - b. Self-advocacy;
 - c. Adaptive and social skills; and
 - d. Vocational skills;
 3. Be provided in a community setting that may:
 - a. Be a fixed location; or
 - b. Occur in public venues;
 4. Not be diversional in nature;
 5. If provided on site:
 - a. Include facility-based services provided on a regularly-scheduled basis;
 - b. Lead to the acquisition of skills and abilities to prepare the participant for work or community participation; or
 - c. Prepare the participant for transition from school to work or adult support services;
 6. If provided off site:
 - a. Include services provided in a variety of community settings;
 - b. Provide access to community-based activities that cannot be provided by natural or other unpaid supports;
 - c. Be designed to result in increased ability to access community resources without paid supports;
 - d. Provide the opportunity for the participant to be involved with other members of the general population; and
 - e. Be provided as:
 - (i) An enclave or group approach to training in which participants work as a group or are dispersed individually throughout an integrated work setting with people without disabilities;
 - (ii) A mobile crew performing work in a variety of community businesses or other community settings with supervision by the provider; or
 - (iii) An entrepreneurial or group approach to training for participants to work in a small business created specifically by or for the participant or participants;
 7. Ensure that any participant performing productive work that benefits the organization is paid commensurate with compensation to members of the general work force doing similar work;
 8. Require that an adult day training service provider conduct, at least annually, an orientation informing the participant of supported employment and other competitive opportunities in the community;
 9. Be provided at a time mutually agreed to by the participant and Michelle P. waiver provider;
 10.
 - a. Be provided to participants of age twenty-two (22) years or older; or
 - b. Be provided to participants of age sixteen (16) to twenty-one (21) years as a transition process from school to work or adult support services; and
 11. Be documented in the MWMA with:
 - a. A detailed monthly summary note, which shall include:
 - (i) The month, day, and year for the time period each note covers;
 - (ii) Progression, regression, and maintenance toward outcomes identified in the person-centered service plan; and
 - (iii) The signature, date of signature, and title of the individual preparing the note; and
 - b. A time and attendance record, which shall include:
 - (i) The date of service;
 - (ii) The beginning and ending time of the service;
 - (iii) The location of the service; and
 - (iv) The signature, date of signature, and title of the individual providing the service;
 - (m) A supported employment service, which shall:
 1. Be intensive, ongoing support for a participant to maintain paid employment in an environment in which an individual without a disability is employed;
 2. Include attending to a participant's personal care needs;
 3. Be provided in a variety of settings;
 4. Be provided on a one-to-one basis;
 5. Be unavailable under a program funded by either 29 U.S.C. Chapter 16 or 34 C.F.R. Subtitle B, Chapter III (34 C.F.R. Parts 300 to 399), proof of which shall be documented in the participant's file;
 6. Exclude work performed directly for the supported employment provider;
 7. Be provided by a staff person who has completed a supported employment training curriculum conducted by staff of the cabinet or its designee;
 8. Be documented in the MWMA by:
 - a. A detailed monthly summary note, which shall include:
 - (i) The month, day, and year for the time period each note covers;
 - (ii) Progression, regression, and maintenance toward outcomes identified in the person-centered service plan; and
 - (iii) The signature, date of signature, and title of the individual preparing the note; and
 - b. A time and attendance record, which shall include:
 - (i) The date of service;
 - (ii) The beginning and ending time of the service;
 - (iii) The location of the service; and
 - (iv) The signature, date of signature, and title of the individual providing the service;
 - (n) A behavioral support service, which shall:
 1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;
 2. Be provided to assist the participant to learn new behaviors that are directly related to existing challenging behaviors or functionally equivalent replacement behaviors for identified challenging behaviors;
 3. Include a functional assessment of the participant's behavior, which shall include:
 - a. An analysis of the potential communicative intent of the behavior;
 - b. The history of reinforcement for the behavior;
 - c. Critical variables that preceded the behavior;
 - d. Effects of different situations on the behavior; and
 - e. A hypothesis regarding the motivation, purpose, and factors that maintain the behavior;
 4. Include the development of a behavioral support plan, which shall:
 - a. Be developed by the behavior support specialist;
 - b. Be implemented by Michelle P. waiver provider staff in all relevant environments and activities;
 - c. Be revised as necessary;
 - d. Define the techniques and procedures used;
 - e. Be designed to equip the participant to communicate his or her needs and to participate in age-appropriate activities;
 - f. Include the hierarchy of behavior interventions ranging from the least to the most restrictive;
 - g. Reflect the use of positive approaches; and
 - h. Prohibit the use of restraints, seclusion, corporal punishment, verbal abuse, and any procedure that denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;

5. Include the provision of training to other Michelle P. waiver providers concerning implementation of the behavioral support plan;

6. Include the monitoring of a participant's progress, which shall be accomplished by:

a. The analysis of data concerning the frequency, intensity, and duration of a behavior; and

b. The reports of a Michelle P. waiver provider involved in implementing the behavior support plan;

7. Provide for the design, implementation, and evaluation of systematic environmental modifications;

8. Be provided by a behavior support specialist; and

9. Be documented in the MWMA by a detailed staff note, which shall include:

a. The date of service;

b. The beginning and ending time; and

c. The signature, date of signature, and title of the behavior support specialist;

(o) An ADHC service, which shall:

1. Be provided to a participant who is at least twenty-one (21) years of age;

2. Include the following basic services and necessities provided to participants during the posted hours of operation:

a. Skilled nursing services provided by an RN or LPN, including ostomy care, urinary catheter care, decubitus care, tube feeding, venipuncture, insulin injections, tracheotomy care, or medical monitoring;

b. Meal service corresponding with hours of operation with a minimum of one (1) meal per day and therapeutic diets as required;

c. Snacks;

d. Supervision by an RN;

e. Age and diagnosis appropriate daily activities; and

f. Routine services that meet the daily personal and health care needs of a participant, including:

(i) Monitoring of vital signs;

(ii) Assistance with activities of daily living; and

(iii) Monitoring and supervision of self-administered medications, therapeutic programs, and incidental supplies and equipment needed for use by a participant;

3. Include developing, implementing, and maintaining nursing policies for nursing or medical procedures performed in the ADHC center;

4. Include respite care services pursuant to paragraph (g) of this subsection;

5. Be provided to a participant by the health team in an ADHC center, which may include:

a. A physician;

b. A physician assistant;

c. An APRN;

d. An RN;

e. An LPN;

f. An activities director;

g. A physical therapist;

h. A physical therapist assistant;

i. An occupational therapist;

j. An occupational therapy assistant;

k. A speech-language pathologist;

l. A social worker;

m. A nutritionist;

n. A health aide;

o. An LPCC;

p. An LMFT;

q. A certified psychologist with autonomous functioning; or

r. A licensed psychological practitioner; and

6. Be provided pursuant to a plan of treatment that shall:

a. Be developed and signed by each member of the plan of treatment team, which shall include the participant or a legal representative of the participant;

b. Include pertinent diagnoses, mental status, services required, frequency of visits to the ADHC center, prognosis, rehabilitation potential, functional limitation, activities permitted, nutritional requirements, medication, treatment, safety measures to protect against injury, instructions for timely discharge, and other pertinent information; and

c. Be developed annually from information on the MAP 351, Medicaid Waiver Assessment, and revised as needed; and

(p) Community living supports, which shall:

1. Be provided to facilitate independence and promote integration into the community for a participant residing in his or her own home or in his or her family's home;

2. Be supports and assistance that shall be related to chosen outcomes, not be diversional in nature, and may include:

a. Routine household tasks and maintenance;

b. Activities of daily living;

c. Personal hygiene;

d. Shopping;

e. Money management;

f. Medication management;

g. Socialization;

h. Relationship building;

i. Leisure choices;

j. Participation in community activities;

k. Therapeutic goals; or

l. Nonmedical care not requiring nurse or physician intervention;

3. Not replace other work or day activities;

4. Be provided on a one-on-one basis;

5. Not be provided at an adult day training or children's day habilitation site;

6. Be documented in the MWMA by:

a. A time and attendance record, which shall include:

(i) The date of the service;

(ii) The beginning and ending time of the service; and

(iii) The signature, date of signature, and title of the individual providing the service; and

b. A detailed monthly summary note, which shall include:

(i) The month, day, and year for the time period each note covers;

(ii) Progression, regression, and maintenance toward outcomes identified in the person-centered service plan; and

(iii) The signature, date of signature, and title of the individual preparing the summary note; and

7. Be limited to sixteen (16) hours per day alone or in combination with adult day training and supported employment.

Section 7. Participant-Directed Services.

(1) Covered services and supports provided to a participant receiving PDS shall be nonmedical and include:

(a) A home and community support service, which shall:

1. Be available only as participant-directed services;

2. Be provided in the participant's home or in the community;

3. Be based upon therapeutic goals and not be diversional in nature;

4. Not be provided to an individual if the same or similar service is being provided to the individual via non-PDS Michelle P. waiver services; and

5. Include:

a. Assistance, support, or training in activities including meal preparation, laundry, or routine household care or maintenance;

b. Activities of daily living including bathing, eating, dressing, personal hygiene, shopping, or the use of money;

c. Reminding, observing, or monitoring of medications;

d. Nonmedical care that does not require a nurse or physician intervention;

e. Respite; or

f. Socialization, relationship building, leisure choice, or participation in generic community activities;

(b) Goods and services, which shall:

1. Be individualized;

2. Be utilized to reduce the need for personal care or to enhance independence within the home or community of the participant;

3. Not include experimental goods or services; and

4. Not include chemical or physical restraints;

(c) A community day support service, which shall:

1. Be available only as participant-directed services;

2. Be provided in a community setting;

3. Be tailored to the participant's specific personal outcomes related to the acquisition, improvement, and retention of skills and

VOLUME 51, NUMBER 8— February 1, 2025

abilities to prepare and support the participant for work or community activities, socialization, leisure, or retirement activities;

4. Be based upon therapeutic goals and not be diversional in nature; and

5. Not be provided to an individual if the same or similar service is being provided to the individual via non-PDS Michelle P. waiver services; or

(d) Financial management, which shall:

1. Include managing, directing, or dispersing a participant's funds identified in the participant's approved PDS budget;

2. Include payroll processing associated with the individuals hired by a participant or participant's representative;

3. Include withholding local, state, and federal taxes and making payments to appropriate tax authorities on behalf of a participant;

4. Be performed by an entity:

a. Enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and

b. With at least two (2) years of experience working with individuals possessing the same or similar level of care needs as those referenced in Section 5 of this administrative regulation;

5. Include preparing fiscal accounting and expenditure reports for:

a. A participant or participant's representative; and

b. The department.

(2) To be covered, a PDS shall be specified in a person-centered service plan.

(3) Reimbursement for a PDS shall not exceed the department's allowed reimbursement for the same or similar service provided in a non-PDS Michelle P. waiver setting except that respite may be provided in excess of the cap established in Section 14(2) of this administrative regulation if:

(a) Necessary per the participant's person-centered service plan; and

(b) Approved by the department in accordance with subsection (13) of this section.

(4) A participant, including a married participant, shall choose providers and a participant's choice shall be reflected or documented in the person-centered service plan.

(5)

(a) A participant may designate a representative to act on the participant's behalf.

(b) The PDS representative shall:

1. Be twenty-one (21) years of age or older;

2. Not be monetarily compensated for acting as the PDS representative or providing a PDS; and

3. Be appointed by the participant on a MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)/Participant Directed Services (PDS).

(6) A participant may voluntarily terminate PDS by completing a MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)/Participant Directed Services (PDS), and submitting it to the support broker.

(7) The department shall immediately terminate a participant from PDS if:

(a) Imminent danger to the participant's health, safety, or welfare exists;

(b) The participant fails to pay patient liability;

(c) The participant's person-centered service plan indicates he or she requires more hours of service than the program can provide; thus, jeopardizing the participant's safety and welfare due to being left alone without a caregiver present; or

(d) The participant, caregiver, family, or guardian threatens or intimidates a support broker or other PDS staff.

(8) The department may terminate a participant from PDS if it determines that the participant's PDS provider has not adhered to the person-centered service plan.

(9) Except for a termination required by subsection (7) of this section, prior to a participant's termination from PDS, the support broker shall:

(a) Notify the assessment or reassessment service provider of potential termination;

(b) Assist the participant in developing a resolution and prevention plan;

(c) Allow at least thirty (30) but no more than ninety (90) days for the participant to resolve the issue, develop and implement a prevention plan, or designate a PDS representative;

(d) Complete, and submit to the department, a MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)/Participant Directed Services (PDS), terminating the participant from PDS if the participant fails to meet the requirements in paragraph (c) of this subsection; and

(e) Assist the participant in transitioning back to traditional Michelle P. waiver services.

(10) Upon an involuntary termination of PDS, the department shall:

(a) Notify a participant in writing of its decision to terminate the participant's PDS participation; and

(b) Inform the participant of the right to appeal the department's decision in accordance with Section 16 of this administrative regulation.

(11) A PDS provider shall:

(a) Be selected by the participant;

(b) Submit a completed Kentucky Consumer Directed Options/Participant Directed Services Employee/Provider Contract to the support broker;

(c) Be eighteen (18) years of age or older;

(d)

1. Be a citizen of the United States with a valid Social Security number; or

2. Possess a valid work permit if not a U.S. citizen;

(e) Be able to communicate effectively with the participant, participant's representative, or family;

(f) Be able to understand and carry out instructions;

(g) Be able to keep records as required by the participant;

(h) Submit to a criminal background check from the Kentucky Administrative Office of the Courts and equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the twelve (12) months prior to being a PDS provider;

(i) Submit to a check of the:

1. Nurse Aide Abuse Registry maintained in accordance with 906 KAR 1:100 and not be found on the registry;

2. ~~Vulnerable Adult Maltreatment~~[Caregiver Misconduct] Registry maintained in accordance with 922 KAR 5:120 and not be found on the registry; and

3. Central Registry maintained in accordance with 922 KAR 1:470 and not be found on the registry;

(j) Not have pled guilty or been convicted of committing a sex crime or violent crime;

(k) Complete training on the reporting of abuse, neglect, or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the participant;

(l) Be approved by the department;

(m) Maintain and submit timesheets documenting hours worked; and

(n) Be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the participant.

(12) A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of children who receive waiver services.

(13)

(a) The department shall establish a twelve (12) month budget for a participant based on the participant's person-centered service plan.

(b) A participant's twelve (12) month budget shall not exceed \$40,000 unless:

1. The participant's support broker requests a budget adjustment to a level higher than \$40,000; and

2. The department approves the adjustment.

VOLUME 51, NUMBER 8— February 1, 2025

(c) The department shall consider the following factors in determining whether to grant a twelve (12) month budget adjustment:

1. If the proposed services are necessary to prevent imminent institutionalization;
2. The cost effectiveness of the proposed services;
3. Protection of the participant's health, safety, and welfare; and
4. If a significant change has occurred in the participant's:
 - a. Physical condition, resulting in additional loss of function or limitations to activities of daily living and instrumental activities of daily living;
 - b. Natural support system; or
 - c. Environmental living arrangement, resulting in the participant's relocation.

(d) A participant's twelve (12) month budget may encompass a service or any combination of services listed in subsection (1) of this section, if each service is established in the participant's person-centered service plan and approved by the department.

(14) Unless approved by the department pursuant to subsection (13)(a) through (c) of this section, if a PDS is expanded to a point in which expansion necessitates a twelve (12) month budget increase, the entire service shall only be covered via traditional (non-PDS) waiver services.

(15) A support broker shall:

- (a) Provide needed assistance to a participant with any aspect of PDS or blended services;
- (b) Be available to a participant twenty-four (24) hours per day, seven (7) days per week;
- (c) Comply with all applicable federal and state laws and requirements;
- (d) Continually monitor a participant's health, safety, and welfare; and
- (e) Complete or revise a person-centered service plan in accordance with Section 8 of this administrative regulation.

(16)

(a) A support broker or case manager may conduct an assessment or reassessment for a PDS participant.

(b) A PDS assessment or reassessment performed by a support broker shall comply with the assessment or reassessment provisions established in this administrative regulation.

(17) Services provided by a support broker shall meet the conflict free requirements established for case management in Section 9(4)(f) and 9(5) of this administrative regulation.

Section 8. Person-centered Service Plan Requirements.

(1) A person-centered service plan shall be established:

- (a) For each participant; and
- (b) By the participant's person-centered team.

(2) A participant's person-centered service plan shall:

- (a) Be developed by:
 1. The participant, the participant's guardian, or the participant's representative;
 2. The participant's case manager;
 3. The participant's person-centered team; and
 4. Any other individual chosen by the participant if the participant chooses any other individual to participate in developing the person-centered service plan;

(b) Use a process that:

1. Provides the necessary information and support to empower the participant, the participant's guardian, or participant's legal representative to direct the planning process in a way that empowers the participant to have the freedom and support to control the participant's schedules and activities without coercion or restraint;
2. Is timely and occurs at times and locations convenient for the participant;
3. Reflects cultural considerations of the participant;
4. Provides information:

- a. Using plain language in accordance with 42 C.F.R. 435.905(b); and
- b. In a way that is accessible to an individual with a disability or who has limited English proficiency;

5. Offers an informed choice defined as a choice from options based on accurate and thorough knowledge and understanding to

the participant regarding the services and supports to be received and from whom;

6. Includes a method for the participant to request updates to the person-centered service plan as needed;

7. Enables all parties to understand how the participant:

- a. Learns;
 - b. Makes decisions; and
 - c. Chooses to live and work in the participant's community;
8. Discovers the participant's needs, likes, and dislikes;
9. Empowers the participant's person-centered team to create a person-centered service plan that:

- a. Is based on the participant's:
 - (i) Assessed clinical and support needs;
 - (ii) Strengths;
 - (iii) Preferences; and
 - (iv) Ideas;
- b. Encourages and supports the participant's:
 - (i) Rehabilitative needs;
 - (ii) Habilitative needs; and
 - (iii) Long term satisfaction;
- c. Is based on reasonable costs given the participant's support needs;

d. Includes:

- (i) The participant's goals;
 - (ii) The participant's desired outcomes; and
 - (iii) Matters important to the participant;
- e. Includes a range of supports including funded, community, and natural supports that shall assist the participant in achieving identified goals;

f. Includes:

- (i) Information necessary to support the participant during times of crisis; and
- (ii) Risk factors and measures in place to prevent crises from occurring;

g. Assists the participant in making informed choices by facilitating knowledge of and access to services and supports;

h. Records the alternative home and community-based settings that were considered by the participant;

i. Reflects that the setting in which the participant resides was chosen by the participant;

j. Is understandable to the participant and to the individuals who are important in supporting the participant;

k. Identifies the individual or entity responsible for monitoring the person-centered service plan;

l. Is finalized and agreed to with the informed consent of the participant or participant's legal representative in writing with signatures by each individual who will be involved in implementing the person-centered service plan;

m. Shall be distributed to the individual and other people involved in implementing the person-centered service plan;

n. Includes those services that the individual elects to self-direct; and

o. Prevents the provision of unnecessary or inappropriate services and supports; and

(c) Include in all settings the ability for the participant to:

1. Have access to make private phone calls, texts, or emails at the participant's preference or convenience;

2.

- a. Choose when and what to eat;
- b. Have access to food at any time;
- c. Choose with whom to eat or whether to eat alone; and
- d. Choose appropriating clothing according to the:

- (i) Participant's preference;
- (ii) Weather; and
- (iii) Activities to be performed.

(3) If a participant's person-centered service plan includes ADHC services, the ADHC services plan of treatment shall be addressed in the person-centered service plan.

(4)

(a) A participant's person-centered service plan shall be:

1. Entered into the MWMA by the participant's case manager; and
2. Updated in the MWMA by the participant's case manager.

VOLUME 51, NUMBER 8– February 1, 2025

(b) A participant or participant's authorized representative shall complete and upload into the MWMA a MAP - 116 Service Plan – Participant Authorization prior to or at the time the person-centered service plan is uploaded into the MWMA.

Section 9. Case Management Requirements.

(1) A case manager shall:

(a) Have a bachelor's degree from an accredited institution in a human services field and be supervised by:

1. A qualified professional in the area of intellectual disabilities who:

a. Has at least one (1) year of experience working directly with individuals with an intellectual disability or a developmental disability;

b. Meets the federal educational requirements for a qualified intellectual disability professional established in 42 C.F.R. 483.430; and

c. Provides documentation of education and experience;

2. A registered nurse who has at least two (2) years of experience working with individuals with an intellectual or a development disability;

3. An individual with a bachelor's degree in a human service field who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

4. A licensed clinical social worker who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

5. A licensed marriage and family therapist who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

6. A licensed professional clinical counselor who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

7. A certified psychologist or licensed psychological associate who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability; or

8. A licensed psychological practitioner or certified psychologist with autonomous functioning who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;

(b) Be a registered nurse;

(c) Be a licensed practical nurse;

(d) Be a licensed clinical social worker;

(e) Be a licensed marriage and family therapist;

(f) Be a licensed professional clinical counselor;

(g) Be a licensed psychologist; or

(h) Be a licensed psychological practitioner.

(2) A case manager shall:

(a) Communicate in a way that ensures the best interest of the participant;

(b) Be able to identify and meet the needs of the participant;

(c)

1. Be competent in the participant's language either through personal knowledge of the language or through interpretation; and

2. Demonstrate a heightened awareness of the unique way in which the participant interacts with the world around the participant;

(d) Ensure that:

1. The participant is educated in a way that addresses the participant's:

a. Need for knowledge of the case management process;

b. Personal rights; and

c. Risks and responsibilities as well as awareness of available services; and

2. All individuals involved in implementing the participant's person-centered service plan are informed of changes in the scope of work related to the person-centered service plan as applicable;

(e) Have a code of ethics to guide the case manager in providing case management, which shall address:

1. Advocating for standards that promote outcomes of quality;

2. Ensuring that no harm is done;

3. Respecting the rights of others to make their own decisions;

4. Treating others fairly; and

5. Being faithful and following through on promises and commitments;

(f)

1. Lead the person-centered service planning team; and

2. Take charge of coordinating services through team meetings with representatives of all agencies involved in implementing a participant's person-centered service plan;

(g)

1. Include the participant's participation or legal representative's participation in the case management process; and

2. Make the participant's preferences and participation in decision making a priority;

(h) Document:

1. A participant's interactions and communications with other agencies involved in implementing the participant's person-centered service plan; and

2. Personal observations;

(i) Advocate for a participant with service providers to ensure that services are delivered as established in the participant's person-centered service plan;

(j) Be accountable to:

1. A participant to whom the case manager provides case management in ensuring that the participant's needs are met;

2. A participant's person-centered team and provide leadership to the team and follow through on commitments made; and

3. The case manager's employer by following the employer's policies and procedures;

(k) Stay current regarding the practice of case management and case management research;

(l) Assess the quality of services, safety of services, and cost effectiveness of services being provided to a participant in order to ensure that implementation of the participant's person-centered service plan is successful and done so in a way that is efficient regarding the participant's financial assets and benefits;

(m) Document services provided to a participant by entering the following into the MWMA:

1. A monthly department approved person-centered monitoring tool; and

2. A monthly entry, which shall include:

a. The month and year for the time period the note covers;

b. An analysis of progress toward the participant's outcome or outcomes;

c. Identification of barriers to achievement of outcomes;

d. A projected plan to achieve the next step in achievement of outcomes;

e. The signature and title of the case manager completing the note; and

f. The date the note was generated;

(n) Accurately reflect in the MWMA if a participant is:

1. Terminated from the Michelle P. waiver program;

2. Admitted to an intermediate care facility for individuals with an intellectual disability;

3. Admitted to a hospital;

4. Admitted to a skilled nursing facility;

5. Transferred to another Medicaid 1915(c) home and community based waiver service program; or

6. Relocated to a different address; and

(o) Provide information about participant-directed services to the participant or the participant's guardian:

1. At the time the initial person-centered service plan is developed;

2. At least annually thereafter; and

3. Upon inquiry from the participant or participant's guardian.

(3) If a participant:

(a) Voluntarily terminates participation in the Michelle P. waiver program in order to be admitted to a hospital, to a nursing facility, or to an intermediate care facility for individuals with an intellectual disability, the participant's case manager shall enter the request into the MWMA; or

VOLUME 51, NUMBER 8– February 1, 2025

(b) Is transferred to another 1915(c) home and community based waiver services program, the case manager shall enter the transfer request into the MWMA.

(4) Case management shall:

(a) Consist of coordinating the delivery of direct and indirect services to a participant;

(b) Be provided by a case manager who shall:

1. Arrange for a service but not provide a service directly;

2. Contact the participant monthly through a face-to-face visit at the participant's home, in the ADHC center, or at the adult day training provider's location;

3. Assure that service delivery is in accordance with a participant's person-centered service plan; and

4. Meet the requirements of this section;

(c) Not include a group conference;

(d) Include documenting:

1. The following regarding notes:

a. The signature of the individual preparing the note;

b. The date of the signature; and

c. The title of the individual preparing the note; and

2. At least one (1) face-to-face meeting between the case manager and participant, family member, or legal representative;

(e) Include requiring a participant or legal representative to sign a MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form, at the time of application or reapplication and at each recertification to document that the individual was informed of the choice to receive Michelle P. waiver or institutional services; and

(f) Not be provided to a participant by an agency if the agency provides any other Michelle P. waiver service to the participant.

(5)

(a) Case management for any participant who begins receiving Michelle P. waiver services after the effective date of this administrative regulation shall be conflict free except as allowed in paragraph (b) of this subsection.

(b)

1. Conflict free case management shall be a scenario in which a provider including any subsidiary, partnership, not-for-profit, or for-profit business entity that has a business interest in the provider who renders case management to a participant shall not also provide another 1915(c) home and community based waiver service to that same participant unless the provider is the only willing and qualified Michelle P. waiver provider within thirty (30) miles of the participant's residence.

2. An exemption to the conflict free case management requirement shall be granted if:

a. A participant requests the exemption;

b. The participant's case manager provides documentation of evidence to the department that there is a lack of a qualified case manager within thirty (30) miles of the participant's residence;

c. The participant or participant's representative and case manager signs a completed MAP - 531 Conflict-Free Case Management Exemption; and

d. The participant, participant's representative, or case manager uploads the completed MAP - 531 Conflict-Free Case Management Exemption into the MWMA.

3. If a case management service is approved to be provided despite not being conflict free, the case management provider shall:

a. Document conflict of interest protections, separating case management and service provision functions within the provider entity; and

b. Demonstrate that the participant is provided with a clear and accessible alternative dispute resolution process.

4. An exemption to the conflict free case management requirement shall be requested upon reassessment or at least annually.

(c) A participant who receives Michelle P. waiver services prior to the effective date of this administrative regulation shall transition to conflict free case management when the participant's next level of care determination occurs.

(d) During the transition to conflict free case management, any case manager providing case management to a participant shall educate the participant and members of the participant's person-centered team of the conflict free case management requirement in order to prepare the participant to decide, if necessary, to change the participant's:

1. Case manager; or

2. Provider of non-case management Michelle P. waiver services.

(6) Case management shall involve:

(a) A constant recognition of what is and is not working regarding a participant; and

(b) Changing what is not working.

Section 10. Annual Expenditure Limit Per Individual.

(1) The department shall have an annual expenditure limit per individual receiving services via this administrative regulation.

(2) The limit referenced in subsection (1) of this section shall:

(a) Be an overall limit applied to all services whether PDS, Michelle P. waiver services not provided as PDS, or a combination of PDS and Michelle P. waiver services; and

(b) Equal \$63,000 per year.

Section 11. Incident Reporting Process.

(1)

(a) There shall be two (2) classes of incidents.

(b) The following shall be the two (2) classes of incidents:

1. An incident; or

2. A critical incident.

(2) An incident shall be any occurrence that impacts the health, safety, welfare, or lifestyle choice of a participant and includes:

(a) A minor injury;

(b) A medication error without a serious outcome; or

(c) A behavior or situation that is not a critical incident.

(3) A critical incident shall be an alleged, suspected, or actual occurrence of an incident that:

(a) Can reasonably be expected to result in harm to a participant; and

(b) Shall include:

1. Abuse, neglect, or exploitation;

2. A serious medication error;

3. Death;

4. A homicidal or suicidal ideation;

5. A missing person; or

6. Other action or event that the provider determines may result in harm to the participant.

(4)

(a) If an incident occurs, the Michelle P. waiver provider shall:

1. Report the incident by making an entry into the MWMA that includes details regarding the incident; and

2. Be immediately assessed for potential abuse, neglect, or exploitation.

(b) If an assessment of an incident indicates that the potential for abuse, neglect, or exploitation exists:

1. The incident shall immediately be considered a critical incident;

2. The critical incident procedures established in subsection (5) of this section shall be followed; and

3. The Michelle P. waiver provider shall report the incident to the participant's case manager and participant's guardian, if the participant has a guardian, within twenty-four (24) hours of discovery of the incident.

(5)

(a) If a critical incident occurs, the individual who witnessed the critical incident or discovered the critical incident shall immediately act to ensure the health, safety, and welfare of the at-risk participant.

(b) If the critical incident:

1. Requires reporting of abuse, neglect, or exploitation, the critical incident shall be immediately reported via the MWMA; or

2. Does not require reporting of abuse, neglect, or exploitation, the critical incident shall be reported via the MWMA within eight (8) hours of discovery.

- (c) The Michelle P. waiver provider shall:
1. Conduct an immediate investigation and involve the participant's case manager in the investigation; and
 2. Prepare a report of the investigation, which shall be recorded in the MWMA and shall include:
 - a. Identifying information of the participant involved in the critical incident and the person reporting the critical incident;
 - b. Details of the critical incident; and
 - c. Relevant participant information including:
 - (i) A listing of recent medical concerns;
 - (ii) An analysis of causal factors; and
 - (iii) Recommendations for preventing future occurrences.
- (6)
- (a) Following a death of a participant receiving Michelle P. waiver services from a Michelle P. waiver provider, the Michelle P. waiver provider shall enter mortality data documentation into the MWMA within fourteen (14) days of the death.
- (b) Mortality data documentation shall include:
1. The participant's person-centered service plan at the time of death;
 2. Any current assessment forms regarding the participant;
 3. The participant's medication administration records from all service sites for the past three (3) months along with a copy of each prescription, if applicable;
 4. Progress notes regarding the participant from all service elements for the past thirty (30) days, including case management notes;
 5. The results of the participant's most recent physical exam, if available;
 6. All incident reports, if any exist, regarding the participant for the past six (6) months;
 7. The most recent psychological evaluation of the participant, if applicable and available;
 8. A full life history and any updates;
 9. Emergency medical services notes regarding the participant if available;
 10. The police report if available;
 11. A copy of:
 - a. The participant's advance directive, medical order for scope of treatment, living will, or health care directive if applicable; and
 - b. Any functional assessment of behavior or positive behavior support plan regarding the participant that has been in place over any part of the past twelve (12) months; and
 12. A record of all medical appointments or emergency room visits by the participant within the past twelve (12) months, if available.
- (7) A Michelle P. waiver provider shall document all medication error details on a medication error log retained on file at the Michelle P. waiver provider site.

Section 12. Michelle P. Waiver Program Waiting List.

- (1)
- (a) If a slot is not available for an individual to enroll in the Michelle P. Waiver Program at the time of applying for the program, the individual shall be placed on a statewide Michelle P. Waiver Program waiting list:
1. In accordance with subsection (2) of this section; and
 2. Maintained by the department.
- (b) Each slot for the Michelle P. Waiver Program shall be contingent upon:
1. Biennium budget funding;
 2. Federal financial participation; and
 3. Centers for Medicare and Medicaid Services approval.
- (2) For an individual to be placed on the Michelle P. Waiver Program waiting list, the individual or individual's representative shall:
- (a) Apply for 1915(c) home and community based waiver services via the MWMA; and
 - (b) Complete and upload to the MWMA a MAP – 115 Application Intake – Participant Authorization.
- (3) Individuals shall be placed on the Michelle P. Waiver Program waiting list in the chronological order that each application is received and validated by the department.

- (4) The department shall send a written notice of placement on the Michelle P. Waiver Program waiting list to the:
- (a) Applicant; or
 - (b) Applicant's legal representative.
- (5) At least annually, the department shall contact each individual, or individual's legal representative, on the Michelle P. Waiver Program waiting list to:
- (a) Verify the accuracy of the individual's information; and
 - (b) Verify whether the individual wishes to continue to pursue enrollment in the Michelle P. Waiver Program.
- (6) The department shall remove an individual from the Michelle P. Waiver Program waiting list if:
- (a) The individual is deceased;
 - (b) The department notifies the individual or the individual's legal representative of potential funding approved to enroll the individual in the Michelle P. Waiver Program and the individual or individual's legal representative:
 1. Declines the potential funding for enrollment in the program; and
 2. Does not request to remain on the Michelle P. Waiver Program waiting list; or
 - (c) Pursuant to subsection (5) of this section, the individual elects to not continue to pursue enrollment in the Michelle P. Waiver Program.
- (7) If, after being notified by the department of potential funding approved to enroll the individual in the Michelle P. Waiver Program, the individual or individual's legal representative declines the potential funding but requests to remain on the Michelle P. Waiver Program waiting list, the individual shall:
- (a) Lose his or her current position on the waiting list; and
 - (b) Be moved to the bottom of the waiting list.
- (8) If the department removes an individual from the Michelle P. Waiver Program waiting list pursuant to this section, the department shall send written notice of the removal to:
- (a) The individual or the individual's legal representative; and
 - (b) The individual's Michelle P. Waiver Program coordination provider if the individual has a Michelle P. Waiver Program coordination provider.
- (9) The removal of an individual from the Michelle P. Waiver Program waiting list shall not preclude the individual from applying for Michelle P. Waiver Program participation in the future.
- (10)
- (a) An individual who is placed on the Michelle P. Waiver Program waiting list shall be informed about and told how to apply for Medicaid state plan services for which the individual might qualify.
 - (b) An individual who is under twenty-one (21) years of age and who is placed on the Michelle P. Waiver Program waiting list shall also be informed about Early and Periodic Screening, Diagnostic, and Treatment services.

Section 13. Use of Electronic Signatures. The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

Section 14. Reimbursement.

- (1) The following Michelle P. waiver services, alone or in any combination, shall be limited to forty (40) hours per calendar week:
- (a) Homemaker;
 - (b) Personal care;
 - (c) Attendant care;
 - (d) Supported employment;
 - (e) Adult day health care;
 - (f) Adult day training;
 - (g) Community living supports;
 - (h) Physical therapy;
 - (i) Occupational therapy;
 - (j) Speech therapy; and
 - (k) Behavior supports.
- (2) Respite services shall not exceed \$4,000 per member, per calendar year.

VOLUME 51, NUMBER 8– February 1, 2025

(3) Environmental and minor home adaptation services shall not exceed \$500 per member, per calendar year.

(4)

(a) The department shall reimburse for a Michelle P. waiver service at the lesser of billed charges or the ~~base[fixed upper]~~ payment rate for each unit of service.

(b) The unit amounts, ~~base[fixed upper]~~ payment rate[limits], and other limits established in the following table shall apply:

<u>Service</u>	<u>Unit</u>	<u>Base Rate Effective January 1, 2025</u>
Adult Day Health Care	15-minute	\$3.82
Adult Day Training	15-minute	\$3.62
Attendant Care - Traditional	15-minute	\$6.36
Attendant Care - PDS	15-minute	\$6.36
Behavioral Support Services	15-minute	\$40.23
Case Management	Per month	\$425.92
Community Living Supports - Traditional	15-minute	\$6.70
Community Living Supports - PDS	15-minute	\$6.70
Environmental and Minor Home Adaptation	Per Plan of Care	Up to \$605
Financial Management Services	Per month	\$121.00
Homemaker - Traditional	15-minute	\$7.87
Homemaker - PDS	15-minute	\$7.87
Occupational Therapy	15-minute	\$26.83
Personal Care - Traditional	15-minute	\$9.08
Personal Care - PDS	15-minute	\$9.08
Physical Therapy	15-minute	\$26.83
Respite	15-minutes	\$5.92
Respite - PDS	15-minutes	\$5.92
Speech Therapy	15-minute	\$26.83
Supported Employment - Traditional	15-minute	\$10.54
Supported Employment - PDS	15-minute	\$10.54

Section 15. Federal Financial Participation and Approval. The department's coverage and reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage and reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval of the coverage and reimbursement.

Section 16. Appeal Rights. An appeal of a department determination regarding Michelle P. waiver service level of care or services to a participant shall be in accordance with 907 KAR 1:563.

Section 17. Federal Approval and Federal Financial Participation. The department's coverage of and reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage and reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage and reimbursement.

Section 18. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "MAP – 115 Application Intake – Participant Authorization", May 2015;

(b) "MAP – 116 Service Plan – Participant Authorization", May 2015;

(c) "MAP – 531 Conflict-Free Case Management Exemption", October 2015;

(d) "MAP 95 Request for Equipment Form", June 2007;

(e) "MAP - 350, Long Term Care Facilities and Home and Community Based Program Certification Form", June 2015;

(f) "MAP 351, Medicaid Waiver Assessment", July 2015;

(g) "MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)/Participant Directed Services (PDS)", June 2015;

(h) "MAP 10, Waiver Services Physician's Recommendation", June 2015; and

(i) "Kentucky Consumer Directed Options/Participant Directed Services Employee/Provider Contract", June 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:

(a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at <https://www.chfs.ky.gov/agencies/dms/dca/Pages/mpw.aspx> [<http://www.chfs.ky.gov/dms/incorporated.htm>].

Lisa D. Lee, Commissioner

Eric C. Friedlander, Secretary

APPROVED BY AGENCY: December 20, 2024

FILED WITH LRC: December 23, 2024 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 24, 2025, 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 March 17, 2025, 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 March 31, 2025. 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, KY 40621; Phone: 502-564-7476; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan Scott or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services' (DMS's) coverage and reimbursement provisions requirements regarding Michelle P. waiver program services. The Michelle P. waiver program is a program which enables individuals who have care needs that qualify them for receiving services in an intermediate care facility for individuals with an intellectual disability (ICF-IID) to reside in and receive services in a community setting rather than in an institutional setting.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish DMS's coverage and reimbursement provisions and requirements regarding Michelle P. Waiver Program services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing DMS's coverage and reimbursement provisions and requirements regarding Michelle P. Waiver Program services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing DMS's coverage and reimbursement provisions and requirements regarding Michelle P. Waiver Program 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 delete and update the reimbursement methodology to reflect the approval of new federal 1915(c) waivers. A new table has been inserted to reflect the new rates. Other amendments were made to conform to KRS 13A drafting requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update reimbursement methodology to new, higher rates approved by the federal government.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by implementing a federally approved rate increase.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists with the effective administration of the statutes by establishing a process to update increased federal reimbursement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: DMS anticipates that more than 10,300 recipients will utilize the services available under this waiver.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required, regulated entities will be able to bill and receive a higher reimbursement.

(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 in the expanded reimbursement available for this waiver.

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

(a) Initially: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(b) On a continuing basis: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Cabinet for Health and Family Services, Department for Medicaid Services

(a) Estimate the following for the first year:

Expenditures: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 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 anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): N/A

(a) Estimate the following for the first year:

Expenditures: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 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 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): Enrolled providers providing Michelle P. waiver services.

(a) Estimate the following for the first year:

Expenditures: DMS does not anticipate additional expenditures for regulated entities.

Revenues: Participating providers will benefit from increased reimbursement.

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 anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6. Future slots and increases will be dependent on the state budgeting process and federal reimbursement requirements.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6. Future slots and increases will be dependent on the state budgeting process and federal reimbursement requirements.

(b) Methodology and resources used to determine the fiscal impact: The department worked with interested parties to gain input and perspectives as well as completed a multiyear process working with a contracted third party to redesign the 1915(c) waivers and reimbursement.

(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: This administrative regulation will provide additional reimbursement for all 1915(c) providers.

FEDERAL MANDATE ANALYSIS COMPARISON

- (1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. 441.305(b).
- (2) State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."
- (3) Minimum or uniform standards contained in the federal mandate. Federal approval is for a limited number of waiver slots.
- (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 Medicaid Services
Division of Long Term Services and Supports
(Amendment)

907 KAR 3:100. Reimbursement for acquired brain injury waiver services.

RELATES TO: KRS 205.5605(2), 34 C.F.R. Subtitle B, Chapter III, 42 C.F.R. 441.300 - 310, 29 U.S.C. Chapter 16, 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(3), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the payment provisions relating to home - and community -based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services for the purpose of rehabilitation and retraining for reentry into the community with existing resources.

Section 1. Definitions.

- (1) "ABI" means an acquired brain injury.
- (2) "ABI provider" means an entity that meets the provider criteria established in 907 KAR 3:090, Section 2.
- (3) "ABI recipient" means an individual who meets the ABI recipient criteria established in 907 KAR 3:090, Section 3.
- (4) "Acquired brain injury waiver service" or "ABI waiver service" means a home and community based waiver service provided to a Medicaid eligible individual who has acquired a brain injury.
- (5) "Consumer" is defined by KRS 205.5605(2).
- (6) "Consumer directed option" or "CDO" means an option established by KRS 205.5606 within the home and community based services waiver that allows recipients to:
 - (a) Assist with the design of their programs;
 - (b) Choose their providers of services; and
 - (c) Direct the delivery of services to meet their needs.
- (7) "Department" means the Department for Medicaid Services or its designated agent.
- (8) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

Section 2. Coverage. The department shall reimburse a participating provider for an ABI waiver service if the service is:

- (1) Provided to an ABI recipient;
- (2) Prior authorized;

- (3) Included in the recipient's plan of care;
- (4) Medically necessary; and
- (5) Essential for the rehabilitation and retraining of the recipient.

Section 3. Exclusions to Acquired Brain Injury Waiver Program. Under the ABI waiver program, the department shall not reimburse a provider for a service provided:

- (1) To an individual who has a condition identified in 907 KAR 3:090, Section 5; or
- (2) Which has not been prior authorized as a part of the recipient's plan of care.

Section 4. Payment Amounts.

- (1) A participating ABI waiver service provider shall be reimbursed a fixed rate for reasonable and medically necessary services for a prior-authorized unit of service provided to a recipient.
- (2) A participating ABI waiver service provider certified in accordance with 907 KAR 3:090 shall be reimbursed at the lesser of:
 - (a) The provider's usual and customary charge; or
 - (b) The Medicaid ~~fixed upper payment limit~~ per unit of service as established in Section 5 of this administrative regulation.

Section 5. Base Payment Rate Table and Reimbursement Requirements. [Fixed Upper Payment Limits:]

(1) The rates established in the following table shall establish the base payment rate for ABI waiver services:

~~[(1)] [Except as provided by subsection (2) of this section, the following respective rates shall be the fixed upper payment limits for the corresponding respective ABI waiver services in conjunction with the corresponding units of service and unit of service limits:]~~

Service	Unit	Base Rate Effective January 1, 2025
Adult Day Training	15-minute	\$4.88
Assessment & Reassessment	Per assessment	\$121.00
Behavior Programming	15-minute	\$40.67
Case Management	Per month	\$525.14
Companion	15-minute	\$6.73
Companion - PDS	15-minute	\$6.73
Counseling, Individual	15-minute	\$28.85
Counseling, Group	15-minute	\$6.96
Environmental or Minor Home Adaptation	Per year	Up to \$2,420.00
Financial Management Services	Per month	\$121.00
Occupational Therapy	15-minute	\$31.34
Personal Care	15-minute	\$6.73
Personal Care - PDS	15-minute	\$6.73
Respite	15-minute	\$5.92
Respite - PDS	15-minute	\$5.92
Speech Therapy	15-minute	\$34.38
Supervised Residential Care - Level I	Per day	\$300.00
Supervised Residential Care - Level II	Per day	\$225.00
Supervised Residential Care - Level III	Per day	\$112.50
Supported Employment	15-minute	\$10.54
Supported Employment - PDS	15-minute	\$10.54

(2) Specialized medical equipment and supplies shall be reimbursed on a per-item basis based on a reasonable cost as negotiated by the department if the equipment or supply is:

- (a) Not covered through the Medicaid durable medical equipment program established in 907 KAR 1:479; and

VOLUME 51, NUMBER 8— February 1, 2025

(b) Provided to an individual participating in the ABI waiver program.

(3) Respite care may exceed 336 hours in a twelve (12) month period if an individual's normal caregiver[care-giver] is unable to provide care due to a death in the family, serious illness, or hospitalization.

(4) If an ABI recipient is placed in a nursing facility to receive respite care, the department shall pay the nursing facility its per diem rate for that individual.

(5) If supported employment services are provided at a work site in which persons without disabilities are employed, payment shall:

(a) Be made only for the supervision and training required as the result of the ABI recipient's disabilities; and

(b) Not include payment for supervisory activities normally rendered.

(6)

(a) The department shall only pay for supported employment services for an individual if supported employment services are unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 94-142 (34 C.F.R. Subtitle B, Chapter III).

(b) For an individual receiving supported employment services, documentation shall be maintained in his or her record demonstrating that the services are not otherwise available under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 94-142 (34 C.F.R. Subtitle B, Chapter III).

Section 6. Payment Exclusions. Payment shall not include:

(1) The cost of room and board, unless provided as part of respite care in a Medicaid certified nursing facility;

(2) The cost of maintenance, upkeep, an improvement, or an environmental modification to a group home or other licensed facility;

(3) Excluding an environmental modification, the cost of maintenance, upkeep, or an improvement to a recipient's place of residence;

(4) The cost of a service that is not listed in the recipient's approved plan of care; or

(5) A service provided by a family member.

Section 7. Records Maintenance. A participating provider shall:

(1) Maintain fiscal and service records for at least six (6) years;

(2) Provide, as requested by the department, a copy of, and access to, each record of the ABI waiver program retained by the provider pursuant to:

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

(b) 907 KAR 1:672; and

(3) Upon request, make available service and financial records to a representative or designee of:

(a) The Commonwealth of Kentucky, Cabinet for Health and Family Services;

(b) The United States Department for Health and Human Services, Comptroller General;

(c) The United States Department for Health and Human Services, the Centers for Medicare and Medicaid Services (CMS);

(d) The General Accounting Office;

(e) The Commonwealth of Kentucky, Office of the Auditor of Public Accounts; or

(f) The Commonwealth of Kentucky, Office of the Attorney General.

Section 8. Appeal Rights. An ABI waiver[wavier] provider may appeal department decisions as to the application of this administrative regulation as it impacts the provider's reimbursement in accordance with 907 KAR 1:671, Sections 8 and 9.

Section 9. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 20, 2024

FILED WITH LRC: December 23, 2024 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 24, 2025, 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 March 17, 2025, 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 March 31, 2025. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan Scott or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medicaid program coverage provisions and requirements regarding acquired brain injury (ABI) waiver services.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish coverage policies for the Medicaid ABI waiver program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid ABI coverage provisions and requirements for a program that enables individuals who have suffered a brain injury to live, and receive services, in a community setting rather than in an institution.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation will assist in the effective administration of the authorizing statutes by establishing Medicaid coverage provisions and requirements for a program that enables individuals who have suffered a brain injury to live, and receive services, in a community setting rather than in an institution.

(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 delete and update the reimbursement methodology to reflect the approval of new federal 1915(c) waivers. A new table has been inserted to reflect the new rates. In addition, a federal approval clause and an updated website link are included, as well as amendments to conform to KRS 13A drafting requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update reimbursement methodology to new, higher rates approved by the federal government.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by implementing a federally approved rate increase.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists with the effective administration of the statutes by establishing a process to update increased federal reimbursement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: DMS anticipates that up to 383 recipients will utilize the services available under this waiver.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required, regulated entities will be able to bill and receive a higher reimbursement.

(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 in the expanded reimbursement available for this waiver.

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

(a) Initially: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(b) On a continuing basis: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Cabinet for Health and Family Services, Department for Medicaid Services

(a) Estimate the following for the first year:

Expenditures: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 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 anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): N/A

(a) Estimate the following for the first year:

Expenditures: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 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 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): Enrolled providers providing Michelle P. waiver services.

(a) Estimate the following for the first year:

Expenditures: DMS does not anticipate additional expenditures for regulated entities.

Revenues: Participating providers will benefit from increased reimbursement.

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 anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6. Future slots and increases will be dependent on the state budgeting process and federal reimbursement requirements.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6. Future slots and increases will be dependent on the state budgeting process and federal reimbursement requirements.

(b) Methodology and resources used to determine the fiscal impact: The department worked with interested parties to gain input and perspectives as well as completed a multiyear process working with a contracted third party to re-design the 1915(c) waivers and reimbursement.

(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: This administrative regulation will provide additional reimbursement for all 1915(c) providers.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. 441.305(b).

(2) State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

(3) Minimum or uniform standards contained in the federal mandate. Federal approval is for a limited number of waiver slots.

(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 Medicaid Services
Division of Long Term Services and Supports
(Amendment)

907 KAR 3:210. Acquired brain injury long-term care waiver services and reimbursement.

RELATES TO: KRS 17.165, 202A.011, 205.5605, 205.5607, 205.8451, 205.8477, 314.011, 319.010(8), 319A.010, 319.056, 327.010, 334A.020, 335.300(2), 335.500(3), 620.030, 42 C.F.R. 441 Subpart G, 455 Subpart B, 42 U.S.C. 1396a, 1396b, 1396d, 1396n
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606(1)

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. KRS 205.5606(1) requires the cabinet to promulgate administrative regulations to establish a participant-directed services program to provide an option for the home and community-based services waivers. This administrative regulation establishes the coverage provisions relating to home- and community- based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services and including a participant-directed services program pursuant to KRS 205.5606. The purpose of acquired brain injury long term care waiver services is to provide an alternative to institutional care to individuals with an acquired brain injury who require maintenance services.

Section 1. Definitions.

(1) "1915(c) home and community based services waiver program" means a Kentucky Medicaid program established pursuant to and in accordance with 42 U.S.C. 1396n(c).

(2) "ABI" means an acquired brain injury.

(3) "ABI provider" means an entity that meets the criteria established in Section 2 of this administrative regulation.

(4) "ABIB" means the Acquired Brain Injury Branch in the Division of Community Alternatives, in the Cabinet for Health and Family Services.

(5) "Acquired brain injury long term care waiver service" means a home and community based waiver service for an individual who requires long term maintenance and has acquired a brain injury involving the central nervous system that resulted from:

- (a) An injury from a physical trauma;
- (b) Anoxia or a hypoxic episode; or
- (c) Allergic condition, toxic substance, or another acute medical incident.

(6) "ADHC services" means adult day health care services provided on a regularly scheduled basis that ensure optimal functioning of a participant who does not require twenty-four (24) hour care in an institutional setting.

(7) "Assessment" or "reassessment" means a comprehensive evaluation of abilities, needs, and services that:

- (a) Serves as the basis for a level of care determination;
- (b) Is completed on a MAP 351, Medicaid Waiver Assessment that is uploaded into the MWMA; and
- (c) Occurs at least once every twelve (12) months thereafter.

(8) "Axis I diagnosis" means a clinical disorder or other condition which may be a focus of clinical attention.

(9) "Behavior intervention committee" or "BIC" means a group of individuals established to evaluate the technical adequacy of a proposed behavior intervention for a participant.

(10) "Blended services" means a nonduplicative combination of ABI waiver services identified in Section 6 of this administrative regulation and participant-directed services identified in Section 10 of this administrative regulation provided in accordance with the participant's approved person-centered service plan.

(11) "Board certified behavior analyst" means an independent practitioner who is certified by the Behavior Analyst Certification Board, Inc.

(12) "Case manager" means an individual who manages the overall development and monitoring of a participant's person-centered service plan.

(13) "Covered services and supports" is defined by KRS 205.5605(3).

(14) "Crisis prevention and response plan" means a plan developed to identify any potential risk to a participant and to detail a strategy to minimize the risk.

(15) "DCBS" means the Department for Community Based Services.

(16) "Department" means the Department for Medicaid Services or its designee.

(17) "Family training" means providing to the family or other responsible person:

- (a) Interpretation or explanation of medical examinations and procedures;
- (b) Treatment regimens;
- (c) Use of equipment specified in the person-centered service plan; or
- (d) Advising the family how to assist the participant.

(18) "Good cause" means a circumstance beyond the control of an individual which affects the individual's ability to access funding or services, including:

- (a) Illness or hospitalization of the individual which is expected to last sixty (60) days or less;
- (b) Death or incapacitation of the primary caregiver;
- (c) Required paperwork and documentation for processing in accordance with Section 3 of this administrative regulation that has not been completed but is expected to be completed in two (2) weeks or less; or
- (d) The individual not having been accepted for services or placement by a potential provider despite the individual or individual's legal representative having made diligent contact with the potential provider to secure placement or access services within sixty (60) days.

(19) "Human rights committee" means a group of individuals established to protect the rights and welfare of a participant.

(20) "Human rights restriction" means the denial of a basic right or freedom to which all humans are entitled, including the right to life and physical safety, civil and political rights, freedom of expression, equality before the law, social and cultural justice, the right to participate in culture, the right to food and water, the right to work, and the right to education.

(21) "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

(22) "Licensed medical professional" means:

- (a) A physician;
- (b) An advanced practice registered nurse;
- (c) A physician assistant;
- (d) A registered nurse;
- (e) A licensed practical nurse; or
- (f) A pharmacist.

(23) "Licensed practical nurse" or "LPN" means a person who:

- (a) Meets the definition of KRS 314.011(9); and
- (b) Works under the supervision of a registered nurse.

(24) "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3).

(25) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(26) "MWMA" means the Kentucky Medicaid Waiver Management Application internet portal located at <https://www.chfs.ky.gov/agencies/dms/dca/Pages/mwma.aspx> [<http://chfs.ky.gov/dms/mwma.htm>].

(27) "Nursing supports" means training and monitoring of services by a registered nurse or a licensed practical nurse.

(28) "Occupational therapist" is defined by KRS 319A.010(3).

(29) "Occupational therapy assistant" is defined by KRS 319A.010(4).

(30) "Participant" means an individual who meets the criteria established in Section 3 of this administrative regulation.

(31) "Participant-directed services" or "PDS" means an option established by KRS 205.5606 within the 1915(c) home and

VOLUME 51, NUMBER 8– February 1, 2025

community based service waiver programs which allows participants to receive non-medical services in which the individual:

- (a) Assists with the design of the program;
- (b) Chooses the providers of services; and
- (c) Directs the delivery of services to meet their needs.

(32) "Person-centered service plan" means a written individualized plan of services for a participant that meets the requirements established in Section 4 of this administrative regulation.

(33) "Person-centered team" means the participant, the participant's guardian or representative, and other individuals who are natural or paid supports, and who:

(a) Recognize that evidenced based decisions are determined within the basic framework of what is important for the participant and within the context of what is important to the participant based on informed choice;

(b) Work together to identify what roles they will assume to assist the participant in becoming as independent as possible in meeting the participant's needs; and

(c) Include providers who receive payment for services who shall:

- 1. Be active contributing members of the person centered team meetings;
- 2. Base their input upon evidence-based information; and
- 3. Not request reimbursement for person centered team meetings.

(34) "Physical therapist" is defined by KRS 327.010(2).

(35) "Physical therapist assistant" means a skilled health care worker who:

- (a) Is certified by the Kentucky Board of Physical Therapy; and
- (b) Performs physical therapy and related duties as assigned by the supervising physical therapist

(36) "Pro re nata" or "PRN" means as needed.

(37) "Psychologist" is defined by KRS 319.010(9)(8).

(38) "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

(39) "Qualified mental health professional" is defined by KRS 202A.011(13)(12).

(40) "Registered nurse" or "RN" means a person who:

- (a) Meets the definition established in KRS 314.011(5); and
- (b) Has one (1) year or more experience as a professional nurse.

(41) "Representative" is defined by KRS 205.5605(6).

(42) "Speech-language pathologist" is defined by KRS 334A.020(9)(3).

(43) "Support broker" means an individual designated by the department to:

- (a) Provide training, technical assistance, and support to a participant; and
- (b) Assist a participant in any other aspects of participant-directed services.

Section 2. Non-PDS Provider Participation Requirements.

(1) In order to provide an ABI waiver service in accordance with Section 4 of this administrative regulation, excluding a participant-directed service, an ABI provider shall:

(a) Be enrolled as a Medicaid provider in accordance with 907 KAR 1:671;

(b) Be located within an office in the Commonwealth of Kentucky; and

(c)

- 1. Be a licensed provider in accordance with:
 - a. 902 KAR 20:066, if an adult day health care provider;
 - b. 902 KAR 20:081, if a home health service provider; or
 - c. 902 KAR 20:091, if a community mental health center; or
- 2. Be certified by the department in accordance with 907 KAR 12:010, Section 3, or 907 KAR 3:090, Section 2, if a provider type is not listed in subparagraph 1. of this paragraph; and

(d) Complete and submit a MAP-4100a to the department.

(2) An ABI provider shall comply with:

- (a) 907 KAR 1:671;
- (b) 907 KAR 1:672;
- (c) 907 KAR 1:673;
- (d) 907 KAR 7:005;

(e) The Health Insurance Portability and Accountability Act, 42 U.S.C. 1320d-2, and 45 C.F.R. Parts 160, 162, and 164; and

(f) 42 U.S.C. 1320d to 1320d-8.

(3) An ABI provider shall have a governing body that shall be:

(a) A legally-constituted entity within the Commonwealth of Kentucky; and

(b) Responsible for the overall operation of the organization including establishing policy that complies with this administrative regulation concerning the operation of the agency and the health, safety, and welfare of a participant served by the agency.

(4) An ABI provider shall:

(a) Unless providing participant-directed services, ensure that an ABI waiver service is not provided to a participant by a staff member of the ABI provider who has one (1) of the following blood relationships to the participant:

- 1. Child;
- 2. Parent;
- 3. Sibling; or
- 4. Spouse;

(b) Not enroll a participant for whom the ABI provider cannot meet the service needs; and

(c) Have and follow written criteria in accordance with this administrative regulation for determining the eligibility of an individual for admission to services.

(5) An ABI provider shall meet the following requirements if responsible for the management of a participant's funds:

(a) Separate accounting shall be maintained for each participant or for the participant's interest in a common trust or special account;

(b) Account balance and records of transactions shall be provided to the participant or legal representative on a quarterly basis; and

(c) The participant or legal representative shall be notified if a large balance is accrued that may affect Medicaid eligibility.

(6) An ABI provider shall have a written statement of its mission and values.

(7) An ABI provider shall have written policies and procedures for communication and interaction with a family and legal representative of a participant which shall:

- (a) Require a timely response to an inquiry;
- (b) Require the opportunity for interaction with direct care staff;
- (c) Require prompt notification of any unusual incident;
- (d) Permit visitation with the participant at a reasonable time and with due regard for the participant's right of privacy;
- (e) Require involvement of the legal representative in decision-making regarding the selection and direction of the service provided; and

(f) Consider the cultural, educational, language, and socioeconomic characteristics of the participant.

(8)

(a) An ABI provider shall have written policies and procedures for all settings that assure the participant has:

1. Rights of privacy, dignity, respect, and freedom from coercion and restraint; and

2. Freedom of choice:

a. As defined by the experience of independence, individual initiative, or autonomy in making life choices, both in small everyday matters (what to eat or what to wear), and in large, life-defining matters (where and with whom to live and work); and

b. Including the freedom to choose:

- (i) Services;
- (ii) Providers;
- (iii) Settings from among setting options including non-disability specific settings; and

(iv) Where to live with as much independence as possible and in the most community-integrated environment.

(b) The setting options and choices shall be:

1. Identified and documented in the person-centered service plan; and

2. Based on the participant's needs and preferences.

(c) For a residential setting, the resources available for room and board shall be documented in the person-centered service plan.

(9) An ABI provider shall have written policies and procedures for residential settings that assure the participant has:

VOLUME 51, NUMBER 8— February 1, 2025

- (a) Privacy in the sleeping unit and living unit in a residential setting;
- (b) An option for a private unit in a residential setting;
- (c) A unit with lockable entrance doors and with only the participant and appropriate staff having keys to those doors;
- (d) A choice of roommate or housemate;
- (e) The freedom to furnish or decorate the sleeping or living units within the lease or other agreement;
- (f) Visitors of the participant's choosing at any time and access to a private area for visitors; and
- (g) Physical accessibility, defined as being easy to approach, enter, operate, or participate in a safe manner and with dignity by a person with or without a disability.
 - 1. Settings considered to be physically accessible shall also meet the Americans with Disabilities Act standards of accessibility for all participants served in the setting.
 - 2. All communal areas shall be accessible to all participants as well as have a means to enter the building (i.e. keys, security codes, etc.).
 - 3. Bedrooms shall be accessible to the appropriate persons.
 - 4.
 - a. Any modification of an additional residential condition except for the setting being physically accessible requirement shall be supported by a specific assessed need and justified in the participant's person-centered service plan.
 - b. Regarding a modification, the following shall be documented in a participant's person-centered service plan:
 - (i) That the modification is the result of an identified specific and individualized assessed need;
 - (ii) Any positive intervention or support used prior to the modification;
 - (iii) Any less intrusive method of meeting the participant's need that was tried but failed;
 - (iv) A clear description of the condition that is directly proportionate to the specific assessed need;
 - (v) Regular collection and review of data used to measure the ongoing effectiveness of the modification;
 - (vi) Time limits established for periodic reviews to determine if the modification remains necessary or should be terminated;
 - (vii) Informed consent by the participant or participant's representative for the modification; and
 - (viii) An assurance that interventions and supports will cause no harm to the participant.
 - (10) An ABI provider shall cooperate with monitoring visits from monitoring agents.
 - (11) An ABI provider shall maintain a record for each participant served that shall:
 - (a) Be recorded in permanent ink;
 - (b) Be free from correction fluid;
 - (c) Have a strike through for each error which is initialed and dated; and
 - (d) Contain no blank lines between each entry.
 - (12) A record of each participant who is served shall:
 - (a) Be cumulative;
 - (b) Be readily available;
 - (c) Contain a legend that identifies any symbol or abbreviation used in making a record entry;
 - (d) Contain the following specific information:
 - 1. The participant's name and Medical Assistance Identification Number (MAID);
 - 2. An assessment summary relevant to the service area;
 - 3. The person-centered service plan;
 - 4. The crisis prevention and response plan that shall include:
 - a. A list containing emergency contact telephone numbers; and
 - b. The participant's history of any allergies with appropriate allergy alerts for severe allergies;
 - 5. The training objective for any service which provides skills training to the participant;
 - 6. The participant's medication record, including a copy of the prescription or the signed physician's order and the medication log if medication is administered at the service site;

- 7. Legally-adequate consent for the provision of services or other treatment including consent for emergency attention which shall be located at each service site;
- 8. The MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form updated at recertification; and
- 9. Current level of care certification;
 - (e) Be maintained by the provider in a manner to ensure the confidentiality of the participant's record and other personal information and to allow the participant or legal representative to determine when to share the information;
 - (f) Be secured against loss, destruction, or use by an unauthorized person ensured by the provider; and
 - (g) Be available to the participant or legal guardian according to the provider's written policy and procedures which shall address the availability of the record.
- (13) An ABI provider:
 - (a) Shall ensure that each new staff person or volunteer performing direct care or a supervisory function has had a tuberculosis (TB) risk assessment performed by a licensed medical professional and, if indicated, a TB skin test with a negative result within the past twelve (12) months as documented on test results received by the provider;
 - (b) Shall maintain documentation of the annual TB risk assessment or negative TB test result described in paragraph (a) of this subsection for:
 - 1. Existing staff; or
 - 2. A volunteer, if the volunteer performs direct care or a supervisory function;
 - (c) Shall ensure that an employee or volunteer who tests positive for TB, or has a history of a positive TB skin test, shall be assessed annually by a licensed medical professional for signs or symptoms of active disease;
 - (d) Shall if it is determined that signs and symptoms of active TB are present, ensure that the employee or volunteer has follow-up testing administered by the employee's or volunteer's physician and that the follow-up test results indicate the employee or volunteer does not have active TB disease;
 - (e) Shall not permit an individual to work for or volunteer for the provider if the individual has TB or symptoms of active TB;
 - (f) Shall maintain documentation for an employee or volunteer with a positive TB test to ensure that active disease or symptoms of active disease are not present;
 - (g)
 - 1. Shall:
 - a. Prior to the employee's date of hire or the volunteer's date of service, obtain the results of:
 - (i) A criminal record check from the Administrative Office of the Courts or the equivalent out-of-state agency if the individual resided, worked, or volunteered outside Kentucky during the year prior to employment or volunteer service in Kentucky;
 - (ii) A Nurse Aide Abuse Registry check as described in 906 KAR 1:100; and
 - (iii) A Caregiver Misconduct Registry check as described in 922 KAR 5:120; and
 - b. Within thirty (30) days of the date of hire or service as a volunteer, obtain the results of a Central Registry check as described in 922 KAR 1:470; or
 - 2. May use Kentucky's national background check program established by 906 KAR 1:190 to satisfy the background check requirements of subparagraph 1 of this paragraph;
 - (h) Shall annually, for twenty-five (25) percent of employees randomly selected, obtain the results of a criminal record check from:
 - 1. The Kentucky Administrative Office of the Courts; or
 - 2. The equivalent out-of-state agency, if the individual resided or worked outside of Kentucky during the year prior to employment;
 - (i) Shall evaluate and document the performance of each employee upon completion of the agency's designated probationary period, and at a minimum, annually thereafter;
 - (j) Conduct and document periodic and regularly scheduled supervisory visits of all professional and paraprofessional direct

VOLUME 51, NUMBER 8– February 1, 2025

service staff at the service site in order to ensure that high quality, appropriate services are provided to the participant;

(k) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a prior conviction of an offense delineated in KRS 17.165(1) through (3) or prior felony conviction;

(l) Not permit an employee or volunteer to transport a participant, if the employee or volunteer has a conviction of Driving under the Influence (DUI) during the past year;

(m) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a conviction of abuse or sale of illegal drugs during the past five (5) years;

(n) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a conviction of abuse, neglect, or exploitation;

(o) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual has a Cabinet for Health and Family Services finding of:

1. Child abuse or neglect pursuant to the Central Registry; or
2. Adult abuse, neglect, or exploitation pursuant to the Caregiver Misconduct Registry; and

(p) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function, if the individual is listed on the:

1. Nurse Aide Abuse Registry pursuant to 906 KAR 1:100; or
2. Kentucky Caregiver Misconduct Registry pursuant to 922 KAR 5:120.

(14) An ABI provider shall:

(a) Have an executive director who:

1. Is qualified with a bachelor's degree from an accredited institution in administration or a human services field; and

2. Has a minimum of one (1) year of administrative responsibility in an organization which served an individual with a disability; and

(b) Have adequate direct contact staff who:

1. Is eighteen (18) years of age or older and has a high school diploma or GED; and

2. Has a minimum of two (2) years of experience in providing a service to an individual with a disability or has successfully completed a formalized training program approved by the department.

(15) An ABI provider shall establish written guidelines which:

(a) Ensure the health, safety, and welfare of the participant;

(b) Address maintenance of sanitary conditions;

(c) Ensure each site operated by the provider is equipped with:

1. Operational smoke detectors placed in strategic locations; and

2. A minimum of two (2) correctly charged fire extinguishers placed in strategic locations, one (1) of which shall be capable of extinguishing a grease fire and with a rating of 1A10BC;

(d) Ensure the availability of a supply of hot and cold running water with the water temperature at a tap, for water used by the participant, not exceeding 120 degrees Fahrenheit, for a Supervised Residential Care, Adult Day Training, or Adult Day Health provider;

(e) Ensure that the nutritional needs of the participant are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician;

(f) Ensure that staff who supervise waiver participants in medication administration:

1. Unless the employee is a licensed or registered nurse, have been provided specific training by a licensed medical professional and competency has been documented on cause and effect and proper administration and storage of medication; and

2. Document on a medication log all medication administered, including:

a. Self-administered and over-the-counter drugs; and

b. The date, time, and initials of the person who administered the medication;

(g) Ensure that the medication shall be:

1. Kept in a locked container;

2. Kept under double lock if it is a controlled substance;

3. Carried in a proper container labeled with medication, dosage, and time of administration, if administered to the participant or self-administered at a program site other than the participant's residence;

4. Documented on a medication administration form; and

5. Properly disposed of if it is discontinued; and

(h) Establish policy and procedures for monitoring of medication administration, which shall be approved by the department before services begin to ensure that medication administration will be properly monitored under the policies and procedures as approved by the department.

(16) An ABI provider shall establish and follow written guidelines for handling an emergency or a disaster which shall:

(a) Be readily accessible on site;

(b) Include an evacuation drill:

1. To be conducted and documented at least quarterly; and

2. For a residential setting, scheduled to include a time when a participant is asleep;

(c) Mandate:

1. That the result of an evacuation drill be evaluated and modified as needed; and

2. That results of the prior years' evacuation drills be maintained on site.

(17) An ABI provider shall:

(a) Provide orientation for each new employee which shall include the agency's:

1. Mission;

2. Goals;

3. Organization; and

4. Policies and procedures;

(b) Require documentation of all training provided which shall include:

1. Type of training;

2. Name and title of the trainer;

3. Length of the training;

4. Date of completion; and

5. Signature of the trainee verifying completion;

(c) Ensure that each employee completes ABI training consistent with the curriculum that has been approved by the department, prior to working independently with a participant, which shall include:

1. Required orientation in brain injury;

2. Identifying and reporting:

a. Abuse;

b. Neglect; and

c. Exploitation;

3. Unless the employee is a licensed or registered nurse, first aid provided by an individual certified as a trainer by:

a. The American Red Cross; or

b. Other nationally accredited organization; and

4. Coronary pulmonary resuscitation provided by an individual certified as a trainer by:

a. The American Red Cross; or

b. Other nationally accredited organization;

(d) Ensure that each employee completes six (6) hours of continuing education in brain injury annually, following the first year of service;

(e) Not be required to receive the training specified in paragraph (c)1 of this subsection if the provider is a professional who has, within the prior five (5) years, attained 2,000 hours of experience providing services to a person with a primary diagnosis of a brain injury including:

1. An occupational therapist or occupational therapy assistant providing occupational therapy;

2. A psychologist or psychologist with autonomous functioning providing psychological services;

3. A speech-language pathologist providing speech therapy;

4. A board certified behavior analyst; or

5. A physical therapist or physical therapist assistant providing physical therapy; and

(f) Ensure that prior to the date of service as a volunteer, an individual receives training which shall include:

VOLUME 51, NUMBER 8– February 1, 2025

1. Required orientation in brain injury as specified in paragraph (c)1, 2, 3, and 4 of this subsection;
2. Orientation to the agency;
3. A confidentiality statement; and
4. Individualized instruction on the needs of the participant to whom the volunteer shall provide services.

(18) An ABI provider shall provide information to a case manager necessary for completion of a Mayo-Portland Adaptability Inventory-4 for each participant served by the provider.

Section 3. Participant Eligibility, Enrollment, and Termination.

(1)

(a) To be eligible to receive a service in the ABI long term care waiver program, an individual shall:

1. Be at least eighteen (18) years of age;
2. Have an ABI which necessitates:

- a. Supervision;
 - b. Rehabilitative services; and
 - c. Long term supports;
3. Have an ABI that involves:
 - a. Cognition;
 - b. Behavior; or
 - c. Physical function; and

4. Be screened by the department for the purpose of making a preliminary determination of whether the individual might qualify for ABI waiver services.

(b) In addition to the individual meeting the requirements established in paragraph (a) of this subsection, the individual or a representative on behalf of the individual shall:

1. Apply for 1915(c) home and community based waiver services via the MWMA; and
2. Complete and upload into the MWMA a MAP - 115 Application Intake - Participant Authorization.

(2) The department shall utilize a first come, first serve priority basis to enroll an individual who meets the eligibility criteria established in this section.

(3) If funding is not available, an individual shall be placed on the ABI long term care waiver waiting list in accordance with Section 9 of this administrative regulation.

(4)

(a) A certification packet shall be entered into the MWMA by a case manager or support broker on behalf of the applicant.

(b) The packet shall contain:

1. A copy of the allocation letter sent to the applicant at the time funding was allocated for the applicant's participation in the ABI Long Term Care Waiver program;
2. A MAP-351, Medicaid Waiver Assessment;
3. A statement of the need for ABI long term care waiver services which shall be signed and dated by a physician on a MAP 10, Waiver Services Physician's Recommendation form;
4. A MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form; and
5. A person-centered service plan.

(5) An individual shall receive notification of potential funding allocated for the ABI long term care waiver services for the individual in accordance with this section.

(6) An individual shall meet the patient status criteria for nursing facility services established in 907 KAR 1:022, including nursing facility services for a brain injury.

(7) An individual shall:

- (a) Have a primary diagnosis that indicates an ABI with structural, non-degenerative brain injury;
- (b) Be medically stable;
- (c) Meet Medicaid eligibility requirements established in 907 KAR 20:010;

(d) Exhibit:

1. Cognitive damage;
2. Behavioral damage;
3. Motor damage; or
4. Sensory damage;

(e) Have a rating of at least four (4) or above on the Family Guide to the Rancho Levels of Cognitive Functioning; and

(f) Receive notification of approval from the department.

(8) The basis of an eligibility determination for participation in the ABI long term care waiver program shall be the:

- (a) Presenting problem;
- (b) Person-centered service plan;
- (c) Expected benefit of the admission;
- (d) Expected outcome;
- (e) Service required; and

(f) Cost effectiveness of service delivery as an alternative to nursing facility and nursing facility brain injury services.

(9) An ABI long term care waiver service shall not be furnished to an individual if the individual is:

- (a) An inpatient of a hospital, nursing facility, or an intermediate care facility for individuals with an intellectual disability; or
- (b) Receiving a service in another 1915(c) home and community based services waiver program.

(10) The department shall make:

(a) An initial evaluation to determine if an individual meets the nursing facility level of care criteria established in 907 KAR 1:022; and

(b) A determination of whether to admit an individual into the ABI long term care waiver program.

(11) To maintain eligibility as a participant:

(a) An individual shall maintain Medicaid eligibility requirements established in 907 KAR 20:010;

(b) A reevaluation shall be conducted at least once every twelve (12) months to determine if the individual continues to meet the patient status criteria for nursing facility services established in 907 KAR 1:022; and

(c) Progress toward outcomes identified in the approved person-centered service plan shall not be required.

(12) The department shall exclude an individual from receiving an ABI long term care waiver service for whom the average cost of ABI waiver service is reasonably expected to exceed the cost of a nursing facility service.

(13) Involuntary termination and loss of an ABI long term care waiver program placement shall be in accordance with 907 KAR 1:563 and shall be initiated if:

(a) An individual fails to initiate an ABI long term care waiver service within sixty (60) days of notification of potential funding without good cause shown. The individual or legal representative shall have the burden of providing documentation of good cause, including:

1. A statement signed by the participant or legal representative;
2. Copies of letters to providers; and
3. Copies of letters from providers;

(b) A participant or legal representative fails to access the required service as outlined in the person-centered service plan for a period greater than sixty (60) consecutive days without good cause shown.

1. The participant or legal representative shall have the burden of providing documentation of good cause including:

- a. A statement signed by the participant or legal representative;
- b. Copies of letters to providers; and
- c. Copies of letters from providers.

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension period, which shall not exceed sixty (60) days, to the participant during which time period the participant shall initiate the ABI long term care waiver services or access the required services as outlined in the person-centered service plan.

The extension shall be in writing;

(c) A participant changes residence outside the Commonwealth of Kentucky;

(d) A participant does not meet the patient status criteria for nursing facility services established in 907 KAR 1:022;

(e) A participant is no longer able to be safely served in the community; or

(f) A participant is no longer actively participating in services within the approved person-centered service plan as determined by the person-centered team.

(14) Involuntary termination of a service to a participant by an ABI provider shall require:

- (a) Simultaneous notice, which shall:

1. Be sent at least thirty (30) days prior to the effective date of the action, to the:
 - a. Department;
 - b. Participant or legal representative; and
 - c. Case manager; and
2. Include:
 - a. A statement of the intended action;
 - b. The basis for the intended action;
 - c. The authority by which the action is taken; and
 - d. The participant's right to appeal the intended action through the provider's appeal or grievance process; and
- (b) The case manager in conjunction with the provider to:
 1. Provide the participant with the name, address, and telephone number of each current ABI provider in the state;
 2. Provide assistance to the participant in making contact with another ABI provider;
 3. Arrange transportation for a requested visit to an ABI provider site;
 4. Provide a copy of pertinent information to the participant or legal representative;
 5. Ensure the health, safety, and welfare of the participant until an appropriate placement is secured;
 6. Continue to provide supports until alternative services or another placement is secured; and
 7. Provide assistance to ensure a safe and effective service transition.
- (15) Voluntary termination and loss of an ABI long term care waiver program placement shall be initiated if a participant or legal representative submits a written notice of intent to discontinue services to the service provider and to the department.
 - (a) An action to terminate services shall not be initiated until thirty (30) calendar days from the date of the notice.
 - (b) The participant or legal representative may reconsider and revoke the notice in writing during the thirty (30) calendar day period.

Section 4. Person-centered Service Plan Requirements.

- (1) A person-centered service plan shall be established:
 - (a) For each participant; and
 - (b) By the participant's person-centered service plan team.
- (2) A participant's person-centered service plan shall:
 - (a) Be developed by:
 1. The participant, the participant's guardian, or the participant's representative;
 2. The participant's case manager;
 3. The participant's person-centered team; and
 4. Any other individual chosen by the participant if the participant chooses any other individual to participate in developing the person-centered service plan;
 - (b) Use a process that:
 1. Provides the necessary information and support to empower the participant, the participant's guardian, or participant's legal representative to direct the planning process in a way that empowers the participant to have the freedom and support to control the participant's schedules and activities without coercion or restraint;
 2. Is timely and occurs at times and locations convenient for the participant;
 3. Reflects cultural considerations of the participant;
 4. Provides information:
 - a. Using plain language in accordance with 42 C.F.R. 435.905(b); and
 - b. In a way that is accessible to an individual with a disability or who has limited English proficiency;
 5. Offers an informed choice defined as a choice from options based on accurate and thorough knowledge and understanding to the participant regarding the services and supports to be received and from whom;
 6. Includes a method for the participant to request updates to the person-centered service plan as needed;
 7. Enables all parties to understand how the participant:
 - a. Learns;
 - b. Makes decisions; and
 - c. Chooses to live and work in the participant's community;
 8. Discovers the participant's needs, likes, and dislikes;

9. Empowers the participant's person-centered team to create a person-centered service plan that:
 - a. Is based on the participant's:
 - (i) Assessed clinical and support needs;
 - (ii) Strengths;
 - (iii) Preferences; and
 - (iv) Ideas;
 - b. Encourages and supports the participant's:
 - (i) Rehabilitative needs;
 - (ii) Habilitative needs; and
 - (iii) Long term satisfaction;
 - c. Is based on reasonable costs given the participant's support needs;
 - d. Includes:
 - (i) The participant's goals;
 - (ii) The participant's desired outcomes; and
 - (iii) Matters important to the participant;
 - e. Includes a range of supports including funded, community, and natural supports that shall assist the participant in achieving identified goals;
 - f. Includes:
 - (i) Information necessary to support the participant during times of crisis; and
 - (ii) Risk factors and measures in place to prevent crises from occurring;
 - g. Assists the participant in making informed choices by facilitating knowledge of and access to services and supports;
 - h. Records the alternative home and community-based settings that were considered by the participant;
 - i. Reflects that the setting in which the participant resides was chosen by the participant;
 - j. Is understandable to the participant and to the individuals who are important in supporting the participant;
 - k. Identifies the individual or entity responsible for monitoring the person-centered service plan;
 - l. Is finalized and agreed to with the informed consent of the participant or participant's legal representative in writing with signatures by each individual who will be involved in implementing the person-centered service plan;
 - m. Shall be distributed to the individual and other people involved in implementing the person-centered service plan;
 - n. Includes those services which the individual elects to self-direct; and
 - o. Prevents the provision of unnecessary or inappropriate services and supports; and
- (c) Includes in all settings the ability for the participant to:
 1. Have access to make private phone calls, texts, or emails at the participant's preference or convenience; and
 2.
 - a. Choose when and what to eat;
 - b. Have access to food at any time;
 - c. Choose with whom to eat or whether to eat alone; and
 - d. Choose appropriating clothing according to the:
 - (i) Participant's preference;
 - (ii) Weather; and
 - (iii) Activities to be performed.
- (3) If a participant's person-centered service plan includes ADHC services, the ADHC services plan of treatment shall be addressed in the person-centered service plan.
- (4)
 - (a) A participant's person-centered service plan shall be:
 1. Entered into the MWMA by the participant's case manager; and
 2. Updated in the MWMA by the participant's case manager.
 - (b) A participant or participant's authorized representative shall complete and upload into the MWMA a MAP - 116 Service Plan – Participant Authorization prior to or at the time the person-centered service plan is uploaded into the MWMA.

Section 5. Case Management Requirements.

- (1) A case manager shall:
 - (a)
 1. Be a registered nurse;

2. Be a licensed practical nurse; or
3. Be an individual with a bachelor's degree or master's degree in a human services field who meets all applicable requirements of his or her particular field including a degree in:
 - a. Psychology;
 - b. Sociology;
 - c. Social work;
 - d. Rehabilitation counseling; or
 - e. Occupational therapy;
- (b)
 1. Be independent as defined as not being employed by an agency that is providing ABI waiver services to the participant; or
 2. Be employed by or work under contract with a free-standing case management agency; and
- (c) Have completed case management training that is consistent with the curriculum that has been approved by the department prior to providing case management services.
- (2) A case manager shall:
 - (a) Communicate in a way that ensures the best interest of the participant;
 - (b) Be able to identify and meet the needs of the participant;
 - (c)
 1. Be competent in the participant's language either through personal knowledge of the language or through interpretation; and
 2. Demonstrate a heightened awareness of the unique way in which the participant interacts with the world around the participant;
 - (d) Ensure that:
 1. The participant is educated in a way that addresses the participant's:
 - a. Need for knowledge of the case management process;
 - b. Personal rights; and
 - c. Risks and responsibilities as well as awareness of available services; and
 2. All individuals involved in implementing the participant's person-centered service plan are informed of changes in the scope of work related to the person-centered service plan as applicable;
 - (e) Have a code of ethics to guide the case manager in providing case management which shall address:
 1. Advocating for standards that promote outcomes of quality;
 2. Ensuring that no harm is done;
 3. Respecting the rights of others to make their own decisions;
 4. Treating others fairly; and
 5. Being faithful and following through on promises and commitments;
 - (f)
 1. Lead the person-centered service planning team; and
 2. Take charge of coordinating services through team meetings with representatives of all agencies involved in implementing a participant's person-centered service plan;
 - (g)
 1. Include the participant's participation or legal representative's participation in the case management process; and
 2. Make the participant's preferences and participation in decision making a priority;
 - (h) Document:
 1. A participant's interactions and communications with other agencies involved in implementing the participant's person-centered service plan; and
 2. Personal observations;
 - (i) Advocate for a participant with service providers to ensure that services are delivered as established in the participant's person-centered service plan;
 - (j) Be accountable to:
 1. A participant to whom the case manager provides case management in ensuring that the participant's needs are met;
 2. A participant's person-centered service plan team and provide leadership to the team and follow through on commitments made; and
 3. The case manager's employer by following the employer's policies and procedures;
 - (k) Stay current regarding the practice of case management and case management research;

- (l) Assess the quality of services, safety of services, and cost effectiveness of services being provided to a participant in order to ensure that implementation of the participant's person-centered service plan is successful and done so in a way that is efficient regarding the participant's financial assets and benefits;
- (m) Document services provided to a participant by entering the following into the MWMA:
 1. A monthly department-approved person centered monitoring tool; and
 2. A monthly entry which shall include:
 - a. The month and year for the time period the note covers;
 - b. An analysis of progress toward the participant's outcome or outcomes;
 - c. Identification of barriers to achievement of outcomes;
 - d. A projected plan to achieve the next step in achievement of outcomes;
 - e. The signature and title of the case manager completing the note; and
 - f. The date the note was generated;
- (n) Document via an entry into the MWMA if a participant is:
 1. Admitted to the ABI long term care waiver program;
 2. Terminated from the ABI long-term care waiver program;
 3. Temporarily discharged from the ABI long term care waiver program;
 4. Admitted to a hospital;
 5. Admitted to a nursing facility;
 6. Changing the primary ABI provider;
 7. Changing the case management agency;
 8. Transferred to another Medicaid 1915(c) home and community based waiver service program; or
 9. Relocated to a different address; and
- (o) Provide information about participant-directed services to the participant or the participant's guardian:
 1. At the time the initial person-centered service plan is developed; and
 2. At least annually thereafter and upon inquiry from the participant or participant's guardian.
- (3) A case management provider shall:
 - (a) Establish a human rights committee which shall:
 1. Include an:
 - a. Individual with a brain injury or a family member of an individual with a brain injury;
 - b. Individual not affiliated with the ABI provider; and
 - c. Individual who has knowledge and experience in human rights issues;
 2. Review and approve each person-centered service plan with human rights restrictions at a minimum of every six (6) months;
 3. Review and approve, in conjunction with the participant's team, behavior intervention plans that contain human rights restrictions; and
 4. Review the use of a psychotropic medication by a participant without an Axis I diagnosis; and
 - (b) Establish a behavior intervention committee which shall:
 1. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior intervention plan;
 2. Be separate from the human rights committee; and
 3. Review and approve, prior to implementation and at a minimum of every six (6) months in conjunction with the participant's team, an intervention plan that includes highly restrictive procedures or contain human rights restrictions; and
 - (c) Complete and submit a Mayo-Portland Adaptability Inventory-4 to the department for each participant:
 1. Within thirty (30) days of the participant's admission into the ABI program;
 2. Annually thereafter; and
 3. Upon discharge from the ABI waiver program.
- (4)
 - (a) Case management for any participant who begins receiving ABI waiver services after the effective date of this administrative regulation shall be conflict free.
 - (b)

1. Conflict free case management shall be a scenario in which a provider including any subsidiary, partnership, not-for-profit, or for-profit business entity that has a business interest in the provider who renders case management to a participant shall not also provide another 1915(c) home and community based waiver service to that same participant unless the provider is the only willing and qualified ABI waiver services provider within thirty (30) miles of the participant's residence.

2. An exemption to the conflict free case management requirement shall be granted if:

a. A participant requests the exemption;

b. The participant's case manager provides documentation of evidence to the department, that there is a lack of a qualified case manager within thirty (30) miles of the participant's residence;

c. The participant or participant's representative and case manager signs a completed MAP - 531 Conflict-Free Case Management Exemption; and

d. The participant, participant's representative, or case manager uploads the completed MAP - 531 Conflict-Free Case Management Exemption into the MWMA.

3. If a case management service is approved to be provided despite not being conflict free, the case management provider shall document conflict of interest protections, separating case management and service provision functions within the provider entity and demonstrate that the participant is provided with a clear and accessible alternative dispute resolution process.

4. An exemption to the conflict free case management requirement shall be requested upon reassessment or at least annually.

(c) A participant who receives ABI waiver services prior to the effective date of this administrative regulation shall transition to conflict free case management when the participant's next level of care determination occurs.

(d) During the transition to conflict free case management, any case manager providing case management to a participant shall educate the participant and members of the participant's person-centered team of the conflict free case management requirement in order to prepare the participant to decide, if necessary, to change the participant's:

1. Case manager; or

2. Provider of non-case management ABI waiver services.

(5) Case management shall:

(a) Include initiation, coordination, implementation, and monitoring of the assessment or reassessment, evaluation, intake, and eligibility process;

(b) Assist a participant in the identification, coordination, and facilitation of the person centered team and person centered team meetings;

(c) Assist a participant and the person centered team to develop an individualized person-centered service plan and update it as necessary based on changes in the participant's medical condition and supports;

(d) Include monitoring of the delivery of services and the effectiveness of the person-centered service plan, which shall:

1. Be initially developed with the participant and legal representative if appointed prior to the level of care determination;

2. Be updated within the first thirty (30) days of service and as changes or recertification occurs; and

3. Include the person-centered service plan being sent to the department or its designee prior to the implementation of the effective date the change occurs with the participant;

(e) Include a transition plan that shall:

1. Be:

a. Developed within the first thirty (30) days of service;

b. Updated as changes or recertification occurs; and

c. Updated thirty (30) days prior to discharge; and

2. Include:

a. The skills or service obtained from the ABI waiver program upon transition into the community; and

b. A listing of the community supports available upon the transition;

(f) Assist a participant in obtaining a needed service outside those available by the ABI waiver;

(g) Be provided by a case manager who:

1. Meets the requirements of subsection (1) of this section;

2. Shall provide a participant and legal representative with a listing of each available ABI provider in the service area;

3. Shall maintain documentation signed by a participant or legal representative of informed choice of an ABI provider and of any change to the selection of an ABI provider and the reason for the change;

4. Shall provide a distribution of the crisis prevention and response plan, transition plan, person-centered service plan, and other documents within the first thirty (30) days of the service to the chosen ABI service provider and as information is updated;

5. Shall provide twenty-four (24) hour telephone access to a participant and chosen ABI provider;

6. Shall work in conjunction with an ABI provider selected by a participant to develop a crisis prevention and response plan which shall be:

a. Individual-specific; and

b. Updated as a change occurs and at each recertification;

7. Shall assist a participant in planning resource use and assuring protection of resources;

8. Shall conduct one (1) face-to-face meeting with a participant within a calendar month occurring at a covered service site with one (1) visit quarterly at the participant's residence;

9. Shall ensure twenty-four (24) hour availability of services; and

10. Shall ensure that the participant's health, welfare, and safety needs are met; and

(h) Be documented by a detailed staff note in the MWMA which shall include:

1. The participant's health, safety and welfare;

2. Progress toward outcomes identified in the approved person-centered service plan;

3. The date of the service;

4. Beginning and ending time;

5. The signature and title of the individual providing the service; and

6. A quarterly summary which shall include:

a. Documentation of monthly contact with each chosen ABI provider; and

b. Evidence of monitoring of the delivery of services approved in the participant's person-centered service plan and of the effectiveness of the person-centered service plan.

(6) Case management shall involve:

(a) A constant recognition of what is and is not working regarding a participant; and

(b) Changing what is not working.

Section 6. Covered Services.

(1) An ABI waiver service shall:

(a) Not be covered unless it has been prior-authorized by the department; and

(b) Be provided pursuant to the participant's person-centered service plan.

(2) An ABI waiver provider shall provide the following services to a participant:

(a) Case management services in accordance with Section 4 of this administrative regulation;

(b) Behavioral services, which shall:

1. Be a systematic application of techniques and methods to influence or change a behavior in a desired way;

2. Include a functional analysis of the participant's behavior including:

a. An evaluation of the impact of an ABI on:

(i) Cognition; and

(ii) Behavior;

b. An analysis of potential communicative intent of the behavior;

c. The history of reinforcement for the behavior;

d. Critical variables that precede the behavior;

e. Effects of different situations on the behavior; and

f. A hypothesis regarding the:

(i) Motivation behind the behavior;

(ii) Purpose of the behavior; and

(iii) Factors that maintain the behavior;

3. Include the development of a behavioral support plan, which shall:
 - a. Be developed by the behavioral specialist;
 - b. Not be implemented by the behavior specialist who wrote the plan;
 - c. Be revised as necessary;
 - d. Define the techniques and procedures used;
 - e. Include the hierarchy of behavior interventions ranging from the least to the most restrictive;
 - f. Reflect the use of positive approaches; and
 - g. Prohibit the use of:
 - (i) Prone or supine restraint;
 - (ii) Corporal punishment;
 - (iii) Seclusion;
 - (iv) Verbal abuse; and
 - (v) Any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;
4. Include the provision of training to other ABI providers concerning implementation of the behavioral intervention plan;
5. Include the monitoring of a participant's progress, which shall be accomplished through:
 - a. The analysis of data concerning the behavior's:
 - (i) Frequency;
 - (ii) Intensity; and
 - (iii) Duration; and
 - b. Reports involved in implementing the behavioral service plan;
6. Be provided by a behavior specialist who shall:
 - a. Be:
 - (i) A psychologist;
 - (ii) A psychologist with autonomous functioning;
 - (iii) A licensed psychological associate;
 - (iv) A psychiatrist;
 - (v) A licensed clinical social worker;
 - (vi) A clinical nurse specialist with a master's degree in psychiatric nursing or rehabilitation nursing;
 - (vii) An advanced practice registered nurse;
 - (viii) A board certified behavior analyst; or
 - (ix) A licensed professional clinical counselor; and
 - b. Have at least one (1) year of behavior specialist experience or provide documentation of completed coursework regarding learning and behavior principles and techniques; and
7. Be documented by a detailed staff note in the MWMA which shall include:
 - a. The date of the service;
 - b. The beginning and ending time;
 - c. The signature and title of the behavioral specialist; and
 - d. A summary of data analysis and progress of the individual related to the approved person-centered service plan;
- (c) Community living supports, which shall:
 1. Be provided in accordance with the participant's person-centered service plan, including:
 - a. A nonmedical service;
 - b. Supervision; or
 - c. Socialization;
 2. Include assistance, prompting, observing, or training in activities of daily living;
 3. Include activities of daily living which shall include:
 - a. Bathing;
 - b. Eating;
 - c. Dressing;
 - d. Personal hygiene;
 - e. Shopping; and
 - f. Money management;
 4. Include prompting, observing, and monitoring of medications and nonmedical care not requiring a nurse or physician intervention;
 5. Include socialization, relationship building, and participation in community activities according to the approved person-centered service plan which are therapeutic and not diversional in nature;
 6. Accompany and assist a participant while utilizing transportation services;
 7. Include documentation in a detailed staff note in the MWMA which shall include the:

- a. Progress toward goals and objectives identified in the approved person-centered service plan;
 - b. Date of the service;
 - c. Beginning and ending time; and
 - d. Signature and title of the individual providing the service;
8. Not be provided to a participant who receives community residential services; and
 9. Be provided by a:
 - a. Home health agency licensed and operating in accordance with 902 KAR 20:081;
 - b. Community mental health center licensed and operating in accordance with 902 KAR 20:091;
 - c. Community habilitation program certified at least annually by the department; or
 - d. Supervised residential care setting certified at least annually by the department;
 - (d) Supervised residential care level I, which:
 1. Shall be provided by:
 - a. A community mental health center licensed and operating in accordance with 902 KAR 20:091 and certified at least annually by the department; or
 - b. An approved waiver provider certified at least annually by the department;
 2. Shall not be provided to a participant unless the participant has been authorized to receive residential care by the department's residential review committee which shall:
 - a. Consider applications for residential care in the order in which the applications are received;
 - b. Base residential care decisions on the following factors:
 - (i) Whether the applicant resides with a caregiver or not;
 - (ii) Whether the applicant resides with a caregiver but demonstrates maladaptive behavior which places the applicant at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the applicant's behavior or the risk it poses, resulting in the need for removal from the home to a more structured setting; or
 - (iii) Whether the applicant demonstrates behavior which may result in potential legal problems if not ameliorated;
 - c. Be comprised of three (3) Cabinet for Health and Family Services employees:
 - (i) With professional or personal experience with brain injury or other cognitive disabilities; and
 - (ii) Two (2) of whom shall not be supervised by the manager of the acquired brain injury branch; and
 - d. Only consider applications for a monthly committee meeting which were received no later than the close of business the day before the committee convenes;
 3. Shall not have more than three (3) participants simultaneously in a home rented or owned by the ABI provider;
 4. Shall provide twenty-four (24) hours of supervision daily unless the provider implements, pursuant to subparagraph 5. of this paragraph, an individualized plan allowing for up to five (5) unsupervised hours per day;
 5. May include the provision of up to five (5) unsupervised hours per day per participant if the provider develops an individualized plan for the participant to promote increased independence which shall:
 - a. Contain provisions necessary to ensure the participant's health, safety, and welfare;
 - b. Be approved by the participant's treatment team, with the approval documented by the provider; and
 - c. Contain periodic reviews and updates based on changes, if any, in the participant's status;
 6. Shall include assistance and training with daily living skills including:
 - a. Ambulating;
 - b. Dressing;
 - c. Grooming;
 - d. Eating;
 - e. Toileting;
 - f. Bathing;
 - g. Meal planning;
 - h. Grocery shopping;
 - i. Meal preparation;

- j. Laundry;
 - k. Budgeting and financial matters;
 - l. Home care and cleaning;
 - m. Leisure skill instruction; or
 - n. Self-medication instruction;
7. Shall include social skills training including the reduction or elimination of maladaptive behaviors in accordance with the individual's person-centered service plan;
8. Shall include provision or arrangement of transportation to services, activities, or medical appointments as needed;
9. Shall include accompanying or assisting a participant while the participant utilizes transportation services as specified in the participant's person-centered service plan;
10. Shall include participation in medical appointments or follow-up care as directed by the medical staff;
11. Shall be documented by a detailed staff note in the MWMA which shall document:
- a. Progress toward goals and objectives identified in the approved person-centered service plan;
 - b. The date of the service;
 - c. The beginning and ending time of the service; and
 - d. The signature and title of the individual providing the service;
12. Shall not include the cost of room and board;
13. Shall be provided to a participant who:
- a. Does not reside with a caregiver;
 - b. Is residing with a caregiver but demonstrates maladaptive behavior that places him or her at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the behavior or the risk it presents, resulting in the need for removal from the home to a more structured setting; or
 - c. Demonstrates behavior that may result in potential legal problems if not ameliorated;
14. May utilize a modular home only if the:
- a. Wheels are removed;
 - b. Home is anchored to a permanent foundation; and
 - c. Windows are of adequate size for an adult to use as an exit in an emergency;
15. Shall not utilize a motor home;
16. Shall provide a sleeping room which ensures that a participant:
- a. Does not share a room with an individual of the opposite gender who is not the participant's spouse;
 - b. Does not share a room with an individual who presents a potential threat; and
 - c. Has a separate bed equipped with substantial springs, a clean and comfortable mattress, and clean bed linens as required for the participant's health and comfort; and
17. Shall provide service and training to obtain the outcomes for the participant as identified in the approved person-centered service plan;
- (e) Supervised residential care level II, which shall:
1. Meet the requirements established in paragraph (d) of this subsection except for the requirements established in paragraph (d)4 and 5;
 2. Provide twelve (12) to eighteen (18) hours of daily supervision, the amount of which shall:
 - a. Be based on the participant's needs;
 - b. Be approved by the participant's treatment team; and
 - c. Be documented in the participant's person-centered service plan which shall also contain periodic reviews and updates based on changes, if any, in the participant's status; and
 3. Include provision of twenty-four (24) hour on-call support;
- (f) Supervised residential care level III, which shall:
1. Meet the requirements established in paragraph (d) of this subsection except for the requirements established in paragraph (d)4 and 5;
 2. Be provided in a single family home, duplex, or apartment building to a participant who lives alone or with an unrelated roommate;
 3. Not be provided to more than two (2) participants simultaneously in one (1) apartment or home;
 4. Not be provided in more than two (2) apartments in one (1) building;
5. If provided in an apartment building, have staff:
 - a. Available twenty-four (24) hours per day and seven (7) days per week; and
 - b. Who do not reside in a dwelling occupied by a participant; and
 6. Provide less than twelve (12) hours of supervision or support in the home based on an individualized plan developed by the provider to promote increased independence which shall:
 - a. Contain provisions necessary to ensure the participant's health, safety, and welfare;
 - b. Be approved by the participant's treatment team, with the approval documented by the provider; and
 - c. Contain periodic reviews and updates based on changes, if any, in the participant's status;
- (g) Counseling services, which:
1. Shall be designed to help a participant resolve personal issues or interpersonal problems resulting from the participant's ABI;
 2. Shall assist a family member in implementing a participant's approved person-centered service plan;
 3. In a severe case, shall be provided as an adjunct to behavioral programming;
 4. Shall include substance use or chemical dependency treatment, if needed;
 5. Shall include building and maintaining healthy relationships;
 6. Shall develop social skills or the skills to cope with and adjust to the brain injury;
 7. Shall increase knowledge and awareness of the effects of an ABI;
 8. May include group counseling if the service is:
 - a. Provided to a maximum of twelve (12) participants; and
 - b. Included in the participant's approved person-centered service plan for:
 - (i) Substance use or chemical dependency treatment;
 - (ii) Building and maintaining healthy relationships;
 - (iii) Developing social skills;
 - (iv) Developing skills to cope with and adjust to a brain injury, including the use of cognitive remediation strategies consisting of the development of compensatory memory and problem solving strategies, and the management of impulsivity; and
 - (v) Increasing knowledge and awareness of the effects of the acquired brain injury upon the participant's functioning and social interactions;
 9. Shall be provided by:
 - a. A psychiatrist;
 - b. A psychologist;
 - c. A psychologist with autonomous functioning;
 - d. A licensed psychological associate;
 - e. A licensed clinical social worker;
 - f. A clinical nurse specialist with a master's degree in psychiatric nursing;
 - g. An advanced practice registered nurse;
 - h. A certified alcohol and drug counselor;
 - i. A licensed marriage and family therapist;
 - j. A licensed professional clinical counselor;
 - k. A licensed clinical alcohol and drug counselor associate effective and contingent upon approval by the Centers for Medicare and Medicaid Services; or
 - l. A licensed clinical alcohol and drug counselor effective and contingent upon approval by the Centers for Medicare and Medicaid Services; and
 10. Shall be documented by a detailed staff note in the MWMA which shall include:
 - a. Progress toward the goals and objectives established in the person-centered service plan;
 - b. The date of the service;
 - c. The beginning and ending time; and
 - d. The signature and title of the individual providing the service;
- (h) Family training, which shall:
1. Provide training and counseling services for the families of individuals served in the ABI long term care waiver. Training to family or other responsible persons shall include:
 - a. Interpretation or explanation of medical examinations and procedures;
 - b. Treatment regimens;

- c. Use of equipment specified in the person-centered service plan; or
- d. Advising how to assist the participant;
- 2. Include updates as needed to safely maintain the participant at home;
- 3. Include specified goals in the participant's person-centered service plan;
- 4. Be training provided to family that may include a person who:
 - a. Lives with, or provides care to, a participant; and
 - b. Is a:
 - (i) Parent;
 - (ii) Spouse;
 - (iii) Child;
 - (iv) Relative;
 - (v) Foster family; or
 - (vi) In-law;
- 5. Not include an individual who is employed to care for the participant;
- 6. Be provided by an approved ABI waiver provider that is certified at least annually and which may include:
 - a. An occupational therapist;
 - b. A certified occupational therapy assistant;
 - c. A licensed practical nurse;
 - d. A physical therapist;
 - e. A physical therapist assistant;
 - f. A registered nurse;
 - g. A speech-language pathologist;
 - h. A psychiatrist;
 - i. A psychologist;
 - j. A psychologist with autonomous functioning;
 - k. A licensed psychological associate;
 - l. A clinical nurse specialist with a master's degree in:
 - (i) Psychiatric nursing; or
 - (ii) Rehabilitative nursing;
 - m. An advanced practice registered nurse;
 - n. A certified alcohol and drug counselor;
 - o. A licensed professional clinical counselor;
 - p. A board certified behavior analyst;
 - q. A licensed clinical social worker;
 - r. A licensed marriage and family therapist;
 - s. A licensed clinical alcohol and drug counselor associate effective and contingent upon approval by the Centers for Medicare and Medicaid Services; or
 - t. A licensed clinical alcohol and drug counselor effective and contingent upon approval by the Centers for Medicare and Medicaid Services; and
- 7. Be documented by a detailed staff note in the MWMA which shall include:
 - a. Progress toward the goals and objectives established in the person-centered service plan;
 - b. The date of the service;
 - c. The beginning and ending time; and
 - d. The signature and title of the individual providing the service;
 - (i) Nursing supports, which shall include:
 - 1.
 - a. A physician order to monitor medical conditions; or
 - b. A physician order for training and oversight of medical procedures;
 - 2. The monitoring of specific medical conditions;
 - 3. Services that shall be provided by:
 - a. A registered nurse who meets the definition established in KRS 314.011(5); or
 - b. A licensed practical nurse as defined by KRS 314.011(9) who works under the supervision of a registered nurse; and
 - 4. Documentation by a detailed staff note in the MWMA which shall include:
 - a. Progress toward the goals and objectives established in the person-centered service plan;
 - b. The date of the service;
 - c. The beginning and ending time; and
 - d. The signature and title of the individual providing the service;
 - (j) Occupational therapy, which shall be:

- 1. A physician-ordered evaluation of a participant's level of functioning by applying diagnostic and prognostic tests;
- 2. Physician-ordered services in a specified amount and duration to guide a participant in the use of therapeutic, creative, and self-care activities to assist the participant in obtaining the highest possible level of functioning;
- 3. Provided by an occupational therapist or an occupational therapy assistant if supervised by an occupational therapist in accordance with 201 KAR 28:130; and
- 4. Documented by a detailed staff note in the MWMA which shall include:
 - a. Progress toward goals and objectives identified in the approved person-centered service plan;
 - b. The date of the service;
 - c. The beginning and ending time; and
 - d. The signature and title of the individual providing the service;
 - (k) A physical therapy service, which shall be:
 - 1. A physician-ordered evaluation of a participant by applying muscle, joint, and functional ability tests;
 - 2. Physician-ordered treatment in a specified amount and duration to assist a participant in obtaining the highest possible level of functioning;
 - 3. Training of another ABI provider to improve the level of functioning of the participant in that provider's service setting;
 - 4. Provided by a physical therapist or a physical therapist assistant supervised by a physical therapist in accordance with 201 KAR 22:001 and 201 KAR 22:020; and
- 5. Documented by a detailed staff note in the MWMA, which shall include:
 - a. Progress made toward outcomes identified in the person-centered service plan;
 - b. The date of the service;
 - c. The beginning and ending time of the service; and
 - d. The signature and title of the individual providing the service;
 - (l) A respite service, which shall:
 - 1. Be provided only to a participant unable to administer self-care;
 - 2. Be provided by a:
 - a. Nursing facility;
 - b. Community mental health center;
 - c. Home health agency;
 - d. Supervised residential care provider;
 - e. Adult day training provider; or
 - f. Adult day health care provider;
 - 3. Be provided on a short-term basis due to the absence or need for relief of a non-paid primary caregiver;
 - 4. Be limited to 5,760 fifteen (15) minute units per one (1) year authorized person-centered service plan period unless an individual's non-paid primary caregiver is unable to provide care due to a:
 - a. Death in the family;
 - b. Serious illness; or
 - c. Hospitalization;
 - 5. Not be provided to a participant who receives supervised residential care;
 - 6. Not include the cost of room and board if provided in a nursing facility; and
 - 7. Be documented by a detailed staff note in the MWMA, which shall include:
 - a. Progress toward goals and objectives identified in the approved person-centered service plan;
 - b. The date of the service;
 - c. The beginning and ending time; and
 - d. The signature and title of the individual providing the service;
 - (m) Speech-language pathology services, which shall be:
 - 1. A physician-ordered evaluation of a participant with a speech, hearing, or language disorder;
 - 2. A physician-ordered habilitative service in a specified amount and duration to assist a participant with a speech and language disability in obtaining the highest possible level of functioning;
 - 3. Provided by a speech-language pathologist; and
 - 4. Documented by a detailed staff note in the MWMA, which shall include:

- a. Progress toward goals and objectives identified in the approved person-centered service plan;
- b. The date of the service;
- c. The beginning and ending time; and
- d. The signature and title of the individual providing the service;
- (n) Adult day training services, which shall:
 1. Be provided by:
 - a. An adult day training center that is certified at least annually by the department;
 - b. An outpatient rehabilitation facility that is licensed and operating in accordance with 902 KAR 20:190; or
 - c. A community mental health center licensed and operating in accordance with 902 KAR 20:091;
 2. Focus on enabling the participant to attain or maintain the participant's maximum functional level and reintegrate the participant into the community;
 3. Not exceed a staffing ratio of five (5) participants per one (1) staff person;
 4. Include the following services:
 - a. Social skills training related to problematic behaviors identified in the participant's person-centered service plan;
 - b. Sensory or motor development;
 - c. Reduction or elimination of a maladaptive behavior;
 - d. Prevocational; or
 - e. Teaching concepts and skills to promote independence including:
 - (i) Following instructions;
 - (ii) Attendance and punctuality;
 - (iii) Task completion;
 - (iv) Budgeting and money management;
 - (v) Problem solving; or
 - (vi) Safety;
 5. Be provided in a nonresidential setting;
 6. Be developed in accordance with a participant's overall approved person-centered service plan;
 7. Reflect the recommendations of a participant's person-centered team;
 8. Be appropriate:
 - a. Given a participant's:
 - (i) Age;
 - (ii) Level of cognitive and behavioral function; and
 - (iii) Interest;
 - b. Given a participant's ability prior to and after the participant's injury; and
 - c. According to the approved person-centered service plan and be therapeutic in nature and not diversional;
 9. Be coordinated with the occupational, speech, or other rehabilitation therapy included in a participant's person-centered service plan;
 10. Provide a participant with an organized framework within which to function in the participant's daily activities;
 11. Entail frequent assessments of a participant's progress and be appropriately revised as necessary; and
 12. Be documented by a detailed staff note in the MWMA, which shall include:
 - a. Progress toward goals and objectives identified in the approved person-centered service plan;
 - b. The date of the service;
 - c. The beginning and ending time; and
 - d. The signature and title of the individual providing the service;
 - (o) Adult day health care services, which shall:
 1. Be provided by an adult day health care center that is licensed and operating in accordance with 902 KAR 20:066; and
 2. Include the following basic services and necessities provided to a participant during the posted hours of operation:
 - a. Skilled nursing services provided by a registered nurse or licensed practical nurse, including:
 - (i) Ostomy care;
 - (ii) Urinary catheter care;
 - (iii) Decubitus care;
 - (iv) Tube feeding;
 - (v) Venipuncture;
 - (vi) Insulin injections;

- (vii) Tracheotomy care; or
- (viii) Medical monitoring;
- b. Meal service corresponding with hours of operation with a minimum of one (1) meal per day and therapeutic diets as required;
- c. Snacks;
- d. Supervision by a registered nurse;
- e. Daily activities that are appropriate, given a participant's:
 - (i) Age;
 - (ii) Level of cognitive and behavioral function; and
 - (iii) Interest; and
- f. Routine services that meet the daily personal and health care needs of a participant, including:
 - (i) Monitoring of vital signs;
 - (ii) Assistance with activities of daily living; and
 - (iii) Monitoring and supervision of self-administered medications, therapeutic programs, and incidental supplies and equipment needed for use by a participant;
3. Include developing, implementing, and maintaining nursing policies for nursing or medical procedures performed in the adult day health care center;
4. Focus on enabling the participant to attain or maintain the participant's maximum functional level and reintegrate a participant into the community by providing the following training:
 - a. Social skills training related to problematic behaviors identified in the participant's person-centered service plan;
 - b. Sensory or motor development;
 - c. Reduction or elimination of a maladaptive behavior per the participant's person-centered service plan;
 - d. Prevocational services; or
 - e. Teaching concepts and skills to promote independence including:
 - (i) Following instructions;
 - (ii) Attendance and punctuality;
 - (iii) Task completion;
 - (iv) Budgeting and money management;
 - (v) Problem solving; or
 - (vi) Safety;
 5. Be provided in a nonresidential setting;
 6. Be developed in accordance with a participant's overall approved person-centered service plan, therapeutic in nature, and not diversional;
 7. Reflect the recommendations of a participant's person-centered team;
 8. Include ancillary services in accordance with 907 KAR 1:023 if ordered by a physician, physician assistant, or advanced practice registered nurse in a participant's adult day health care plan of treatment. Ancillary services shall:
 - a. Consist of evaluations or reevaluations for the purpose of developing a plan that shall be carried out by the participant or adult day health care center staff;
 - b. Be reasonable and necessary for the participant's condition;
 - c. Be rehabilitative in nature;
 - d. Include:
 - (i) Physical therapy provided by a physical therapist or physical therapist assistant;
 - (ii) Occupational therapy provided by an occupational therapist or occupational therapy assistant; or
 - (iii) Speech-language pathology services provided by a speech-language pathologist; and
 - e. Comply with the physical, occupational, and speech-language pathology service requirements established in 907 KAR 1:030, Section 3;
 9. Be provided to a participant by the health team in an adult day health care center, which may include:
 - a. A physician;
 - b. A physician assistant;
 - c. An advanced practice registered nurse;
 - d. A registered nurse;
 - e. A licensed practical nurse;
 - f. An activities director;
 - g. A physical therapist;
 - h. A physical therapist assistant;
 - i. An occupational therapist;

- j. An occupational therapy assistant;
 - k. A speech-language pathologist;
 - l. A social worker;
 - m. A nutritionist;
 - n. A health aide;
 - o. An LPCC;
 - p. A licensed marriage and family therapist;
 - q. A certified psychologist with autonomous functioning; or
 - r. A licensed psychological associate;
10. Be provided pursuant to a plan of treatment and developed annually in accordance with 902 KAR 20:066 and from information in the MAP 351, Medicaid Waiver Assessment and revised as needed; and
11. Be documented by a detailed staff note in the MWMA, which shall include:
- a. Progress toward goals and objectives identified in the approved person-centered service plan;
 - b. The date of the service;
 - c. The beginning and ending time;
 - d. The signature and title of the individual providing the service; and
 - e. A monthly summary that assesses the participant's status related to the approved person-centered service plan;
- (p) Supported employment, which shall be:
- 1. Intensive, ongoing services for a participant to maintain paid employment in an environment in which an individual without a disability is employed;
 - 2. Provided by a:
 - a. Supported employment provider;
 - b. Sheltered employment provider; or
 - c. Structured day program provider;
 - 3. Provided one-on-one;
 - 4. Unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 99-457 (34 C.F.R. Parts 300 to 399), proof of which shall be documented in the participant's file;
 - 5. Limited to forty (40) hours per week alone or in combination with adult day training or adult day health services;
 - 6. An activity needed to sustain paid work by a participant receiving waiver services, including:
 - a. Supervision; and
 - b. Training;
 - 7. Exclusive of work performed directly for the supported employment provider; and
 - 8. Documented by a time and attendance record, which shall include:
 - a. Progress toward the goals and objectives identified in the person-centered service plan;
 - b. The date of service;
 - c. The beginning and ending time; and
 - d. The signature and title of the individual providing the service;
- (q) Specialized medical equipment and supplies, which shall:
- 1. Include durable and nondurable medical equipment, devices, controls, appliances, or ancillary supplies;
 - 2. Enable a participant to increase his or her ability to perform daily living activities or to perceive, control, or communicate with the environment;
 - 3. Be ordered by a physician, documented in a participant's person-centered service plan, entered into the MWMA by the participant's case manager or support broker, and include three (3) estimates if the equipment is needed for vision or hearing;
 - 4. Include equipment necessary for the proper functioning of specialized items;
 - 5. Not be available through the department's durable medical equipment, vision, or hearing programs;
 - 6. Not be necessary for life support;
 - 7. Meet applicable standards of manufacture, design, and installation; and
 - 8. Exclude those items which are not of direct medical or remedial benefit to a participant;
- (r) Environmental and minor home adaptations, which shall:
- 1. Be provided in accordance with applicable state and local building codes;

- 2. Be provided to a participant if:
 - a. Ordered by a physician;
 - b. Prior-authorized by the ABIB;
 - c. Specified in the participant's approved person-centered service plan and entered into the MWMA, by the participant's case manager or support broker;
 - d. Necessary to enable the participant to function with greater independence within the participant's home; and
 - e. Without the modification, the participant requires institutionalization;
 - 3. Not include a vehicle modification;
 - 4. Be limited to no more than \$2,000 for a participant in a twelve (12) month period; and
 - 5. If entailing:
 - a. Electrical work, be provided by a licensed electrician; or
 - b. Plumbing work, be provided by a licensed plumber;
- (s) Assessment services, which shall:
- 1. Be a comprehensive assessment that shall identify a participant's needs and the services that the participant's family cannot manage or arrange for the participant;
 - 2. Evaluate a participant's physical health, mental health, social supports, and environment;
 - 3. Be requested by an individual requesting ABI services or a family or legal representative of the individual;
 - 4. Be conducted by an ABI case manager or support broker;
 - 5. Be conducted within seven (7) calendar days of receipt of the request for assessment;
 - 6. Include at least one (1) face-to-face contact with the participant and, if appropriate, the participant's family by the assessor in the participant's home; and
 - 7. Not be reimbursable if the individual does not receive a level of care certification; or
- (t) Reassessment services, which shall:
- 1. Be performed at least every twelve (12) months;
 - 2. Be conducted using the same procedures as for an assessment service;
 - 3. Be conducted by an ABI case manager or support broker and submitted to the department no more than three (3) weeks prior to the expiration of the current level of care certification to ensure that certification is consecutive;
 - 4. Not be reimbursable if conducted during a period that the participant is not covered by a valid level of care certification; and
 - 5. Not be retroactive.

Section 7. Exclusions of the Acquired Brain Injury Waiver Program. A condition included in the following list shall not be considered an acquired brain injury requiring specialized rehabilitation:

- (1) A stroke treatable in a nursing facility providing routine rehabilitation services;
- (2) A spinal cord injury for which there is no known or obvious injury to the intracranial central nervous system;
- (3) Progressive dementia or another condition related to mental impairment that is of a chronic degenerative nature, including:
 - (a) Senile dementia;
 - (b) Organic brain disorder;
 - (c) Alzheimer's disease;
 - (d) Alcoholism; or
 - (e) Another addiction;
- (4) A depression or a psychiatric disorder in which there is no known or obvious central nervous system damage;
- (5) A birth defect;
- (6) An intellectual disability without an etiology to an acquired brain injury; or
- (7) A condition which causes an individual to pose a level of danger or an aggression that is unable to be managed and treated in a community.

Section 8. Incident Reporting Process.

- (1)
 - (a) There shall be two (2) classes of incidents.
 - (b) The following shall be the two (2) classes of incidents:
 - 1. An incident; or

2. A critical incident.

(2) An incident shall be any occurrence that impacts the health, safety, welfare, or lifestyle choice of a participant and includes:

- (a) A minor injury;
- (b) A medication error without a serious outcome; or
- (c) A behavior or situation that is not a critical incident.

(3) A critical incident shall be an alleged, suspected, or actual occurrence of an incident that:

(a) Can reasonably be expected to result in harm to a participant; and

(b) Shall include:

- 1. Abuse, neglect, or exploitation;
- 2. A serious medication error;
- 3. Death;
- 4. A homicidal or suicidal ideation;
- 5. A missing person; or
- 6. Other action or event that the provider determines may result in harm to the participant.

(4)

(a) If an incident occurs, the ABI provider shall:

- 1. Report the incident by making an entry into the MWMA that includes details regarding the incident; and
- 2. Be immediately assessed for potential abuse, neglect, or exploitation.

(b) If an assessment of an incident indicates that the potential for abuse, neglect, or exploitation exists:

- 1. The incident shall immediately be considered a critical incident;
- 2. The critical incident procedures established in subsection (5) of this section shall be followed; and
- 3. The ABI provider shall report the incident to the participant's case manager and participant's guardian, if the participant has a guardian, within twenty-four (24) hours of discovery of the incident.

(5)

(a) If a critical incident occurs, the individual who witnessed the critical incident or discovered the critical incident shall immediately act to ensure the health, safety, and welfare of the at-risk participant.

(b) If the critical incident:

- 1. Requires reporting of abuse, neglect, or exploitation, the critical incident shall be immediately reported via the MWMA by the individual who witnessed or discovered the critical incident; or
- 2. Does not require reporting of abuse, neglect, or exploitation, the critical incident shall be reported via the MWMA by the individual who witnessed or discovered the critical incident within eight (8) hours of discovery.

(c) The ABI provider shall:

- 1. Conduct an immediate investigation and involve the participant's case manager in the investigation; and
- 2. Prepare a report of the investigation, which shall be recorded in the MWMA and shall include:
 - a. Identifying information of the participant involved in the critical incident and the person reporting the critical incident;
 - b. Details of the critical incident; and
 - c. Relevant participant information including:
 - (i) Axis I diagnosis or diagnoses;
 - (ii) Axis II diagnosis or diagnoses;
 - (iii) Axis III diagnosis or diagnoses;
 - (iv) A listing of recent medical concerns;
 - (v) An analysis of causal factors; and
 - (vi) Recommendations for preventing future occurrences.

(6)

(a) Following a death of a participant receiving ABI services from an ABI provider, the ABI provider shall enter mortality data documentation into the MWMA within fourteen (14) days of the death.

(b) Mortality data documentation shall include:

- 1. The participant's person-centered service plan at the time of death;
- 2. Any current assessment forms regarding the participant;
- 3. The participant's medication administration records from all service sites for the past three (3) months along with a copy of each prescription;

4. Progress notes regarding the participant from all service elements for the past thirty (30) days;

5. The results of the participant's most recent physical exam;

6. All incident reports, if any exist, regarding the participant for the past six (6) months;

7. Any medication error report, if any exists, related to the participant for the past six (6) months;

8. The most recent psychological evaluation of the participant;

9. A full life history of the participant including any update from the last version of the life history;

10. Names and contact information for all staff members who provided direct care to the participant during the last thirty (30) days of the participant's life;

11. Emergency medical services notes regarding the participant if available;

12. The police report if available;

13. A copy of:

- a. The participant's advance directive, medical order for scope of treatment, living will, or health care directive if applicable;
- b. Any functional assessment of behavior or positive behavior support plan regarding the participant that has been in place over any part of the past twelve (12) months; and
- c. The cardiopulmonary resuscitation and first aid card for any ABI provider's staff member who was present at the time of the incident that resulted in the participant's death;

14. A record of all medical appointments or emergency room visits by the participant within the past twelve (12) months; and

15. A record of any crisis training for any staff member present at the time of the incident which resulted in the participant's death.

(7)

(a) An ABI provider shall report a medication error to the MWMA.

(b) An ABI provider shall document all medication error details on a medication error log retained on file at the ABI provider site.

Section 9. ABI Long Term Care Waiver Waiting List.

(1) An individual eighteen (18) years of age or older applying for an ABI long term care waiver service shall be placed on a statewide ABI long term care waiver waiting list that shall be maintained by the department.

(2) In order to be placed on the ABI long term care waiver waiting list, an individual or the individual's representative shall:

(a) Apply for 1915(c) home and community based waiver services via the MWMA;

(b) Complete and upload into the MWMA a MAP – 115 Application Intake – Participant Authorization; and

(c) Upload into the MWMA a completed MAP 10, Waiver Services Physician's Recommendation form that has been signed by a physician.

(3) The order of placement on the ABI long term care waiver waiting list shall be determined by the:

(a) Chronological date of complete application information regarding the individual being entered into the MWMA;

(b) Category of need of the individual as follows:

1. Emergency. An emergency shall exist if an immediate service is indicated as determined by:

a. The individual currently is demonstrating behavior related to the individual's acquired brain injury that places the participant, caregiver, or others at risk of significant harm; or

b. The individual is demonstrating behavior related to the individual's acquired brain injury which has resulted in the individual's arrest; or

2. Nonemergency; and

(c) Emergency Committee, which shall consider applications for the Acquired Brain Injury long term care waiver program for emergency placement.

1. The Emergency Committee meetings shall regularly occur during the fourth week of each month. To be considered at the monthly committee meeting, an application shall be received by the department no later than three (3) business days before the scheduled committee meeting.

2. The Emergency Review Committee shall be comprised of three (3) program staff of the cabinet.

a. Each member shall have professional or personal experience with brain injuries or other cognitive disabilities.

b. At least two (2) members shall not be supervised by the branch manager of the Acquired Brain Injury Branch.

(4) In determining chronological status, the original date of the individual's complete application information being entered into the MWMA shall:

(a) Be maintained; and

(b) Not change if an individual is moved from one (1) category of need to another.

(5) A written statement by a physician or other qualified mental health professional shall be required to support the validation of risk of significant harm to an individual or caregiver, or the nature of the individual's medical need.

(6) Written documentation by law enforcement or court personnel shall be required to support the validation of a history of arrest.

(7) A written notification of placement on the waiting list shall be mailed to the individual or the individual's legal representative and case management provider if identified.

(8) Maintenance of the ABI long term care waiver waiting list shall occur as follows:

(a) The department shall, at a minimum, update the waiting list annually; and

(b) If an individual is removed from the ABI long term care waiver waiting list, written notification shall be mailed by the department to the:

1. Individual;
2. Individual's legal representative; and
3. ABI case manager.

(9) Reassignment of category of need shall be completed based on the updated information and validation process.

(10) An individual or legal representative may submit a request for consideration of movement from one (1) category of need to another at any time an individual's status changes.

(11) An individual shall be removed from the ABI long term care waiver waiting list if:

(a) After a documented attempt, the department is unable to locate the individual or the individual's legal representative;

(b) The individual is deceased;

(c) The individual or individual's legal representative refuses the offer of ABI long term care waiver services and does not request to be maintained on the ABI long term care waiver waiting list; or

(d) The individual does not access services without demonstration of good cause within sixty (60) days of the placement allocation date.

1. The individual or individual's legal representative shall have the burden of providing documentation of good cause including:

- a. A signed statement by the individual or the legal representative;
- b. Copies of letters to providers; and
- c. Copies of letters from providers.

2. Upon receipt of documentation of good cause, the department shall grant one (1) sixty (60) day extension in writing.

(12) The removal of an individual from the ABI long term care waiver waiting list shall not prevent the submittal of a new application at a later date.

(13) Potential funding allocated for services for an individual shall be based upon:

(a) The individual's category of need; and

(b) The individual's chronological date of placement on the ABI long term care waiver waiting list.

Section 10. Participant-Directed Services.

(1) Covered services and supports provided to a participant receiving PDS shall include:

(a) A home and community support service, which shall:

1. Be available only as a participant-directed service;
2. Be provided in the participant's home or in the community;
3. Be based upon therapeutic goals and not be diversional in nature;

4. Not be provided to an individual if the same or similar service is being provided to the individual by a non-PDS acquired brain injury service; and

5.

a. Be respite for the primary caregiver; or

b. Be supports and assistance related to chosen outcomes to facilitate independence and promote integration into the community for an individual residing in the individual's own home or the home of a family member and may include:

(i) Routine household tasks and maintenance;

(ii) Activities of daily living;

(iii) Personal hygiene;

(iv) Shopping;

(v) Money management;

(vi) Medication management;

(vii) Socialization;

(viii) Relationship building;

(ix) Meal planning;

(x) Meal preparation;

(xi) Grocery shopping; or

(xii) Participation in community activities;

(b) Goods and services, which shall:

1. Be individualized;

2. Be utilized to reduce the need for personal care or to enhance independence within the home or community of the participant;

3. Not include experimental goods or services; and

4. Not include chemical or physical restraints; and

(c) A community day support service, which shall:

1. Be available only as a participant-directed service;

2. Be provided in a community setting;

3. Be tailored to the participant's specific personal outcomes related to the acquisition, improvement, and retention of skills and abilities to prepare and support the participant for:

a. Work or community activities;

b. Socialization; and

c. Leisure or retirement activities;

4. Be based upon therapeutic goals and not be diversional in nature; and

5. Not be provided to an individual if the same or similar service is being provided to the individual by a non-PDS acquired brain injury service.

(2) To be covered, a PDS shall be specified in a participant's person-centered service plan.

(3) Reimbursement for a PDS shall not exceed the department's allowed reimbursement for the same or a similar service provided in a non-PDS ABI setting.

(4) A participant, including a married participant, shall choose a provider and the choice of PDS provider shall be documented in the participant's person-centered service plan.

(5)

(a) A participant may designate a representative to act on the participant's behalf.

(b) The PDS representative shall:

1. Be twenty-one (21) years of age or older;

2. Not be monetarily compensated for acting as the PDS representative or providing a PDS; and

3. Be appointed by the participant on a MAP-2000, Initiation/Termination of Participant-Directed Services.

(6) A participant may voluntarily terminate PDS by completing a MAP-2000, Initiation/Termination of Participant-Directed Services and submitting it to the support broker.

(7) The department shall immediately terminate a participant from receiving PDS if:

(a) Imminent danger to the participant's health, safety, or welfare exists;

(b) The participant fails to pay patient liability;

(c) The participant's person-centered service plan indicates the participant requires more hours of service than the program can provide, jeopardizing the participant's safety and welfare due to being left alone without a caregiver present; or

(d) The participant, caregiver, family, or guardian threatens or intimidates a support broker or other PDS staff.

(8) The department may terminate a participant from receiving PDS if the department determines that the participant's PDS provider has not adhered to the person-centered service plan.

(9) Except as provided in subsection (7) of this section, prior to a participant's termination from receiving PDS, the support broker shall:

(a) Notify the assessment or reassessment service provider of potential termination;

(b) Assist the participant in developing a resolution and prevention plan;

(c) Allow at least thirty (30), but no more than ninety (90), days for the participant to resolve the issue, develop and implement a prevention plan, or designate a PDS representative;

(d) Complete and submit to the department a MAP-2000, Initiation/Termination of Participant-Directed Services terminating the participant from receiving PDS if the participant fails to meet the requirements in paragraph (c) of this subsection; and

(e) Assist the participant in transitioning back to traditional ABI services.

(10) Upon an involuntary termination of PDS, the department shall:

(a) Notify a participant in writing of its decision to terminate the participant's PDS participation; and

(b) Except if the participant failed to pay patient liability, inform the participant of the right to appeal the department's decision in accordance with Section 13 of this administrative regulation.

(11) A PDS provider shall:

(a) Be selected by the participant;

(b) Submit a completed Kentucky Participant-Directed Services Employee Provider Contract to the support broker;

(c) Be eighteen (18) years of age or older;

(d) Be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a U.S. citizen;

(e) Be able to communicate effectively with the participant, participant representative, or family;

(f) Be able to understand and carry out instructions;

(g) Be able to keep records as required by the participant;

(h) Submit to a criminal background check conducted by:

1. The Administrative Office of the Courts if the individual is a Kentucky resident; or

2. An equivalent out-of-state agency if the individual resided or worked outside Kentucky during the year prior to selection as a provider of PDS;

(i) Submit to a check of the Central Registry maintained in accordance with 922 KAR 1:470 and not be found on the registry.

1. A participant may employ a provider prior to a Central Registry check result being obtained for up to thirty (30) days.

2. If a participant does not obtain a Central Registry check result within thirty (30) days of employing a provider, the participant shall cease employment of the provider until a favorable result is obtained;

(j) Submit to a check of the:

1. Nurse Aide Abuse Registry maintained in accordance with 906 KAR 1:100 and not be found on the registry; and

2. Caregiver Misconduct Registry in accordance with 922 KAR 5:120 and not be found on the registry;

(k) Not have pled guilty or been convicted of committing a sex crime or violent crime as defined in KRS 17.165(1) through (3);

(l) Complete training on the reporting of abuse, neglect, or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the participant;

(m) Be approved by the department;

(n) Maintain and submit timesheets documenting hours worked; and

(o) Be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the participant.

(12) A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of family members who receive waiver services.

(13)

(a) The department shall establish a budget for a participant based on the individual's historical costs in any Medicaid waiver program minus five (5) percent to cover costs associated with administering participant-directed services.

(b) If no historical cost exists for the participant, the participant's budget shall equal the average per capita historical costs of a participant participating in the ABI waiver program established by 907 KAR 3:090 minus five (5) percent.

(c) Cost of services authorized by the department for the participant's prior year person-centered service plan but not utilized may be added to the budget if necessary to meet the individual's needs.

(d) The department may adjust a participant's budget based on the participant's needs and in accordance with paragraphs (e) and (f) of this subsection.

(e) A participant's budget shall not be adjusted to a level higher than established in paragraph (a) of this subsection unless:

1. The participant's support broker requests an adjustment to a level higher than established in paragraph (a) of this subsection; and

2. The department approves the adjustment.

(f) The department shall consider the following factors in determining whether to allow for a budget adjustment:

1. If the proposed services are necessary to prevent imminent institutionalization;

2. The cost effectiveness of the proposed services;

3. Protection of the participant's health, safety, and welfare; or

4. If a significant change has occurred in the participant's:

a. Physical condition resulting in additional loss of function or limitations to activities of daily living and instrumental activities of daily living;

b. Natural support system; or

c. Environmental living arrangement resulting in the participant's relocation.

(g) A participant's budget shall not exceed the average per capita cost of services provided to individuals with a brain injury in a nursing facility.

(14) Unless approved by the department pursuant to subsection (13)(c) through (f) of this section, if a PDS is expanded to a point in which expansion necessitates a budget allowance increase, the entire service shall only be covered via a traditional (non-PDS) waiver service provider.

(15) A support broker shall:

(a) Provide needed assistance to a participant with any aspect of PDS or blended services;

(b) Be available by phone or in person to a participant twenty-four (24) hours per day, seven (7) days per week to assist the participant in obtaining community resources as needed;

(c) Comply with applicable federal and state laws and requirements;

(d) Continually monitor a participant's health, safety, and welfare; and

(e) Complete or revise a person-centered service plan using person-centered planning principles.

(16) For a participant receiving PDS, a support broker may conduct an assessment or reassessment.

(17) Services provided by a support broker shall meet the conflict free requirements established for case management in Section 5(4) of this administrative regulation.

(18) Financial management services shall:

(a) Include managing, directing, or dispersing a participant's funds identified in the participant's approved PDS budget;

(b) Include payroll processing associated with an individual hired by a participant or the participant's representative;

(c) Include withholding local, state, and federal taxes and making payments to appropriate tax authorities on behalf of a participant;

(d) Be performed by an entity:

1. Enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and

2. With at least two (2) years of experience working with acquired brain injury; and

(e) Include preparing fiscal accounting and expenditure reports for:

VOLUME 51, NUMBER 8– February 1, 2025

1. A participant or participant's representative; and
2. The department.

Section 11. Reimbursement and Coverage.

(1) The department shall reimburse a participating provider for a service provided to a Medicaid eligible person who meets the ABI long term care waiver program requirements as established in this administrative regulation.

(2) The department shall reimburse an ABI participating long term waiver provider for a prior-authorized ABI long term waiver service if the service is:

- (a) Included in the person-centered service plan;
- (b) Medically necessary; and

(c) Essential to provide an alternative to institutional care to an individual with an acquired brain injury who requires maintenance services.

(3) Under the ABI long term care waiver program, the department shall not reimburse a provider for a service provided:

- (a) To an individual who does not meet the criteria established in Section 3 of this administrative regulation; or
- (b) Which has not been prior authorized as a part of the person-centered service plan.

(4)

(a) A participating ABI long term care waiver service provider shall be reimbursed a fixed rate for reasonable and medically necessary services for a prior-authorized unit of service provided to a participant.

(b) A participating ABI long term care waiver service provider certified in accordance with this administrative regulation shall be reimbursed at the lesser of:

1. The provider's usual and customary charge; or
2. The Medicaid fixed upper payment limit per unit of service as established in subsection (5) of this section.

(5)

(a) The unit amounts and base rate payment shall be ~~fixed upper payment limits, and other limits~~ established in the following table ~~shall apply~~:

Service	Unit	Base Rate
		Effective January 1, 2025
Adult Day Health Care	15-minute	\$3.86
Adult Day Training	15-minute	\$4.88
Assessment & Reassessment	Per Assessment	\$121.00
Behavior Programming Services	15-minute	\$40.67
Case Management	Per Month	\$453.75
Community Living Supports	15-minute	\$6.73
Community Living Supports - PDS	15-minute	\$6.73
Counseling, Individual	15-minute	\$28.85
Counseling, Group	15-minute	\$6.96
Environmental and Minor Home Modifications	Per Year	Up to \$2,420.00
Family Training	15-minute	\$30.25
Financial Management Services	Per month	\$121.00
Nursing Supports	15-minute	\$30.25
Occupational Therapy	15-minute	\$31.34
Physical Therapy	15-minute	\$30.25
Respite	15-minute	\$5.92
Respite - PDS	15-minute	\$5.92
Speech Therapy	15-minute	\$34.38
Supervised Residential Care - Level I	Per Day	\$300.00

Supervised Residential Care - Level II	Per Day	\$225.00
Supervised Residential Care - Level III	Per Day	\$112.50
Supported Employment	15-minute	\$10.54
Supported Employment - PDS	15-minute	\$10.54

(b) Specialized medical equipment and supplies shall be reimbursed on a per item basis based on a reasonable cost as negotiated by the department if they meet the following criteria:

1. They are not covered through the Medicaid durable medical equipment program established in 907 KAR 1:479; and
2. They are provided to an individual participating in the ABI waiver program.

(c) Respite care may exceed 1,440 hours in a twelve (12) month period if an individual's usual caregiver is unable to provide care due to a:

1. Death in the family;
2. Serious illness; or
3. Hospitalization.

(d) If supported employment services are provided at a work site in which persons without disabilities are employed, payment shall be made only for the supervision and training required as the result of the participant's disabilities and shall not include payment for supervisory activities normally rendered.

(e)

1. The department shall only pay for supported employment services for an individual if supported employment services are unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 94-142 (34 C.F.R. Subtitle B, Chapter III).

2. For an individual receiving supported employment services, documentation shall be maintained in the individual's record demonstrating that the services are not currently available under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 94-142 (34 C.F.R. Subtitle B, Chapter III).

(6) Payment shall not include:

(a) The cost of room and board unless provided as part of respite care in a Medicaid certified nursing facility. If a participant is placed in a nursing facility to receive respite care, the department shall pay the nursing facility its per diem rate for that individual;

(b) The cost of maintenance, upkeep, an improvement, or an environmental modification to a group home or other licensed facility;

(c) The cost of a service that is not listed in the approved person-centered service plan; or

(d) A service provided by a family member unless provided as an approved participant-directed service.

(7) A participating provider shall:

(a) Maintain fiscal and service records for a period of at least six (6) years. If the Secretary of the United States Department of Health and Human Services requires a longer document retention period, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period;

(b) Provide, as requested by the department, a copy of, and access to, each record of the ABI Waiver Program retained by the provider pursuant to paragraph (a) of this subsection or 907 KAR 1:672; and

(c) Upon request, make available service and financial records to a representative or designee of the:

1. Commonwealth of Kentucky, Cabinet for Health and Family Services;
2. United States Department for Health and Human Services, Comptroller General;
3. United States Department for Health and Human Services, Centers for Medicare and Medicaid Services (CMS);
4. General Accounting Office;
5. Commonwealth of Kentucky, Office of the Auditor of Public Accounts; or
6. Commonwealth of Kentucky, Office of the Attorney General.

VOLUME 51, NUMBER 8– February 1, 2025

Section 12. Electronic Signature Usage. The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

Section 13. Appeal Rights.

(1) An appeal of a department decision regarding a Medicaid beneficiary 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 based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a provider based upon an application of this administrative regulation:

(a) Regarding a provider's reimbursement shall be in accordance with 907 KAR 1:671, Sections 8 and 9; or

(b) Not regarding a provider's reimbursement shall be in accordance with 907 KAR 1:671.

Section 14. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "MAP 10, Waiver Services Physician's Recommendation", June 2015;

(b) "MAP – 115 Application Intake – Participant Authorization", May 2015;

(c) "MAP – 116 Service Plan – Participant Authorization", May 2015;

(d) "MAP – 531 Conflict-Free Case Management Exemption", October 2015;

(e) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", June 2015;

(f) "MAP 351, Medicaid Waiver Assessment", July 2015;

(g) "MAP-2000, Initiation/Termination of Participant-Directed Services (CDO)", June 2015;

(h) "Mayo-Portland Adaptability Inventory-4", March 2003;

(i) "Family Guide to the Rancho Levels of Cognitive Functioning", August 2006;

(j) "Kentucky Participant-Directed Services Employee Provider Contract", June 2015; and

(k) "MAP 4100a Acquired Brain Injury Waiver Program Provider Information and Services", September 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:

(a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at <https://www.chfs.ky.gov/agencies/dms/dca/Pages/abi.aspx> [<http://www.chfs.ky.gov/dms/incorporated.htm>].

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 20, 2024

FILED WITH LRC: December 23, 2024 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 24, 2025, 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 March 17, 2025, 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 March 31, 2025. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration

and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan Scott or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medicaid program coverage provisions and requirements regarding acquired brain injury (ABI) long-term waiver services. The ABI long-term program enables individuals who have suffered a brain injury to live, and receive services, in a community setting rather than in an institution.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish coverage policies for the Medicaid ABI long-term waiver program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid ABI long-term coverage provisions and requirements for a program that enables individuals who have suffered a brain injury to live, and receive services, in a community setting rather than in an institution.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation will assist in the effective administration of the authorizing statutes by establishing Medicaid coverage provisions and requirements for a program that enables individuals who have suffered a brain injury to live, and receive services, in a community setting rather than in an institution.

(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 delete and update the reimbursement methodology to reflect the approval of new federal 1915(c) waivers. A new table has been inserted to reflect the new rates.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update reimbursement methodology to new, higher rates approved by the federal government.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by implementing a federally approved rate increase.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists with the effective administration of the statutes by establishing a process to update increased federal reimbursement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: DMS anticipates that up to 463 recipients will utilize the services available under this waiver.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required, regulated entities will be able to bill and receive a higher reimbursement.

(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 in the expanded reimbursement now available for this waiver.

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

(a) Initially: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(b) On a continuing basis: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Department for Medicaid Services is the promulgating agency, other agencies have not been identified.

(a) Estimate the following for the first year:

Expenditures: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 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 anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): N/A

(a) Estimate the following for the first year:

Expenditures: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 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 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): Enrolled providers providing Michelle P. waiver services.

(a) Estimate the following for the first year:

Expenditures: DMS does not anticipate additional expenditures for regulated entities.

Revenues: Participating providers will benefit from increased reimbursement.

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 anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6. Future slots and increases will be dependent on the state budgeting process and federal reimbursement requirements. Revenues: Participating providers will benefit from increased reimbursement. Cost Savings: The department does not anticipate cost savings as a result of this administrative regulation.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6. Future slots and increases will be dependent on the state budgeting process and federal reimbursement requirements.

(b) Methodology and resources used to determine the fiscal impact: The department worked with interested parties to gain input and perspectives as well as completed a multiyear process working with a contracted third party to re-design the 1915(c) waivers and reimbursement.

(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: This administrative regulation will provide additional reimbursement for all 1915(c) providers.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. 441.305(b).

(2) State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

(3) Minimum or uniform standards contained in the federal mandate. Federal approval is for a limited number of waiver slots.

(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 Medicaid Services Division of Fiscal Management (Amendment)

907 KAR 7:015. Reimbursement for home and community based waiver services version 2.

RELATES TO: 42 C.F.R. 441 Subparts B, G, 42 U.S.C. 1396a, 1396b, 1396d, 1396n

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, is required 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 reimbursement requirements and provisions for home and community based waiver services version 2.

Section 1. Definitions.

(1) "ADHC" means adult day health care.

(2) "ADHC center" means an adult day health care center that is:

(a) Licensed in accordance with 902 KAR 20:066; and

(b) Certified for Medicaid participation by the department.

(3) "Department" means the Department for Medicaid Services or its designee.

(4) "Fixed upper payment limit" means the maximum amount the department shall reimburse per unit.

(5) "HCB" means home and community based waiver.

(6) "Participant" means a recipient who:

VOLUME 51, NUMBER 8– February 1, 2025

- (a) Meets the nursing facility level of care criteria established in 907 KAR 1:022; and
- (b) Meets the eligibility criteria for HCB services established in 907 KAR 7:010.
- (7) "Recipient" is defined by KRS 205.8451(9).

Section 2. HCB Service Reimbursement.

(1)

(a) Except as provided in Section 3, 4, or 5 of this administrative regulation, the department shall reimburse for a home and community based waiver service or item at the lesser of the billed charges or the fixed upper payment limit for each unit.

(b) The ~~base payment rate~~[fixed upper payment limits], unit amounts, and reimbursement maximums established in the following table shall apply:

Service	Unit	Base Rate Effective January 1, 2025
Adult Day Health Care - Level I	15-Minute	\$3.82
Adult Day Health Care - Level II	15-Minute	\$4.15
Attendant Care - Traditional	15-Minute	\$7.26
Attendant Care - PDS	15-Minute	\$7.26
Conflict Free Case Management	Per Month	\$425.92
Environmental and Minor Home Modifications	Per Year	Up to \$3,025
Financial Management	Per Month	\$196.63
Goods and Services - Traditional	Per Year	Up to \$4,235
Goods and Services - PDS	Per Year	Up to \$4,235
Home Delivered Meals	Per Meal	\$9.08
Non-Specialized Respite - Traditional	15-Minute	\$5.92
Non-Specialized Respite - PDS	15-Minute	\$5.92
Specialized Respite - Level I	15-Minute	\$5.92
Specialized Respite - Level II	15-Minute	\$12.10
Specialized Respite - Level I (Congregate Setting)	15-Minute	\$5.92
Specialized Respite - Level II (Congregate Setting)	15-Minute	\$12.10

[Service]	[Fixed Upper Payment Limit]	[Unit Amount]	[Maximum]
[PDS coordination]	[\$162.50 per unit]		[Two (2) units per month]
[Case management]	[\$100.00]	[One (1) month-]	[One (1) unit per month]

[Attendant care not as a PDS]	[\$24.00 per hour]	[One (1) hour]	[\$200 per day alone or in combination with ADHC services; Travel to and from the participant's residence shall be excluded]
[Home and community supports]	[\$2.88 per unit]	[Fifteen (15) minutes]	[Forty five (45) hours per week; Maximum of \$200 per day alone or in combination with ADHC services; Travel to and from the participant's residence shall be excluded]
[Non-specialized respite]	[\$2.75 per unit]	[Fifteen (15) minutes]	[\$200 per day alone or in combination with specialized respite. Non-specialized respite alone or in combination with specialized respite shall not exceed \$4,000 per level of care year.]
[Goods and services]	[\$3,500 per level of care year]	[Level of care year]	[\$3,500 per level of care year; shall not be covered unless prior authorized]
[Home delivered meals]	[\$7.50 per hot meal]	[One (1) hot meal]	[One (1) hot meal per day and five (5) hot meals per week]
[Adult day health care services]	[\$2.83 per unit for Level I services; \$3.43 per unit for Level II services except for specialized respite, which shall be \$10.00 per unit for Level II]	[Fifteen (15) minutes]	[200 units per week]
[Specialized respite]	[\$4.00 per unit for Level I]	[Fifteen (15) minutes]	[\$200 per day alone or in combination]

VOLUME 51, NUMBER 8– February 1, 2025

	1; \$10.00 per unit for Level II]		with non-specialized respite. Specialized respite alone or in combination with non-specialized respite shall not exceed \$4,000 per level of care year.
[Environmental or minor home adaptation]	[\$2,500 per level of care year]	[One (1) level of care year]	[\$2,500 per level of care year; shall not be covered unless prior authorized]

(2)

(a) Reimbursement for a service provided as a PDS shall not exceed the department's allowed reimbursement for the same service as established in the table in subsection (1) of this section.

(b) Participants receiving services through the PDS option shall have three (3) months from the date of level of care recertification to comply with the reimbursement limit established in paragraph (a) of this subsection.

(3)

(a) Three (3) quotes from a prospective provider shall be required for:

1. An environmental or minor home adaptation; or
2. Goods and services.

(b) Documentation justifying the need for the following shall be uploaded into the MWMA:

1. An environmental or minor home adaptation; or
2. Goods and services.

(4) A service listed in subsection (1) of this section shall not be subject to cost settlement by the department unless provided by a local health department.

Section 3. Local Health Department HCB Service Reimbursement.

(1) The department shall reimburse a local health department for HCB services:

- (a) Pursuant to Section 2 of this administrative regulation; and
- (b) Equivalent to the local health department's HCB services cost for a fiscal year.

(2) A local health department shall:

(a) Each year complete a Home Health and Home and Community Based Cost Report completed in accordance with the Home Health and Home and Community Based Cost Reporting Instructions; and

(b) Submit the Home Health and Home and Community Based Cost Report to the department at fiscal year's end.

(3) The department shall determine, based on a local health department's most recently submitted annual Home Health and Home and Community Based Cost Report, the local health department's estimated costs of providing HCB services by multiplying the cost per unit by the number of units provided during the period.

(4) If a local health department's HCB service reimbursement for a fiscal year is less than its cost, the department shall make supplemental payment to the local health department equal to the difference between:

(a) Payments received for HCB services provided during a fiscal year; and

(b) The estimated cost of providing HCB services during the same time period.

(5) If a local health department's HCB service cost as estimated from its most recently submitted annual Home Health and Home and Community Based Cost Report is less than the payments received pursuant to Section 2 of this administrative regulation, the department shall recoup any excess payments.

(6) The department shall audit a local health department's Home Health and Home and Community Based Cost Report if it determines an audit is necessary.

Section 4. Reimbursement for an ADHC Service.

(1) Reimbursement for an ADHC service shall:

(a) Be made:

1. Directly to an ADHC center; and
2. For a service only if the service was provided on site and during an ADHC center's posted hours of operation;

(b) If made to an ADHC center for a service not provided during the center's posted hours of operation, be recouped by the department; and

(c) Be limited to 200 units per calendar week per participant.

(2) Level I reimbursement shall be the lesser of:

(a) The provider's usual and customary charges; or

(b) The base payment rate established for this service in the table established in Section 3[Two (2) dollars and eighty-three (83) cents per unit of service].

(3)

(a) Except as established in paragraph (b) of this subsection, Level II reimbursement shall be the lesser of:

1. The provider's usual and customary charges; or

2. The base payment rate established for this service in the table established in Section 3[Three (3) dollars and forty-three (43) cents per unit of service].

(b)

1. The department shall pay a Level II reimbursement for specialized respite provided by a:

a. Registered nurse; or

b. Licensed practical nurse under the supervision of a registered nurse.

2. The Level II reimbursement for specialized respite shall be the lesser of:

a. The ADHC center's usual and customary charges; or

b. The base payment rate established for this service in the table established in Section 3[Ten (10) dollars per unit of service].

(c) An ADHC center's reimbursement for Level II services shall be:

1. Per participant; and

2. Based upon the participant's assessed level of care and most recent person-centered service plan.

(4) An ADHC basic daily service shall constitute care for one (1) participant.

(5) One (1) unit of ADHC basic daily service shall equal fifteen (15) minutes.

(6) The level of and reimbursement rate for any ADHC service provided to a participant shall be determined by an assessment of the participant using the Kentucky Home Assessment Tool (K-HAT).

Section 5. Criteria for High Intensity Level II Reimbursement and Home Health Level II Reimbursement.

(1) Any ADHC service provided to a participant by an ADHC center shall qualify for Level II reimbursement if the participant meets the Level II High Intensity criteria established in the Kentucky Home Assessment Tool (K-HAT).

(2)

(a) Specialized respite care provided to a participant by a home health agency shall qualify for Level II reimbursement if:

1. The participant meets the Level II High Intensity criteria established in the Kentucky Home Assessment Tool (K-HAT); and

2. Provided by a:

a. Registered nurse; or

b. Licensed practical nurse under the supervision of a registered nurse.

(b) The Level II reimbursement for specialized respite provided by a home health agency shall be the reimbursement established in Section 4(3)(b) of this administrative regulation.

(3) If a participant's assessment determines that:

(a) ADHC services to the participant do not qualify for Level II reimbursement, the department shall reimburse the Level I rate to the ADHC center for services provided to the participant; or

(b) Specialized respite care to the participant does not qualify for Level II reimbursement, the department shall reimburse the Level I rate to the ADHC center or home health agency for the specialized respite care service.

Section 6. Applicability. The reimbursement provisions and requirements established in this administrative regulation shall:

(1) Apply to services or items provided to individuals who receive home and community based services version 2 pursuant to 907 KAR 7:010; and

(2) Not apply to services or items provided to individuals receiving home and community based services version 1 pursuant to 907 KAR 1:160.

Section 7. Appeal Rights. An HCB service provider may appeal a department decision as to the application of this administrative regulation as it impacts the provider's reimbursement in accordance with 907 KAR 1:671, Sections 8 and 9.

Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Kentucky Home Assessment Tool (K-HAT)", July 1, 2015;

(b) "The Home Health and Home and Community Based Cost Report", November 2007; and

(c) "The Home Health and Home and Community Based Cost Report Instructions", November 2007.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:

(a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at <https://www.chfs.ky.gov/agencies/dms/dca/Pages/hcb-waiver.aspx> [<http://www.chfs.ky.gov/dms/incorporated.htm>].

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 20, 2024

FILED WITH LRC: December 23, 2024 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 24, 2025, 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 March 17, 2025, 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 March 31, 2025. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan Scott or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medicaid Program reimbursement requirements and provisions for home and community based waiver services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Medicaid Program reimbursement requirements and provisions for home and community based waiver 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 Medicaid Program reimbursement requirements and provisions for home and community based waiver services.

(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 Medicaid Program reimbursement requirements and provisions for home and community based waiver 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 delete and update the reimbursement methodology to reflect the approval of new federal 1915(c) waivers. The approvals allow for higher reimbursement for providers and this administrative regulation is being updated to reflect the higher reimbursement.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update reimbursement methodology to new, higher rates approved by the federal government.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by implementing a federally approved rate increase.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists with the effective administration of the statutes by establishing a process to update increased federal reimbursement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: DMS anticipates that up to 16,500 recipients will utilize the services available under this waiver.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required, regulated entities will be able to bill and receive a higher reimbursement.

(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 in the expanded reimbursement now available for this waiver.

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

(a) Initially: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(b) On a continuing basis: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Department for Medicaid Services is the promulgating agency, other agencies have not been identified.

(a) Estimate the following for the first year:

Expenditures: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 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 anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): N/A

(a) Estimate the following for the first year:

Expenditures: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 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 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): Enrolled providers providing supports for community living waiver services.

(a) Estimate the following for the first year:

Expenditures: DMS does not anticipate additional expenditures for regulated entities.

Revenues: Participating providers will benefit from increased reimbursement.

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 anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6. Future slots and increases will be dependent on the state budgeting process and federal reimbursement requirements. Revenues: Participating providers will benefit from increased reimbursement. Cost Savings: The department does not anticipate cost savings as a result of this administrative regulation.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB (6) Future slots and increases will be dependent on the state budgeting process and federal reimbursement requirements.

(b) Methodology and resources used to determine the fiscal impact: The department worked with interested parties to gain input and perspectives as well as completed a multiyear process working with a contracted third party to re-design the 1915(c) waivers and reimbursement.

(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: This administrative regulation will provide additional reimbursement for all 1915(c) providers.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. 441.305(b).

(2) State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

(3) Minimum or uniform standards contained in the federal mandate. Federal approval is for a limited number of waiver slots.

(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 Medicaid Services Division of Fiscal Management (Amendment)

907 KAR 12:020. Reimbursement for New Supports for Community Living Waiver Services.

RELATES TO: KRS 205.520, 42 C.F.R. 441, Subpart G, 447.272, 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 142.363, 194A.030(3), 194A.050(1), 205.520(3), 205.6317

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, is required 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 reimbursement policies for SCL waiver services provided to individuals pursuant to the new Supports for Community Living (SCL) waiver program established by 907 KAR 12:010.

Section 1. Definitions.

(1) "DBHDID" means the Department for Behavioral Health, Developmental and Intellectual Disabilities.

(2) "Department" means the Department for Medicaid Services or its designee.

(3) "Developmental disability" means a disability that:

(a) Is manifested prior to the age of twenty-two (22);

(b) Constitutes a substantial disability to the affected individual; and

(c) Is attributable either to an intellectual disability or a condition related to an intellectual disability that:

1. Results in an impairment of general intellectual functioning and adaptive behavior similar to that of a person with an intellectual disability; and

2. Is a direct result of, or is influenced by, the person's cognitive deficits.

(4) "Exceptional support" means a service:

(a) Requested by a participant and the participant's team; and

(b) That due to an extraordinary circumstance related to a participant's physical health, psychiatric issue, or behavioral health issue is necessary to:

VOLUME 51, NUMBER 8– February 1, 2025

1. Be provided in excess of the upper payment limit for the service for a specified amount of time; and
 2. Meet the assessed needs of the participant.
- (5) "Immediate family member" is defined by KRS 205.8451(3).
- (6) "Intellectual disability" or "ID" means:
- (a) A demonstration:
 1. Of significantly sub-average intellectual functioning and an intelligence quotient (IQ) of seventy (70) plus or minus five (5); and
 2. Of concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:
 - a. Communication;
 - b. Self-care;
 - c. Home living;
 - d. Social or interpersonal skills;
 - e. Use of community resources;
 - f. Self-direction;
 - g. Functional academic skills;
 - h. Work;
 - i. Leisure; or
 - j. Health and safety; and
 - (b) An intellectual disability that had an onset before eighteen (18) years of age.
- (7) "Legally responsible individual" means an individual who has a duty under state law to care for another person and includes:
- (a) A parent (biological, adoptive, or foster) who provides care to the parent's minor child;
 - (b) A guardian who provides care to the guardian's minor child;
- or
- (c) A spouse of a participant.
- (8) "Participant" means a Medicaid recipient who:
- (a) Meets patient status criteria for an intermediate care facility for individuals with intellectual disabilities as established in 907 KAR 1:022;
 - (b) Is authorized by the department to receive SCL waiver services; and
 - (c) Utilizes SCL waiver services and supports in accordance with a person-centered service plan.
- (9) "Participant-directed service" means an option established by KRS 205.5606 within the 1915(c) home and community based service waiver programs that allows recipients to receive non-medical services in which the individual:
- (a) Assists with the design of the program;
 - (b) Chooses the providers of services; and
 - (c) Directs the delivery of services to meet his or her needs.
- (10) "State plan" is defined by 42 C.F.R. 430.10.
- (11) "Supports for community living services" or "SCL services" means community-based waiver services for a participant who has an intellectual or developmental disability.

Section 2. Coverage.

- (1) The department shall reimburse a participating SCL provider for a covered service provided to a participant.
- (2) In order to be reimbursable by the department, a service shall be:
 - (a) Provided in accordance with the terms and conditions specified in 907 KAR 12:010; and
 - (b) Prior authorized by the department.
- (3) Funding for the SCL waiver program shall be associated with and generated through SCL waiver program participants rather than SCL waiver service providers.

Section 3. SCL Reimbursement and Limits.

- (1) Except as established in Section 4 of this administrative regulation, the department shall reimburse for an SCL service provided in accordance with 907 KAR 12:010 to a participant an amount:
 - (a) Equal to the charge billed by the provider; and
 - (b) Not to exceed the fixed upper payment limit for the service.
- (2) The unit amounts and ~~base payment rate~~[fixed upper payment limits] listed in the following table shall apply:

<u>Service</u>	<u>Unit</u>	<u>Base Rate Effective January 1, 2025</u>
Case Management	Per Month	\$425.92
Community Access, Individual	15-minute	\$10.65
Community Access, Individual - PDS	15-minute	\$10.65
Community Access, Group	15-minute	\$5.32
Community Access, Group - PDS	15-minute	\$5.32
Community Guide	15-minute	\$10.65
Community Guide - PDS	15-minute	\$10.65
Community Transition	Per Transition	Up to \$2,420
Consultative Clinical and Therapeutic Services (Behavioral)	15-minute	\$29.95
Consultative Clinical and Therapeutic Services (Dietary)	15-minute	\$29.95
Consultative Clinical and Therapeutic Services (Psychological)	15-minute	\$29.95
Consultative Clinical and Therapeutic Services (Functional analysis)	15-minute	\$29.95
Day Training	15-minute	\$3.62
Day Training - PDS	15-minute	\$3.62
Day Training at an ADHC	15-minute	\$3.99
Environmental Accessibility Adaptation Services	Lifetime	Up to \$9,680
Environmental Accessibility Adaptation Services - PDS	Lifetime	Up to \$9,680
Financial Management Services	Per month	\$121.00
Goods and Services	Per Year	Up to \$2,178
Goods and Service - PDS	Per Year	Up to \$2,178
Natural Supports Training	Per Year	Up to \$1,210
Natural Supports Training - PDS	Per Year	Up to \$1,210
Person-Centered Coaching	15-minute	\$7.66
Personal Assistance	15-minute	\$7.37
Personal Assistance - PDS	15-minute	\$7.37
Positive Behavior Support Plan	Per Plan	\$885.12
Residential Support Level I - 3 residents or fewer	Per Day	\$284.57
Residential Support Level I - 4 to 8 residents	Per Day	\$215.09
Residential Support Level II	Per Day	\$129.91
Residential Support Level II - 12+ hours of supervision	Per Day	\$198.70

VOLUME 51, NUMBER 8– February 1, 2025

Respite	15-minute	\$5.92
Respite - PDS	15-minute	\$5.92
Shared Living	Per Day	\$726.00
Supported Employment	15-minute	\$13.65
Supported Employment - PDS	15-minute	\$13.65
Technology Assisted Residential	Per Day	\$105.15
Transportation	Per Month	\$320.65
Vehicle Adaptations	Every Five Years	Up to \$7,260

(3) Any combination of day training, community access, personal assistance, or any hours of paid community employment or on-site supported employment service shall not exceed sixteen (16) hours per day.

(4) Community access services shall not exceed 160 units per week.

(5) Community guide services shall not exceed 576 units per one (1) year authorized person-centered service plan period.

(6) Community transition shall be based on prior authorized cost not to exceed \$2,420[\$2,000] per approved transition.

(7) Consultative clinical and therapeutic services shall not exceed 160 units per one (1) year authorized person-centered service plan period.

(8) Day training alone or in combination with any hours of paid community employment or on-site supported employment service shall not exceed 160 units per week.

(9) An environmental accessibility adaptation service shall be:

(a) Based on a prior authorized, estimated cost; and

(b) Limited to an \$9,680[\$8,000] lifetime maximum.

(10) Goods and services shall not exceed \$2,178[\$1,800] per one (1) year authorized person-centered service plan period.

(11) Natural support training shall be based on a prior authorized, estimated cost not to exceed \$1,210[\$1,000] per one (1) year authorized person-centered service plan period.

(12) Person centered coaching shall not exceed 1,320 units per year.

(13) Respite shall be limited to 3,320 units (830 hours) per one (1) year authorized person-centered service plan period.

(14) Shared living shall be based on a prior authorized amount not to exceed \$726[\$600] per month.

(15) A vehicle adaptation shall be limited to \$7,260[\$6,000] per five (5) years per participant.

(16) Transportation shall be reimbursed:

(a)

1. If provided as a participant directed service:

a. Based on the mileage; and

b. At two thirds of the rate established in 200 KAR 2:006, Section 8(2)(d), if provided by an individual. The rate shall be adjusted quarterly in accordance with 200 KAR 2:006, Section 8(2)(d); or

2. If provided by a public transportation service provider, at the cost per trip as documented by the receipt for the specific trip; and

(b) A maximum of \$320.65[\$265] per calendar month.

(17) An estimate for a supply item requested under specialized medical equipment or goods and services shall be based on the actual price to be charged to the provider, participant, or individual by a retailer or manufacturer.

(18) Specialized medical equipment or goods and services shall not include equipment and supplies covered under the Kentucky Medicaid program's state plan including:

(a) Durable medical equipment;

(b) Early and Periodic Screening, Diagnosis, and Treatment Services;

(c) Orthotics and prosthetics; or

(d) Hearing services.

(19) A participant shall not receive multiple SCL services during the same segment of time except in the case of the following

collateral services that shall be allowed to overlap other SCL services:

- (a) Community guide services;
- (b) Consultative clinical and therapeutic services; or
- (c) Person centered coaching.

Section 4. Exceptional Supports.

(1) A service listed in subsection (2) or (3) of this section, regardless of delivery method, shall qualify as an exceptional support:

(a) Based on the needs of the participant for whom the exceptional support is requested;

(b) For a limited period of time not to exceed a full person-centered service plan year;

(c) If the service meets the requirements for an exceptional support in accordance with the Kentucky Exceptional Supports Protocol; and

(d) If approved by DBHDID to be an exceptional support.

(2)

(a) The following shall qualify as an exceptional support and be reimbursed at a rate higher than the base payment rate[~~upper payment limit~~] established in Section 3 of this administrative regulation if meeting the criteria established in subsection (1) of this section:

- 1. Community access services;
- 2. Day training that is not provided in an adult day health care center;
- 3. Personal assistance;
- 4. Respite;
- 5. Residential Level I – three (3) or fewer residents;
- 6. Residential Level I – four (4) to eight (8) residents; or
- 7. Residential Level II – twelve (12) or more hours.

(b) A rate increase for a service authorized as an exceptional support shall:

- 1. Be based on the actual cost of providing the service; and
- 2. Not exceed twice the upper payment limit established for the service in Section 3 of this administrative regulation.

(3) The following shall qualify as an exceptional support and be provided in excess of the unit limits established in Section 3 of this administrative regulation if meeting the criteria established in subsection (1) of this section:

- (a) Consultative clinical and therapeutic services;
- (b) Person centered coaching;
- (c) Personal assistance; or
- (d) Respite.

(4) A service that qualifies as an exceptional support shall:

(a) Either:

1. Be authorized to be reimbursed at a rate higher than the base payment rate[~~upper payment limit~~] established for the service in Section 3 of this administrative regulation; or

2. Be authorized to be provided in excess of the unit limit established for the service in Section 3 of this administrative regulation; and

(b) Not be authorized to be reimbursed at both a higher rate than the base payment rate[~~upper payment limit~~] and in excess of the service limit established for the service in Section 3 of this administrative regulation.

Section 5. Participant Directed Services.

(1) A reimbursement rate for a participant directed service shall:

(a) Not exceed the base payment rate[~~upper payment limit~~] established for the service in Section 3 of this administrative regulation unless the service qualifies as an exceptional support in accordance with Section 4(2)(a) of this administrative regulation; and

(b) Include:

1. All applicable local, state, and federal withholdings; and

2. Any applicable employment related administrative costs, which shall be the responsibility of the participant who is directing the service.

(2) An employee who provides a participant directed service shall not be approved to provide more than forty (40) hours of service per week unless authorized to do so by the department.

(3) A legally responsible individual or immediate family member shall not be authorized to be reimbursed for more than forty (40) hours of participant directed services per week.

Section 6. Auditing and Reporting. An SCL provider shall maintain fiscal records and incident reports in accordance with the requirements established in 907 KAR 12:010.

Section 7. Appeal Rights. A provider may appeal a department decision regarding the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 8. Federal Approval and Federal Financial Participation. The department's reimbursement of services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the reimbursement; and
- (2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

Section 9. Incorporation by Reference.

(1) The "Kentucky Exceptional Supports Protocol", April 2016, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law;[;]

(a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at: <https://www.chfs.ky.gov/agencies/dms/dca/Pages/scl-waiver.aspx>.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 20, 2024

FILED WITH LRC: December 23, 2024 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 24, 2025, 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 March 17, 2025, 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 March 31, 2025. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan Scott or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement policies for SCL waiver services provided to individuals pursuant to the new Supports for Community Living (SCL) waiver program established by 907 KAR 12:010.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the reimbursement policies for SCL waiver services provided to individuals pursuant to the new Supports for Community Living (SCL) waiver program established by 907 KAR 12:010.

(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 reimbursement policies for SCL waiver services provided to individuals pursuant to the new Supports for Community Living (SCL) waiver program established by 907 KAR 12:010.

(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 reimbursement policies for SCL waiver services provided to individuals pursuant to the new Supports for Community Living (SCL) waiver program established by 907 KAR 12:010.

(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 delete and update the reimbursement methodology to reflect the approval of new federal 1915(c) waivers. The approvals allow for higher reimbursement for providers and this administrative regulation is being updated to reflect the higher reimbursement.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update reimbursement methodology to new, higher rates approved by the federal government.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by implementing a federally approved rate increase.

(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 process to update increased federal reimbursement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: DMS anticipates about 5,200 recipients will utilize the services available under this waiver.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action is required, regulated entities will be able to bill and receive a higher reimbursement.

(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 in the expanded reimbursement now available for this waiver.

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

(a) Initially: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(b) On a continuing basis: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Department for Medicaid Services is the promulgating agency, other agencies have not been identified.

(a) Estimate the following for the first year:

Expenditures: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 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 anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): N/A

(a) Estimate the following for the first year:

Expenditures: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 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 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): Enrolled providers providing supports for community living waiver services.

(a) Estimate the following for the first year:

Expenditures: DMS does not anticipate additional expenditures for regulated entities.

Revenues: Participating providers will benefit from increased reimbursement.

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 anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6. Future slots and increases will be dependent on the state budgeting process and federal reimbursement requirements. Revenues: Participating providers will benefit from increased reimbursement. Cost Savings: The department does not anticipate cost savings as a result of this administrative regulation.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6. Future slots and increases will be dependent on the state budgeting process and federal reimbursement requirements.

(b) Methodology and resources used to determine the fiscal impact: The department worked with interested parties to gain input and perspectives as well as completed a multiyear process working with a contracted third party to re-design the 1915(c) waivers and reimbursement.

(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: This administrative regulation will provide additional reimbursement for all 1915(c) providers.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. 441.305(b).

(2) State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

(3) Minimum or uniform standards contained in the federal mandate. Federal approval is for a limited number of waiver slots.

(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 Medicaid Services
Division of Policy and Operations
(Amendment)

907 KAR 20:005. Medicaid technical eligibility requirements not related to a modified adjusted gross income standard or former foster care individuals.

RELATES TO: KRS 205.520, 205.6481-205.6497, 341.360, 42 C.F.R. 435, 403, 45 C.F.R. 233.100, 8 U.S.C. 1101, 1153(a)(7), 1157, 1158, 1182(d)(5), 1231(b)(3), 1253(h), 1522, 1612, 1613, 1622, 1641, 38 U.S.C. 101, 107, 1101, 1301, 1304, 5303A, 42 U.S.C. 402, 416, 423, 1382c, 1383c, 1395i, 1396a

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a(1)(a)(84)(D), 1396a(a)(10), (r)(2), [1396b(f)]1396d(q)(2)(B), 1397aa, 1397bb

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 technical eligibility requirements of the Medicaid Program except for individuals whose Medicaid eligibility standard is a modified adjusted gross income or for former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage. Individuals to whom the technical eligibility requirements in this administrative regulation apply include children in foster care; aged, blind, or disabled individuals; and individuals who receive supplemental security income benefits.

Section 1. The Categorically Needy.

(1) An individual receiving Title IV-E benefits, SSI benefits, or an optional or a mandatory state supplement shall be eligible for Medicaid as a categorically-needy individual.

(2) The following classifications of persons shall be considered categorically needy and eligible for Medicaid participation as categorically needy:

(a) A child in a foster family home or private child-caring facility dependent on a governmental or private agency;

(b) A child in a psychiatric hospital, psychiatric residential treatment facility, or intermediate care facility for individuals with an intellectual disability beginning with day thirty-one (31) of the child's stay in the psychiatric hospital, psychiatric residential treatment facility, or intermediate care facility for individuals with an intellectual disability;

(c) A child in a subsidized adoption dependent on a governmental agency;

(d) A qualified severely impaired individual as specified in 42 U.S.C. 1396a(a)(10)(A)(i)(II) and 1396d(q), to the extent the coverage is mandatory in this state;

(e) An individual who loses SSI benefit eligibility but would be eligible for SSI benefits except for entitlement to or an increase in his or her child's insurance benefits based on disability as specified in 42 U.S.C. 1383c;

(f) An individual specified in 42 U.S.C. 1383c who:

1. Loses SSI benefits or state supplement payments as a result of receipt of benefits pursuant to 42 U.S.C. 402(e) or (f);

2. Would be eligible for SSI benefits or state supplement payments except for these benefits; and

3. Is not entitled to Medicare Part A benefits;

(g) A disabled widow, widower, or disabled surviving divorced spouse, who would be eligible for SSI benefits except for entitlement to an OASDI benefit resulting from a change in the definition of disability;

(h) A child who:

1. Was receiving SSI benefits on August 22, 1996; and

2. Except for the change in definition of childhood disability would continue to receive SSI benefits; or

(i) A person with hemophilia who would be eligible for SSI benefits except that the individual received a settlement in a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation".

(3) The classifications of persons listed in this subsection shall be considered categorically-needy and eligible for Medicaid participation as limited by the provisions of this subsection.

(a) A family which correctly received Medicaid for three (3) of the last six (6) calendar months, and would have been terminated from receipt of AFDC using AFDC methodologies in effect on July 16, 1996 as a result of new or increased collection of child or spousal support, shall be eligible for extended Medicaid coverage for four (4) consecutive calendar months beginning with the first month the family would have been ineligible for AFDC.

(b) A family which would have been terminated from AFDC assistance using the AFDC methodologies in effect on July 16, 1996 because of increased earnings, hours of employment, or loss of earnings disregards shall be eligible for up to four (4) months of extended Medicaid.

(c)

1. Except as provided in subparagraph 3 of this paragraph, an individual in an institution meeting appropriate patient status criteria who, if not institutionalized, would not be eligible for SSI benefits or optional state supplement benefits due to income shall be eligible under a special income level which is set at 300 percent of the SSI benefit amount payable for an individual with no income.

2. Except as provided in subparagraph 3 of this paragraph, eligibility for a similar hospice participant or similar participant in a 1915(c) home and community based waiver program for individuals with an intellectual disability or the aged, blind, or disabled shall be determined using the method established in subparagraph 1 of this subsection.

3. Eligibility of an individual in an intermediate care facility for individuals with an intellectual disability (ICF IID) or supports for community living for an individual with an intellectual disability or a developmental disability waiver meeting appropriate patient status criteria whose gross income exceeds 300 percent of the SSI benefit amount shall be determined by comparing the cost of the individual's care to the individual's income.

Section 2. Citizenship and Residency Requirements.

(1) The citizenship requirements established in 42 C.F.R. 435.406 shall apply.

(2) Except as established in subsection (3) or (4) of this section, to satisfy the Medicaid:

(a) Citizenship requirement, an applicant or recipient shall be:

1. A citizen of the United States as verified through satisfactory documentary evidence of citizenship or nationality presented during initial application or if a current recipient, upon next redetermination of continued eligibility;

2. A qualified alien who entered the United States before August 22, 1996, and is:

a. Lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101;

b. Granted asylum pursuant to 8 U.S.C. 1158;

c. A refugee admitted to the United States pursuant to 8 U.S.C. 1157;

d. Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1) year;

e. An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);

f. Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7), as in effect prior to April 1, 1980;

g. An alien who is granted status as a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;

h. A battered alien pursuant to 8 U.S.C. 1641(c);

i. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

j. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);

k. The spouse or unmarried dependent child of an individual described in clause i. or j. of this subparagraph or the unremarried surviving spouse of an individual described in clause i. or j. of this subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304; or

l. An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or

3. A qualified alien who entered the United States on or after August 22, 1996 and is:

a. Granted asylum pursuant to 8 U.S.C. 1158;

b. A refugee admitted to the United States pursuant to 8 U.S.C. 1157;

c. An alien whose deportation is being withheld pursuant to 8 U.S.C. 1253(h), as in effect prior to April 1, 1997, or 8 U.S.C. 1231(b)(3);

d. An alien who is granted status as a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;

e. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

f. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements established in 38 U.S.C. 5303A(d);

g. The spouse or unmarried dependent child of an individual described in clause e. or f. of this subparagraph or the unremarried surviving spouse of an individual described in clause e. or f. of this subparagraph if the marriage fulfills the requirements established in 38 U.S.C. 1304;

h. An Amerasian immigrant pursuant to 8 U.S.C. 1612(a)(2)(A)(v); or

i. An individual lawfully admitted for permanent residence pursuant to 8 U.S.C. 1101 who has earned forty (40) quarters of Social Security coverage; and

(b) Residency requirements, the applicant or recipient shall be a resident of Kentucky who meets the conditions for determining state residency pursuant to 42 C.F.R. 435.403.

(3) A qualified or nonqualified alien shall be eligible for medical assistance as provided in this paragraph.

(a) The individual shall meet the income, resource, and categorical requirements of the Medicaid Program.

(b) The individual shall have, or have had within at least one (1) of the three (3) months prior to the month of application, an emergency medical condition:

1. Not related to an organ transplant procedure; and

2. Which shall be a medical condition, including severe pain, in which the absence of immediate medical attention could reasonably be expected to result in placing the individual's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

(c)

1. Approval of eligibility shall be for a time limited period which includes, except as established in subparagraph 2 of this paragraph, the month in which the medical emergency began and the next following month.

2. The eligibility period shall be extended for an appropriate period of time upon presentation to the department of written documentation from the medical provider that the medical emergency will exist for a more extended period of time than is allowed for in the time limited eligibility period.

(d) The Medicaid benefits to which the individual is entitled shall be limited to the medical care and services, including limited follow-up, necessary for the treatment of the emergency medical condition of the individual.

(4)

(a) The satisfactory documentary evidence of citizenship or nationality requirement in subsection (2)(a)1 of this section shall not apply to an individual who:

1. Is receiving SSI benefits;

2. Previously received SSI benefits but is no longer receiving them;

3. Is entitled to or enrolled in any part of Medicare;

4. Previously received Medicare benefits but is no longer receiving them;

5. Is receiving:

a. Disability insurance benefits under 42 U.S.C. 423; or

b. Monthly benefits under 42 U.S.C. 402 based on the individual's disability pursuant to 42 U.S.C. 423(d);

6. Is in foster care and who is assisted under Title IV-B of the Social Security Act, which is codified as 42 U.S.C. 621 through 628b; or

7. Receives foster care maintenance or adoption assistance payments under Title IV-E of the Social Security Act, which is codified as 42 U.S.C. 670 through 679c.

(b) The department's documentation requirements shall be in accordance with the requirements established in 42 U.S.C. 1396b(x).

(5) The department shall assist an applicant or recipient who is unable to secure satisfactory documentary evidence of citizenship or nationality in a timely manner because of incapacity of mind or body and lack of a representative to act on the applicant's or recipient's behalf.

(6) An individual shall be determined eligible for Medicaid for up to three (3) months prior to the month of application if all conditions of eligibility are met.

Section 3. The Medically Needy Who Qualify Via Spenddown. A medically needy individual who has sufficient income to meet the individual's basic maintenance needs may apply for Medicaid with need determined in accordance with the income and resource standards established in 907 KAR 20:020 through 907 KAR 20:045, if the individual meets:

(1) The income and resource standards of the medically needy program established in 907 KAR 20:020 and 907 KAR 20:025; and

(2) The technical requirements of the appropriate categorically needy group identified in Section 1 of this administrative regulation.

Section 4. Qualified Medicare Beneficiaries, Qualified Disabled and Working Individuals, Specified Low-Income Medicare Beneficiaries, and Medicare Qualified Individuals Group 1 (QI-1).

(1) Coverage shall be extended to a qualified Medicare beneficiary as specified in 42 U.S.C. 1396a(a)(10)(E):

(a) Subject to the income limits established in 907 KAR 20:020;

(b) Subject to the resource limits established in 907 KAR 20:025; and

(c) For the scope of benefits specified for a QMB in 907 KAR 1:006.

(2) A QMB shall:

(a) Be eligible for or receive Medicare Part A and Part B benefits;

(b) Be determined to be eligible for QMB benefits effective for the month after the month in which the eligibility determination has been made; and

(c) Not be eligible for QMB benefits:

1. Retroactively; or

2. For the month in which the eligibility determination was made.

(3) A qualified disabled and working individual shall be eligible under Medicaid for payment of the individual's Medicare Part A premiums as established in 907 KAR 1:006.

(4) A specified low-income Medicare beneficiary shall be eligible under Medicaid for payment of the Medicare Part B premiums.

(5) A Medicare qualified individual group 1 (QI-1) shall be eligible for payment of all of the Medicare Part B premium.

Section 5. Technical Eligibility Requirements. The technical eligibility factors for an individual included as categorically needy under Section 1 of this administrative regulation shall be as established in this section.

(1) The following shall meet the requirements of a child in accordance with 907 KAR 20:001, Section 1(19):

(a) A child in foster care;

(b) A child in a private institution;

(c) A child in a psychiatric hospital;

(d) A child in a psychiatric residential treatment facility; or

(e) A child in an intermediate care facility for individuals with an intellectual disability.

(2) An aged individual shall be at least sixty-five (65) years of age.

(3) A blind individual shall meet the definition of blindness as contained in 42 U.S.C. 416 and 42 U.S.C. 1382c relating to Retirement, Survivors, and Disability Insurance or SSI benefits.

(4) A disabled individual shall meet the definition of permanent and total disability as established in 42 U.S.C. 423(d) and 42 U.S.C. 1382c(a)(3) relating to RSDI and SSI benefits.

(5)

(a) Using AFDC methodologies in effect on July 16, 1996, a family who loses Medicaid eligibility solely because of increased earnings or hours of employment of the caretaker relative or loss of earnings disregards may receive up to four (4) months of extended medical assistance for family members included in the medical assistance unit prior to losing Medicaid eligibility.

(b) The family shall meet the eligibility and reporting requirements for the benefit period established in this subsection.

(c) The benefit period shall begin with the month the family would have become ineligible for AFDC using AFDC methodologies in effect on July 16, 1996.

1. To be eligible for this transitional benefit period, the family shall:

a. Have correctly received Medicaid assistance in three (3) of the six (6) months immediately preceding the month the family would have become ineligible for AFDC using AFDC methodologies in effect on July 16, 1996;

b. Have a dependent child living in the home; and

c. Report earnings and child care costs no later than the 21st day of the fourth month.

2. If the family no longer has a dependent child living in the home, medical assistance shall be terminated the last day of the month the family no longer includes a dependent child.

(6) An applicant who is deceased shall have eligibility determined in the same manner as if the applicant were alive to cover medical expenditures during the terminal illness.

(7)

(a) An individual shall be determined eligible for Medicaid for up to three (3) months prior to the month of application if all conditions of eligibility are met and the applicant is not enrolled in a managed care organization.

(b) The effective date of Medicaid shall be the first day of the month of eligibility.

(8)

(a) Benefits shall be denied to a family for a month in which a parent with whom the child is living is, on the last day of the month, participating in a strike, and the individual's needs shall not be considered in determining eligibility for Medicaid for the family if, on the last day of the month, the individual is participating in a strike.

(b) A strike shall include a concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) or any concerted slowdown or other concerted interruption of operations by employees.

Section 6. Institutional Status.

(1) An individual shall not be eligible for Medicaid if the individual is a:

(a) Resident or inmate of a nonmedical public institution except as provided in Section 7 of this administrative regulation;

(b) Patient in a state tuberculosis hospital unless he or she has reached age sixty-five (65);

(c) Patient in a mental hospital or psychiatric facility unless the individual is:

1. Under twenty-one (21) years of age;

2. Under age twenty-two (22) if the individual was receiving inpatient services on his or her 21st birthday; or

3. Sixty-five (65) years of age or over; or

(d) Patient in an institution for mental diseases, unless the individual has reached age sixty-five (65).

(2) In accordance with subsection (1)(c) of this section, if an individual is receiving services in a mental hospital or psychiatric facility at the time the individual reaches twenty-one (21) years of age and the services remain medically necessary for the individual, the individual shall remain eligible for the services until the individual reaches age twenty-two (22) years of age.

Section 7. Emergency Shelters or Incarceration Status.

(1) An individual or family group who is in an emergency shelter for a temporary period of time shall be eligible for medical assistance, even though the shelter is considered a public institution, under the following conditions:

(a) The individual or family group shall:

1. Be a resident of an emergency shelter no more than six (6) months in any nine (9) month period; and

2. Not be in the facility serving a sentence imposed by the court, or awaiting trial; and

(b) Eligibility for Medicaid shall have existed immediately prior to admittance to the shelter or it shall exist immediately after leaving the shelter.

(2) An inmate shall be eligible for Medicaid during the period of time the inmate is admitted to a hospital if the inmate:

(a) Has been admitted to a hospital;

(b) Has been an inpatient at the hospital for at least twenty-four (24) consecutive hours; and

(c) Meets the Medicaid eligibility criteria established in this administrative regulation.

Section 8. Justice Involved Children or Youth.

(1) A justice involved child or youth who is within thirty (30) days of their scheduled release date shall be eligible for Medicaid as established pursuant to 42 U.S.C. 1396a(1)(a)(84)(D) and 1397bb.

(2) Covered services for justice involved youth shall be provided by reentry organizations authorized and approved by the department and may include:

(a) The Department of Juvenile Justice;

(b) The Department of Corrections; or

(c) Local jails; or

(d) An approved third-party contractor that assists one (1) of the entities in paragraphs (a) through (c) of this subsection in delivering services pursuant to this section.

Section 9. Application for Other Benefits.

(1) Except as provided in subsection (2) of this section, as a condition of eligibility for Medicaid, an applicant or recipient shall apply for each annuity, pension, retirement, and disability benefit to which the applicant or recipient is entitled, unless the applicant or recipient can show good cause for not doing so.

(a) Good cause shall be considered to exist if other benefits have previously been denied with no change of circumstances or the individual does not meet all eligibility conditions.

(b) Annuities, pensions, retirement, and disability benefits shall include:

1. Veterans' compensations and pensions;

2. Retirement and survivors disability insurance benefits;

3. Railroad retirement benefits;

4. Unemployment compensation; and

5. Individual retirement accounts.

(2) An applicant or recipient shall not be required to apply for federal benefits if:

(a) The federal law governing that benefit specifies that the benefit is optional; and

(b) The applicant or recipient believes that applying for the benefit would be to the applicant's or recipient's disadvantage.

(3) An individual who would be eligible for SSI benefits but has not made application shall not be eligible for Medicaid.

Section 10.[Section—9.] Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient shall be deemed to have made an assignment to the cabinet of any medical support owed for the child not to exceed the amount of Medicaid payments made on behalf of the recipient.

Section 11.[Section—10.] Third-party Liability as a Condition of Eligibility.

(1)

(a) Except as provided in subsection (3) of this section, an individual applying for or receiving Medicaid shall be required as a condition of eligibility to cooperate with the cabinet in identifying, and providing information to assist the cabinet in pursuing, any third party who may be liable to pay for care or services available under the Medicaid Program unless the individual has good cause for refusing to cooperate.

(b) Good cause for failing to cooperate shall exist if cooperation:

1. Could result in physical or emotional harm of a serious nature to a child or custodial parent;

2. Is not in a child's best interest because the child was conceived as a result of rape or incest; or

3. May interfere with adoption considerations or proceedings.

(2) A failure of the individual to cooperate without good cause shall result in ineligibility of the individual.

(3) A pregnant woman with income up to 195 percent of the federal poverty level established annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2) shall not be required to cooperate in establishing paternity or securing support for her unborn child.

Section 12.[Section—11.] Provision of Social Security Numbers.

(1) Except as provided in subsections (2) and (3) of this section, an applicant or recipient of Medicaid shall provide a Social Security number as a condition of eligibility.

(2) An individual shall not be denied eligibility or discontinued from eligibility due to a delay in receipt of a Social Security number from the United States Social Security Administration if appropriate application for the number has been made.

(3) An individual who refuses to obtain a Social Security number due to a well-established religious objection shall not be required to provide a Social Security number as a condition of eligibility.

Section 13.[Section—12.] Applicability. The provisions and requirements of this administrative regulation shall:

(1) Apply to:

(a) Children in foster care;

(b) Aged, blind, or disabled individuals; and

(c) Individuals who receive supplemental security income benefits; and

(2) Not apply to an individual whose Medicaid eligibility is determined:

(a) Using the modified adjusted gross income standard pursuant to 907 KAR 20:100; or

(b) Pursuant to 907 KAR 20:075.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 20, 2024

FILED WITH LRC: December 23, 2024 at 12:15 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 24, 2025, 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 March 17, 2025, 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 March 31, 2025. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan Scott or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes technical eligibility requirements for Kentucky's Medicaid program for children in foster care; aged, blind, or disabled individuals; and individuals who receive supplemental security income (SSI) benefits.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid program eligibility requirements in accordance with federal law and regulation and as authorized by KRS 194A.030(2) which establishes the Department for Medicaid Services as the commonwealth's single state agency for administering the federal Social Security Act.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 194A.030(2), 194A.050(1) and 205.520(3) by establishing Medicaid program technical eligibility requirements in accordance with federal law and as authorized by KRS 194A.030(2).

(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 KRS 194A.030(2), 194A.050(1) and 205.520(3) by establishing Medicaid program technical eligibility requirements in accordance with federal law and as authorized by KRS 194A.030(2).

(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 allow incarcerated children or youth to receive targeted services 30 days prior to release. A citation to the specific targeted services required to be provided pursuant to federal law is also provided. In addition, departmental authority to provide covered services through reentry organizations is established.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to add a federal requirement to cover incarcerated youth as contained in the 2023 Consolidated Appropriations Act.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by implementing a federally required new group of recipients.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists with the effective administration of the statutes by implementing a new group of recipients required by federal law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: DMS anticipates that 250 incarcerated youth could be eligible for these services during the course of a 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: No action is required, regulated entities will be able to bill and receive a higher reimbursement.

(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 in the expanded reimbursement now available for this waiver.

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

(a) Initially: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(b) On a continuing basis: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: Department for Medicaid Services is the promulgating agency, other agencies have not been identified.

(a) Estimate the following for the first year:

Expenditures: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 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 anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): N/A

(a) Estimate the following for the first year:

Expenditures: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 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 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): Enrolled providers providing services to this new eligibility group.

(a) Estimate the following for the first year:

Expenditures: DMS does not anticipate additional expenditures for regulated entities.

Revenues: Participating providers will benefit from reimbursement for this service.

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 anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6. Revenues: Participating providers will benefit from increased reimbursement. Cost Savings: The department does not anticipate cost savings as a result of this administrative regulation.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(b) Methodology and resources used to determine the fiscal impact: The consensus forecasting group established the Medicaid baseline budget and included the provisions of CAA Section 5121 in their estimations.

(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: This administrative regulation will provide additional reimbursement for providers treating justice involved youth.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. part 435

(2) State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

(3) Minimum or uniform standards contained in the federal mandate. General categorical, and optional eligibility requirements for the Medicaid program are established.

(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.

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 Pharmacy
(New Administrative Regulation)

201 KAR 2:416. Pharmacy annual reporting of cost of dispensing data.

RELATES TO: KRS 18A.2254, 304.9-053, 304.9-054, 304.9-055, 304.14-120, 304.14-120, 304.17A-595, 304.17A-712, 304.17C-125, 304.38A-115, 367.828

STATUTORY AUTHORITY: KRS 315.038, 315.191(1)

NECESSITY, FUNCTION, AND CONFORMITY: 315.191(1) authorizes the board to promulgate administrative regulations to regulate pharmacists, pharmacies, wholesalers and manufacturers. Senate Bill 188 from the 2024 legislative session requires the Board of Pharmacy to promulgate regulations to require all ambulatory pharmacies permitted by the Board of Pharmacy to report annually beginning March 1, 2026 cost of dispensing data to the Board of Pharmacy. The Board of Pharmacy shall then submit that data to the Department of Insurance within thirty days.

Section 1. Mandatory Submission of Data.

(1) On an annual basis, beginning March 1, 2026, and by March 1 every year thereafter, every ambulatory pharmacy permitted by the Board of Pharmacy shall submit to the Board, the following data relating to the dispensing costs for the previous year:

- (a) NCPDP number;
- (b) Labor costs, including:
 - 1. Pharmacist salaries, including benefits and taxes;
 - 2. Pharmacy technician salaries, including benefits and taxes;
 - 3. Salaries of other support staff involved in the dispensing of prescriptions; and
 - 4. Other employee benefits.
- (c) Cost to acquire the medications dispensed;
- (d) Cost of materials, including:
 - 1. Cost of prescription labels and paper;
 - 2. Cost of bottles, vials and packaging;
 - 3. Prescription delivery costs;
 - 4. Inventory services costs;
 - 5. Lost inventory costs; and
 - 6. Warehouse expenses.
- (e) Facility costs, including:
 - 1. Rent or mortgage payments for the pharmacy space;
 - 2. Mortgage interest;
 - 3. Utilities, including electricity, water, heating and communications costs;
 - 4. Facility taxes, including personal property, real estate and payroll as well as insurance
 - 5. Maintenance, cleaning and repair costs; and
 - 6. Security and alarm fees.
- (f) Operational costs, including:
 - 1. Insurance, including liability and property;
 - 2. Software and IT systems;
 - 3. Switch or e-prescribing fees;
 - 4. Office supplies and equipment;
 - 5. Professional liability insurance for pharmacists;
 - 6. Credit card processing fees;
 - 7. Prescription department licenses, permits, accreditation and fees;
 - 8. Cost of continuing education and certification for pharmacists and technicians;
 - 9. Dues and subscriptions for pharmacy department;
 - 10. Delivery and mailing expenses for the prescription department;
 - 11. Transaction fees;
 - 12. Charitable contributions;
 - 13. Employee training;

14. Bad debts for prescriptions, including uncollected copays; and

15. Third party prescriptions audit adjustments.

(g) Store costs, including:

- 1. Marketing and advertising;
- 2. Professional accounting and legal services;
- 3. Franchise fees, if applicable; and
- 4. Other costs not included elsewhere.

(h) Depreciation and amortization costs, including:

- 1. Depreciation of building, equipment and fixtures; and
- 2. Amortization of software and intangible assets.

(i) Total number of prescriptions dispensed each month of the prior year; and

(j) Total number of prescriptions prepared via a central fill pharmacy each month of the prior year; and

(k) Percent of revenue coming directly from the pharmacy department.

(2) All data shall be reported to the Board electronically through the Board's licensing gateway on Reporting Form A, Pharmacy Cost of Dispensing Data, 12/2024.

Section 2. Optional Submission of Data.

(1) On an annual basis, beginning March 1, 2026 and by March 1 every year thereafter, any ambulatory pharmacy permitted by the Board of Pharmacy may submit to the Board, the following data for each prescription dispensed:

- (a) The date the claim was submitted to the pharmacy benefit manager;
- (b) The date the prescription was written;
- (c) The NCPDP transaction type;
- (d) The prescription insurance member identification number;
- (e) The prescription number assigned by the pharmacy;
- (f) The number of the refill;
- (g) The NDC number of the product dispensed;
- (h) The name of the product dispensed;
- (i) The strength of the medication dispensed;
- (j) The quantity of the medication dispensed;
- (k) The days supply of medication dispensed;
- (l) Whether the medication dispensed was generic;
- (m) Whether the medication dispensed was a specialty drug;
- (n) The NABP identification number of the pharmacy where the medication was dispensed;
- (o) The NPI identification number of the pharmacy where the medication was dispensed;
- (p) The name of the pharmacy where the medication was dispensed;
- (q) The amount, in dollars, paid to the pharmacy by the prescription benefit plan;
- (r) The amount, in dollars, paid to the pharmacy by the health plan member;
- (s) The total amount, in dollars, paid to the pharmacy for the prescription dispensed, including what the patient paid and what the health plan paid;
- (t) The amount, in dollars, paid to the pharmacy for dispensing the medication; and
- (u) The amount (in dollars) of retroactive fees that were assessed to the pharmacy by the pharmacy benefit manager for the medication dispensed at any time after the medication was dispensed, including, but not limited to:
 - 1. Direct remuneration fees;
 - 2. Indirect remuneration fees;
 - 3. Generic effective rates;
 - 4. In-network fees;
 - 5. Performance fees;
 - 6. Point-of-sale fees; and
 - 7. Pre and post adjudication fees.

VOLUME 51, NUMBER 8– February 1, 2025

(2) If the pharmacy chooses to submit this data, the data shall be reported to the Board electronically through the Board's licensing gateway on Reporting Form B, Pharmacy Claims Data, 12/2024.

Section 3. All information and data submitted to the Board shall be deemed confidential and proprietary and shall not be subject to disclosure pursuant to KRS 61.870 to 61.884.

Section 4. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Reporting Form A, Pharmacy Cost of Dispensing Data, 12/2024; and

(b) Reporting Form B, Pharmacy Claims Data, 12/2024.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or on the Web site at <https://pharmacy.ky.gov/Businesses/Pages/Pharmacy.aspx>.

CHRISTOPHER HARLOW, Executive Director

APPROVED BY AGENCY: December 12, 2024

FILED WITH LRC: December 17, 2024 at 4:18 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 26, 2025, at 10:00 a.m. Eastern Time via zoom teleconference. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 28, 2025. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Christopher Harlow, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Christopher.harlow@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christopher Harlow

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is required pursuant to KRS 315.038. This regulation establishes procedures for pharmacies to report data to the Department of Insurance per Senate Bill 188 during the 2024 legislative session.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 315.038.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation, authorized by KRS 315.191(1)(a), establishes data reporting procedures required by KRS 315.038.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure that pharmacies know how to report data that is required to be reported by KRS 315.038 and as established by the Commissioner of Insurance at the Public Protection Cabinet.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: n/a

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will impact all ambulatory pharmacies that are permitted by the Commonwealth of 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: All ambulatory pharmacies permitted by the Board will have to review these data elements and collect data during the 2025 calendar year and then report the data by March 2026.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It will not cost anything to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Commissioner of Insurance will be able to review data submitted by pharmacies and compare it with data submitted by the pharmacy benefit managers.

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

(a) Initially: The implementation of this administrative regulation will not cost anything. We have a licensing software already developed that will allow for receipt of data and transmission of data to the Department of Insurance.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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: There is no fee being amended here directly or indirectly.

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

(9) TIERING: Is tiering applied? Tiering is not applied here beyond what the General Assembly has established as an ambulatory pharmacy and only applying the contents of this regulation to such.

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 315.038 requires the Board promulgate this regulation by January 1, 2025.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The promulgating agency, the Board of Pharmacy, is the only affected state unit impacted.

(a) Estimate the following for the first year:

Expenditures: This amendment does not create further expenditures outside of what is already allocated for licensing.

Revenues: This amendment does not create any additional revenue.

Cost Savings: none.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? These things are not expected to change as there is no fee increase or change per this amendment.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): There are no local affected entities with the exception of the Board.

(a) Estimate the following for the first year:

Expenditures: n/a

Revenues: n/a

Cost Savings: n/a

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

(4) Identify additional regulated entities not listed in questions (2) or (3): All ambulatory pharmacies permitted by the Board.

(a) Estimate the following for the first year:

Expenditures: There are no expenditures.

Revenues: There are no expected revenues.

Cost Savings: n/a

(b) How will expenditures, revenues, or cost savings differ in subsequent years? It will not change unless there is a statutory change.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no expected fiscal impact of this amended regulation.

(b) Methodology and resources used to determine the fiscal impact: The estimated revenues generated for the budget are obtained from current and historical data.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate) This administrative regulation will not have an overall negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion: Agency data.

**PUBLIC PROTECTION CABINET
Office of Claims and Appeals
Crime Victims Compensation Board
(New Administrative Regulation)**

802 KAR 3:030. Crime victims compensation awards.

RELATES TO: KRS 49.260 - 49.490, 216B.015, 216B.400

STATUTORY AUTHORITY: KRS 49.010(4)(b), 49.020(7)(a), 49.300(1), 49.370(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: During the 2024 Regular Session, the General Assembly passed Senate Bill 319, which amended KRS 49.370 by expanding the types of expenses the Crime Victims Compensation Board is authorized to award to crime victims. KRS 49.010(4)(b) and 49.020(7)(a) authorize the board and office to promulgate administrative regulation to carry out their statutory authority. KRS 49.300(1) authorizes the Crime Victims Compensation Board to promulgate regulations to carry out the provisions and purposes of the Board's enabling statutes. KRS 49.370(2)(b) authorizes the Board to promulgate regulations to establish additional guidelines for awards. This administrative regulation promotes efficiency in processing certain claim types by establishing eligibility criteria, subsets of eligible expenses, and providing guidelines for which forms of documentation crime victims need to substantiate claims.

Section 1. Relocation.

(1) For purposes of a claim for relocation expenses pursuant to KRS 49.370(2)(a)(1),

(a) The minor is a victim's dependent if: The minor is the victim's biological child;

(b) The minor is the victim's adopted child as adjudicated by a court with competent jurisdiction; or

(c) The victim has legal custody over the minor pursuant to an order of a court with competent jurisdiction.

(2) A victim or their dependent must provide written proof of relocation from one primary residence to another that occurred within six (6) months of the crime, which resulted from the victim or dependent's concern for the safety of themselves or other persons living at the residence as a result of the crime.

(3) A claimant may recover the following types of expenses related to their relocation:

(a) Moving and travel expenses;

(b) Security deposit;

(c) Application fee;

(d) First and last month's rent;

(e) Utility deposit;

(f) First month's utilities;

(g) Down payment on the purchase of a residence;

(h) Closing costs;

(i) First month's mortgage payment; and

(j) Any other relocation-related expenses the Board deems should be paid in the interests of justice.

Section 2. Temporary Housing.

(1) For purposes of a claim for relocation expenses pursuant to KRS 49.370(2)(a)(1), a minor is a victim's dependent if:

(a) The minor is the victim's biological child;

(b) The minor is the victim's adopted child as adjudicated by a court with competent jurisdiction; or

(c) The victim has legal custody over the minor pursuant to an order of a court with competent jurisdiction.

(2) A victim or their dependent must provide written proof of temporary housing costs incurred within thirty (30) days of the crime, which resulted from the victim or dependent's inability to stay in their primary residence due to the crime.

(3) A claimant may recover the following types of expenses related to their temporary housing:

(a) Lodging expenses, including at hotels, homestays, or similar accommodations;

(b) Travel expenses between the temporary housing and primary residence;

(c) Meal expenses;

(d) Expenses incurred for products necessary to maintain basic hygiene and health, which arose due to the victim's inability to stay at their primary residence; and

(e) Any other temporary housing-related expenses the Board deems should be paid in the interests of justice.

Section 3. Rehabilitative or Wellness Practices.

(1) For purposes of a claim for rehabilitative and wellness practices pursuant to KRS 49.370(2)(a)(6), a minor is a victim's dependent if:

(a) The minor is the victim's biological child;

(b) The minor is the victim's adopted child as adjudicated by a court with competent jurisdiction; or

(c) The victim has legal custody over the minor pursuant to an order of a court with competent jurisdiction.

(2) If a claimant engages in rehabilitative or wellness practices as the result of the crime, the Board may reimburse for expenses incurred for such practices only if a licensed healthcare provider prescribed or ordered the treatment as a result of the crime.

Section 4. Court Proceedings Related to the Crime. A victim and the victim's caregiver, if applicable, may recover the following types of expenses incurred for purposes of attending criminal court proceedings related to the crime:

(1) Travel;

(2) Parking;

(3) Lodging;

(4) Meals; and

(5) Any other expenses related to attending crime-related criminal court proceedings that the Board deems should be paid in the interests of justice.

Section 5. Tattoo Removal for Victims of Human Trafficking.

(1) Victims of human trafficking submitting claims for expenses for removal of tattoos received as a result of or related to the human trafficking crime shall submit the following:

(a) A police report or other documentation verifying the individual was trafficked;

(b) Documentation or evidence that the tattoo(s) resulted from being trafficked; and

(c) Receipts or invoices for removal of the tattoo(s).

(2) An award under this section shall only be made for tattoos that have been completely removed.

Section 6. Reimbursement for Replacement of Items Seized as Evidence.

(1) For purposes of a claim for replacement of items seized as evidence pursuant to KRS 49.370(2)(d), a minor is a victim's dependent if:

(a) The minor is the victim's biological child;

(b) The minor is the victim's adopted child as adjudicated by a court with competent jurisdiction; or

(c) The victim has legal custody over the minor pursuant to an order of a court with competent jurisdiction.

(2) Claimants requesting reimbursement for replacement of items seized as evidence shall submit the following:

- (a) Order from a court, inventory list, or evidence sheet itemizing the seized items; and
- (b) Receipts, invoices, or estimates for the replaced items.

Section 7. Replacement of Windows and Locks. Claimants requesting reimbursement or payment for replacement or repair of windows and locks damaged as a result of the crime shall submit the following:

- (1) Police report or other documentation that the windows and locks were damaged during the commission of the crime;
- (2) Documentation or proof that the property where the damage occurred was the victim's primary residence or primary place of business; and
- (3) Receipts, invoices, or estimates for the repairs or replacement windows or locks.

Section 8. Medical Expenses. Claimants requesting reimbursement or payment for medical expenses incurred as a result of the crime shall submit the following documentation as proof of the eligible expenses:

- (1) Copies of itemized medical billing statements for medical treatment provided to the claimant as a direct result of the crime.
- (2) If itemized billing statements are not available, non-itemized medical billing statements shall be accepted if:
 - (a) The medical records from the visit are submitted along with the non-itemized medical billing statements; or
 - (b) The service provider submits a letter on its letterhead attesting that the services provided on the non-itemized billing statements are for medical treatment the claimant or victim required as a direct result of the victimization.

Section 9. Mental Health Counseling Expenses.

- (1) Claimants requesting reimbursement or payment of mental health counseling expenses shall submit the following documentation as proof of the eligible expenses:
 - (a) Mental Health Counselor's Report completed by the claimant's or victim's therapist or mental health clinician;
 - (b) Treatment plan devised by the claimant or victim's therapist or mental health clinician; and
 - (c) Copies of itemized billing statements for mental health treatment provided to the claimant or victim as a direct result of the crime.
 - 1. In the event itemized billing statements are not available, non-itemized billing statements shall be accepted if:
 - 2. The therapist or clinician notes from the visit are submitted along with the non-itemized medical billing statements; or
 - 3. The service provider submits a letter on its letterhead attesting that the services provided on the non-itemized billing statements are for mental health treatment the claimant or victim required as a direct result of victimization.

(2) The two (2) year limitation on mental health counseling shall begin upon initial mental health counseling treatment and expire upon the passage of two (2) years, subject to the following provisions:

- (a) If the claimant or victim pauses mental health counseling treatment recommended pursuant to the provider's treatment plan, the two (2) year period shall also pause; and
- (b) If and when the claimant or victim resumes regular mental health counseling treatment pursuant to the provider's treatment plan, the running of the two (2) year period shall resume.

Section 10. Lost Earnings.

- (1) Claimants requesting reimbursement of lost earnings shall provide the following documentation as proof of the loss of income arising from the crime:
 - (a) Employment Verification Form completed by the claimant or victim's employer. If the claimant or victim is unable to obtain a completed Employment Verification Form, the Board may accept paystubs, tax returns, bank statements, or other documentary evidence to substantiate lost earnings. Bank statements shall clearly delineate direct deposit of earnings into the claimant or victim's bank account.

(b) If the lost earnings resulted from physical injury sustained during the crime, a Physician's Statement Form; and

(c) If the lost earnings resulted from psychological injury or trauma sustained during the crime, a Mental Health Counselor's Report.

(d) If the claimant or victim is unable to obtain a completed Physician's Statement or Mental Health Counselor's Report, the Board may accept the following alternate documentation to substantiate the medical necessity of the lost earnings:

- 1. Medical records from a hospital, physician's office, counselor's office, or other legally registered medical service provider that provides medical or mental health treatment to the claimant or victim; and
 - 2. Return to work statements provided by the claimant or victim's treating physician or mental health clinician on provider letterhead.
- (2) Family members of deceased victims may seek lost earnings constituting bereavement leave for any time missed from work during the four (4) weeks immediately following the victim's death.

(a) Claimants requesting reimbursement of lost earnings constituting bereavement leave shall provide an Employment Verification Form completed by the claimant's employer as proof of the loss of income arising from the crime. If the Claimant is unable to obtain a completed Employment Verification Form, the Board may accept paystubs, tax returns, bank statements, or other documentary evidence to substantiate lost earnings. Bank statements shall clearly delineate direct deposit of earnings into the claimant or victim's bank account.

(b) A Physician's Statement or Mental Health Counselor's Report shall not be required for the Board to award a claimant lost earnings for time missed from work during the four (4) weeks immediately following the victim's death.

(c) If the claimant seeks lost earnings for time missed from work beyond the four (4) week period immediately following the victim's death, the Board shall require a Physician's Statement or Mental Health Counselor's Report.

Section 11. Loss of Support. Claimants requesting reimbursement for loss of support as a result of the crime shall provide documentation as proof of the loss of support, which may include but not limited to documents or records outlining the amount of financial support provided by the victim or offender that was lost as a direct result of the crime, such as:

- (1) Paystubs, tax returns, or bank statements clearly delineating direct deposit of earnings into the offender or victim's bank account; or
- (2) Utility, rent, or mortgage bills or receipts for living or other expenses previously paid for by the victim or offender prior to the crime.

Section 12. Funeral and Burial Expenses. Claimants requesting reimbursement or payment of funeral and burial expenses shall submit the following documentation as proof of the eligible expenses:

- (1) Copy of the signed service contract from the funeral home, crematory, mortuary, cemetery, monument company, or other funeral or burial service provider for the victim's expenses; and
- (2) Invoices or receipts evidencing payments made to the service provider, if applicable. Unsigned service contracts shall be accepted as proof of the expense when the claimant otherwise meets the eligibility criteria for receiving compensation benefits from the Board pursuant to KRS 49.280(4) and 49.310(1).

Section 13.

(1) For purposes of awards of claims submitted by a victim's caregiver or caregivers pursuant to KRS 49.310(1)(e), no more than two (2) primary caregivers of a victim shall receive awards under that subsection related to the same crime.

(2) In addition to all other required documentation, victim caregivers submitting claims pursuant to KRS 49.310(1)(e) shall provide documentation or proof substantiating that the individual is the victim's primary caregiver.

Section 14. Crime Scene Cleanup.

(1) Claimants or victims seeking reimbursement for crime scene cleanup shall submit the following documentation:

- (a) Proof the crime occurred at the claimant or victim's primary residence or business;
- (b) Proof of a need for crime scene cleanup services, including photos of the crime scene or other substantiating documentation;
- (c) Invoices or receipts for the cost of the cleanup; and
- (d) Proof that the cleanup services occurred within thirty (30) days of the crime.

(2) The Board may only award crime scene cleanup expenses sufficient to return the residence or business to its pre-crime condition.

Section 15. Collateral Source Offsets. Monetary amounts collected through crowd funding sources or websites shall not be considered a collateral source offset to an award to a claimant unless:

- (1) The crowdfunding fundraiser, when created, specifically identified the types of expenses the collected funds would cover;
- (2) The identified expense types are the same as expenses the claimant has requested and is eligible to receive in their crime victims compensation claim; and
- (3) The Board obtains or receives proof the collected funds were remitted to or on behalf of the claimant.

Section 16. Payment of Claim. When the Board awards a claim, the awarded expenses shall be paid as follows:

- (1) If the claimant paid the expense in full, the Board shall issue payment directly to the claimant.
- (2) If the claimant has incurred the indebtedness but not paid the expense, the Board shall issue payment directly to the service provider.
- (3) If the claimant has partially paid the expense and a balance remains due to the provider, the Board shall issue payment to the claimant in the amount he or she paid and a separate payment to the service provider for the unpaid balance.
- (4) If the eligible expenses exceed the applicable award maximum, the Board shall first award and issue payment to the claimant for amounts he or she paid out of pocket, then award and issue payment to the provider for as much of the outstanding balance as may be paid within the applicable award maximum.
- (5) If the Board awards a claim that includes outstanding balances owed to multiple service providers, and the total of the outstanding balances exceeds the overall award maximum, the Board shall award expenses, and issue payment, to the eligible service providers on a pro rata basis.

LANOLA PARSONS, Chairperson
JOHN HARDESTY, Executive Director

APPROVED BY AGENCY: January 14, 2025

FILED WITH LRC: January 15, 2025 at 10:32 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 am on March 27, 2025 in Room 247 CE of the Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. This hearing shall be conducted both in-person and virtually via Microsoft Teams videoconferencing. Individuals interested in attending the public hearing virtually may access the hearing at: https://teams.microsoft.com/l/meetupjoin/19%3ameeting_ZmM3NGRiODYtYjBmYi00ZWE4LTg1OWQitN2JiNjFkYzgzZjcw%40thread.v2/0?context=%7b%22id%22%3a%22d77c7f4d-d767-461f-b625-0628792e9e2a%22%2c%22oid%22%3a%22636ef07a-f33f-4378-b8ae-79c6f05a1438%22%7d. The Meeting ID is: 237 908 005 529. The Passcode is: 48N9bQ2U. For phone access, please dial +1 502-632-6289, 867966031# and enter the following Phone Conference ID: 867 966 031#. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 PM EST on March 31, 2025. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Shelby Bevins-Sullivan, Staff Attorney, 500 Mero Street, 2 SC 1, Frankfort, Kentucky 40601. Phone: 502-782-3556. Fax: 502-573-4817. Email: sbevinssullivan@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shelby Bevins-Sullivan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides guidelines in determining eligibility criteria for certain types of compensable expenses and what documentation crime victims are required to submit for the respective expenses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 49.370, which was amended by Senate Bill 319 during the 2024 Regular Session. Senate Bill 319 greatly expanded the types of compensable expenses crime victims may be eligible to receive from the Crime Victims Compensation Board and this proposed regulation establishes guidelines for processing claims that seek certain expenses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with KRS 12.080 which authorizes the Governor to prescribe general rules for the conduct of departments; and, KRS 49.020(7)(a), 49.300(1), and 49.370(2)(b), which authorizes the promulgation of regulations to carry out the duties of the Crime Victims Compensation Board and to establish guidelines for awards pursuant to KRS 49.370.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulation will assist the Crime Victims Compensation Board, its staff, and crime victims in understanding eligibility criteria that must be met to receive certain types of compensable expenses and what types of documentation crime victims must submit to sufficiently document claims. It also clarifies the scope of certain award categories.

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

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

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

(c) How the amendment conforms to the content of the authorizing statutes: N/A.

(d) How the amendment will assist in the effective administration of the statutes: N/A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Public Protection Cabinet, the Office of Claims and Appeals, the Crime Victims Compensation Board, and any person or entity filing a claim with the Crime Victims Compensation Board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None known, beyond updating the Crime Victims Compensation Board application forms and its website to reflect the new changes. The Board also created an online claim filing portal, which includes all of the updates to the program passed in SB 319.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no expected expenditures because of this administrative regulation. Current staff will implement the provisions once promulgated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Crime victims will be able to apply for many types of expenses that were not previously available in prior

versions of KRS 49.370, and they will have clear guidance regarding eligibility and required proof and documentation.

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

(a) Initially: Current staff and agency funds will provide implementation. However, because of the new award categories and increases to certain award caps, the Crime Victims Compensation Board estimates that it will award an additional \$500,000-\$750,000 to claimants. Estimated costs for hiring new staff is \$650,000.

(b) On a continuing basis: See 5(a) for the estimated increase in annual award amounts.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current agency budgetary funding will be used to implement and enforce this administrative regulation, which consists of general, restricted, and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding or increase in fees is needed beyond those appropriated to the Office of Claims and Appeals by the General Assembly in the 2024 Regular Session.

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

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted 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 13B.005, et seq., KRS 49.010(2)(b), KRS 49.020(7)(a), KRS 49.300(1), KRS 49.370(2)(b), and Victims of Crime Act ("VOCA"), 34 U.S. Code §20101, et seq.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Public Protection Cabinet, Office of Claims and Appeals, the Crime Victims Compensation Board is the promulgating agency.

(a) Estimate the following for the first year:

Expenditures: The changes to KRS 49.370 enacted in Senate Bill 319 will cost approximately \$1,150,000 – \$1,400,000 initially to implement. then \$500,000 - \$750,000 each year thereafter. It is estimated to cost an additional \$650,000 to hire new staff.

Revenues: Not applicable.

Cost Savings: Not applicable.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? It will cost approximately \$500,000 to \$750,000 each year thereafter to administer the amendments to KRS 49.370 enacted in Senate Bill 319.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): This proposed regulation should not affect any local governmental entity.

(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: It will cost approximately \$1,150,000 to \$1,400,000 to administer the changes enacted in Senate Bill 319 for the first year, and \$650,000 to hire new

staff. It will cost approximately \$500,000 to \$750,000 each year thereafter.

(b) Methodology and resources used to determine the fiscal impact: Calculations for the fiscal impact of this proposed regulation were determined during the 2024 Regular Session shortly before Senate Bill 319 was introduced due to the significant expansion of eligible award categories as this information was to be presented to the General Assembly.

(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) See 5(a).

(b) The methodology and resources used to reach this conclusion: See 5(b).

PUBLIC PROTECTION CABINET Office of Claims and Appeals Crime Victims Compensation Board (New Administrative Regulation)

802 KAR 3:040. Additional award requests.

RELATES TO: KRS 49.260 - 49.490, 216B.015, 216B.400
STATUTORY AUTHORITY: KRS 49.010(4)(b), 49.020(7)(a), 49.300(1), (2), 49.370(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 49.020(1) and 49.300(1) authorize the Crime Victims Compensation Board to promulgate administrative regulations that are necessary to carry out the provisions of KRS 49.270 through 49.490. The language of KRS 49.370 implicitly authorizes the Crime Victims Compensation Board to award additional awards to claimants or victims, or on their behalf, if the claimant or victim has additional eligible crime-related out of pocket expenses that arise after the board grants an initial award. This administrative regulation establishes procedures for crime victims to file additional award requests when new compensable expenses arise after the board awarded the victim's initial claim.

Section 1. Additional Award Requests. Pursuant to KRS 49.370, the board may grant additional awards to or on behalf of claimants or victims after the board has granted an initial award, in the event the claimant or victim incurs, or obtains proof of, additional eligible expenses after the grant of the initial award.

Section 2. Process for Additional Awards.

(1) Claimants and victims may file additional award requests by mail, email, fax, or through the online claim filing portal.

(2) As part of an additional award request, the claimant or victim shall submit the following:

(a) Written request for an additional award; and

(b) Copies of the expenses that constitute the additional award request, along with supporting documentation.

(3) A new claim form shall not be required for an additional award request.

(4) To the extent practicable, any ancillary documentation required to substantiate the additional award request, which was submitted in the originating claim, shall be taken from the originating claim. The claimant or victim shall be notified by board staff if any additional ancillary documentation is required to substantiate the request.

(5) All additional award requests shall be assigned a new claim number in the board's claim processing system.

(6) The aggregate award totals from the originating claim and any additional awards shall not exceed the monetary award maximums established in KRS 49.370(5).

LANOLA PARSONS, Chairperson
JOHN HARDESTY, Executive Director

APPROVED BY AGENCY: January 14, 2025

FILED WITH LRC: January 15, 2025 at 10:32 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 a.m. on March 27, 2025, in Room 247 CE of the Mayo-Underwood Building,

VOLUME 51, NUMBER 8– February 1, 2025

500 Mero Street, Frankfort, Kentucky 40601. The hearing shall be conducted both in-person and virtually via Microsoft Teams videoconferencing. Individuals interested in attending the public hearing virtually may access the hearing at: https://teams.microsoft.com/l/meetupjoin/19%3ameeting_ZmM3NGRiODYtYjBmYi00ZWE4LTg1OWQtN2JnJkYzgzZjcw%40thread.v2/0?context=%7b%22Tid%22%3a%22d77c7f4d-d767-461f-b625-0628792e9e2a%22%2c%22Oid%22%3a%22636ef07a-f33f-4378-b8ae-79c6f05a1438%22%7d. The Meeting ID is: 237 908 005 529. The Passcode is: 48N9bQ2U. For phone access, please dial +1 502-632-6289, 867966031# and enter the following Phone Conference ID: 867 966 031#. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 PM EST on March 31, 2025. Please 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: Shelby Bevins-Sullivan, Staff Attorney, 500 Mero Street, 2 SC 1, Frankfort, Kentucky 40601. Phone: 502-782-3556. Fax: 502-573-4817. Email: sbevinsullivan@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shelby Bevins-Sullivan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the procedures for crime victims wishing to file an additional award for compensable expenses that arise after being granted an initial award.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 49.370, which enumerates the specific types of expenses the Crime Victims Compensation Board is authorized to award and implicitly allows the board to grant subsequent awards to the same victim or claimant as new expenses arise after the grant of the initial award.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with KRS 12.080, which authorizes the Governor to prescribe general rules for the conduct of departments; KRS 49.010(4)(b), 49.020(7)(a) and KRS 49.300(1), which authorizes the promulgation of regulations to carry out the duties of the office and the Crime Victims Compensation Board; and KRS 49.370(2)(b), which permits the board to promulgate administrative regulations to establish additional guidelines for awards pursuant to KRS 49.370.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulation establishes the procedure for filing requests for additional awards with the Crime Victims Compensation 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.

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

(c) How the amendment conforms to the content of the authorizing statutes: N/A.

(d) How the amendment will assist in the effective administration of the statutes: N/A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Public Protection Cabinet, the Office of Claims and Appeals, the Crime Victims Compensation Board, and any person or entity filing a claim with the Crime Victims Compensation Board.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None known. Board staff has already been processing requests for additional awards in the manner established in this regulation. The regulation simply standardizes the procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no expected expenditures because of this administrative regulation. Current staff will implement the provisions once promulgated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Requests for additional awards will be processed more efficiently and claimants and victims will have a better understanding of how to submit a request for an additional award.

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

(a) Initially: None. Current staff and agency funds will provide implementation.

(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: Current agency budgetary funding will be used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted 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 13B.005, et seq., KRS 49.020(7)(a), KRS 49.370, and Victims of Crime Act ("VOCA"), 34 U.S. Code § 20101, et seq.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Public Protection Cabinet, Office of Claims and Appeals, Crime Victims Compensation Board is the promulgating agency. No other state governmental entity should be impacted by this proposed regulation.

(a) Estimate the following for the first year:

Expenditures: The administrative regulation should not directly create any additional expenses for any state agency after implementation. It only provides clarification on how to handle additional claims.

Revenues: The administrative regulation should not create any additional revenues for any state or local government agency in the first year following implementation

Cost Savings: In the first year following implementation, the administrative regulation should not result in any cost savings as it only provides clarification on the processing of additional award requests.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The administrative regulation should not directly create any additional expenses for any state agency in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None.

(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? The administrative regulation should not create

any additional expenditures, revenue, or cost savings in subsequent years for local entities.

(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: N/A

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The administrative regulation should not create any additional expenditures, revenue, or cost savings in subsequent years for any entities.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This regulation should have no fiscal impact as it only provides guidance for the processing of additional award requests and does not create any new classifications of either claimants or claims.

(b) Methodology and resources used to determine the fiscal impact: There were no methodologies or resources required.

(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 major economic impact.

(b) The methodology and resources used to reach this conclusion: There were no methodologies or resources used.

**PUBLIC PROTECTION CABINET
Office of Claims and Appeals
Crime Victims Compensation Board
(New Administrative Regulation)**

802 KAR 3:050. Emergency awards.

RELATES TO: KRS 49.260 - 49.490, 216B.015, 216B.400

STATUTORY AUTHORITY: KRS 49.010(4)(b), 49.020(7)(a), 49.300, 49.360

NECESSITY, FUNCTION, AND CONFORMITY: During the 2024 Regular Session, the General Assembly passed Senate Bill 319, which amends KRS 49.360 to increase the amount a claimant may receive if granted an emergency award and requires the board to decide whether to grant or deny the emergency award request within two (2) weeks of receiving the request. KRS 49.010(4)(b), 49.020(7)(a), KRS 49.300(1) authorizes the Crime Victims Compensation Board and Office of Claims and Appeals to promulgate administrative regulations necessary to implement the provisions of KRS 49.270 through KRS 49.490. This administrative regulation establishes the procedure for submitting a request for an emergency award and outlines the process and timeline for deciding an emergency award request.

Section 1. Emergency Award Requests. A claimant or victim submitting a request for an emergency award shall submit the following documentation:

(1) Completed claim form; and

(2) Written request for emergency assistance on the Emergency Award Request form, which shall outline the following:

(a) The details and amount of the request for emergency assistance; and

(b) Explanation as to why the emergency assistance is needed, including how the claimant or victim will incur undue hardship if emergency assistance is not awarded.

Section 2. Processing of Emergency Award Requests.

(1) When the board receives an emergency award request, the claims investigator shall conduct a preliminary investigation to determine suitability for emergency assistance pursuant to KRS 49.360(1)(a) and (b). The preliminary investigation shall include, but not be limited to:

(a) Review of the emergency request, including its veracity;

(b) Review of the incident report, police report, or other documentation confirming the crime's occurrence;

(c) Verification of any applicable expenses that were submitted at, or before, the time when the emergency request was received; and

(d) Assessment regarding whether the claimant or victim will experience undue hardship if emergency assistance is not granted.

(2) Upon completion of the preliminary investigation, the claims investigator shall draft an investigative report outlining the findings of the preliminary investigation.

(3) Board staff shall then assign the claim to a board member to review the preliminary investigative report and complete the following:

(a) A draft order; and

(b) A vote sheet on which the board member shall register their decision on the emergency award.

(4) The board member's decision and order shall be issued no later than two (2) weeks after receipt by the board of the emergency request.

(5) Following the decision on the emergency award request, board staff shall:

(a) Serve the order on the claimant; and

(b) If the request was awarded, provide payment to or on behalf of the claimant as soon as practicable.

Section 3. Incorporation by Reference.

(1) "Emergency Award Form", January 2025, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Claims and Appeals, 500 Mero St 2SC1, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at: https://kycc.ky.gov/newstatic_info.aspx?static_id=158.

LANOLA PARSONS, Chairperson

JOHN HARDESTY, Executive Director

APPROVED BY AGENCY: January 14, 2025

FILED WITH LRC: January 15, 2025 at 10:32 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 am on March 27, 2025, in Room 247 CE of the Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. This hearing will be conducted both in-person and via videoconferencing through Microsoft Teams. Individuals interested in attending the public hearing virtually may access the hearing at: https://teams.microsoft.com/l/meetupjoin/19%3ameeting_ZmM3NGRiODYtYjBmYi00ZWE4LTg1OWQtd2JjNjFkYzgzZjcw%40thread.v2/0?context=%7b%22Tid%22%3a%22d77c7f4d-d767-461f-b625-0628792e9e2a%22%2c%22Oid%22%3a%22636ef07a-f33f-4378-b8ae-79c6f05a1438%22%7d. The Meeting ID is: 237 908 005 529. The Passcode is: 48N9bQ2U. For phone access, please dial +1 502-632-6289, 867966031# and enter the following Phone Conference ID: 867 966 031#. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 PM EST on March 31, 2025. Please 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: Shelby Bevins-Sullivan, Staff Attorney, 500 Mero Street, 2 SC 1, Frankfort, Kentucky 40601. Phone: 502-782-3556. Fax: 502-573-4817. Email: sbevinssullivan@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shelby Bevins-Sullivan

(1) Provide a brief summary of:

VOLUME 51, NUMBER 8– February 1, 2025

(a) What this administrative regulation does: This administrative regulation sets forth the procedures for crime victims wishing to file a request for an emergency award.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 49.360, which was amended by Senate Bill 319 during the 2024 Regular Session. It establishes procedures and timelines for filing and processing of emergency award requests.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with KRS 12.080, which authorizes the Governor to prescribe general rules for the conduct of departments; and KRS 49.010(4)(b), 49.020(7)(a) and KRS 49.300(1), which authorizes the promulgation of regulations to carry out the duties of the board and office.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulation establishes the procedure for victims and claimants to use in applying for an emergency award prior to final adjudication of the claim.

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

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

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

(c) How the amendment conforms to the content of the authorizing statutes: N/A.

(d) How the amendment will assist in the effective administration of the statutes: N/A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Public Protection Cabinet, the Office of Claims and Appeals, the Crime Victims Compensation Board, and any person or entity filing a request for an emergency award with the Crime Victims Compensation Board and the Office of Claims and Appeals.

(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 Crime Victims Compensation Board will need to decide requests for emergency awards within two (2) weeks from the date the Emergency Award Form is received. Claimants and victims will need to complete the Emergency Award Form to be considered by the board for an emergency award.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no expected expenditures because of this administrative regulation. Current staff will implement the provisions once promulgated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Crime victims may receive up to \$1,000.00 for an emergency award to help pay outstanding bills, such as rent or other necessary expenses, when at risk of being evicted or other circumstance that may place victims at risk of suffering an undue financial hardship.

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

(a) Initially: None. Current staff and agency funds will provide implementation.

(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: Current agency budgetary funding will be used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted 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 13B.005, et seq., KRS 49.020(7)(a), KRS 49.370, and Victims of Crime Act ("VOCA"), 34 U.S. Code §20101, et seq.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Public Protection Cabinet, Office of Claims and Appeals, Crime Victims Compensation Board is the promulgating agency. No other state governmental entity should be impacted by this proposed regulation.

(a) Estimate the following for the first year:

Expenditures: The administrative regulation should not directly create any additional expenses for any state agency after implementation. It only provides clarification on the processing and awarding of emergency award requests. Emergency award requests have increased since enactment of Senate Bill 319, but the amount awarded is ultimately deducted from the final award, so it will not increase expenditures. Additionally, whether the emergency award request is granted depends on whether the claimant sufficiently documented the claim and will suffer an undue hardship. Many requests are denied because the claim does not have enough documentation demonstrating that the claim will likely be awarded after a full investigation.

Revenues: The administrative regulation should not create any additional revenues for any state or local government agency in the first year following implementation.

Cost Savings: In the first year following implementation, the administrative regulation should not result in any cost savings as it only provides clarification on the processing and awarding of emergency award requests.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The administrative regulation should not directly create any additional expenses for any state agency in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): None.

(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? The administrative regulation should not create any additional expenditures, revenue, or cost savings in subsequent years for local entities.

(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: N/A

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The administrative regulation should not create any additional expenditures, revenue, or cost savings in subsequent years for any entities.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: This regulation should have no fiscal impact as it only provides guidance for the processing of emergency award requests and does not create any new classifications of either claimants or claims.

(b) Methodology and resources used to determine the fiscal impact: There were no methodologies or resources required.

(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 major economic impact from this administrative regulation.

(b) The methodology and resources used to reach this conclusion: There were no methodologies or resources required.

**PUBLIC PROTECTION CABINET
Office of Claims and Appeals
Crime Victims Compensation Board
(New Administrative Regulation)**

802 KAR 3:060. Crime victim compensation offender debt collections.

RELATES TO: KRS 13B.100, 49.010, 49.020, 49.260 - 49.490, 216B.015, 216B.400

STATUTORY AUTHORITY: KRS 44.030, 45.237, 45.238, 45.241, 49.010(4)(b), 49.020(7)(a), 49.300(1), 49.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 49.010, 49.020, and 49.300 authorizes the board to promulgate, amend, and repeal suitable administrative regulations to carry out the provisions and purposes of the board's statutory authority; per KRS 49.470, payment of claims by the board creates a debt owed to the state by a person found to have committed a criminal act for any payment of benefits to on or on behalf of a victim under KRS 49.270 to 49.490. This administrative regulation establishes the procedures for collection of payments from offenders after awards have been made by the board to the victims of their crimes.

Section 1. Notice of Debt.

(1) If the offender is known, the board staff shall first determine whether the criminal matter has yet been reduced to judgment.

(a) If the matter remains pending, the board shall communicate with the prosecutorial agency handling the criminal prosecution and request that the board be listed as a recipient of a restitution order as part of the final judgment entered by the court.

(b) If the matter has already been prosecuted to judgment, the board shall contact the prosecutorial agency to explore if a restitution order could be entered or the judgment amended to allow for the inclusion of the board as a recipient of restitution in the amount paid by the board to the victim or the claimant.

(c) If the board is listed as a recipient of restitution in a final judgment or court order, the board shall notify the court, the prosecutorial agency, the Department of Corrections, or the Division of Probation and Parole in the event the offender fails to remit payments to the board as ordered by the court.

(d) Such notice shall also be provided to the offender and/or his counsel of record in the criminal action wherein the court-imposed restitution.

(2) After locating the offender, a first notice of debt letter shall be sent to the offender, notifying the offender concerning the indebtedness to the board, and including language about appeal rights.

(a) If the offender appeals the debt after receiving the notice of debt letter, the executive director of the Office of Claims and Appeals shall review the offender's appeal and the documentation for the underlying claim and issue a recommended order to the board recommending adjudication of the offender's appeal. The board shall render a decision on the offender's appeal at its next meeting, at which the offender shall have the opportunity to appear and be heard.

(b) Following consideration of the appeal, the board shall issue a final order adjudicating the offender's appeal. If the board denies the appeal, it shall resume efforts to collect the debt.

Section 2. Payment agreements.

(1) The offender may be offered the option to enter into a payment agreement to pay the indebtedness on a monthly basis.

(a) Offenders who are incarcerated may enter into a payment agreement. The minimum payment shall be \$10.00 per month.

(b) If an incarcerated offender refuses to enter into a payment agreement, a Notice of Intercept will be sent to the Department of Corrections, which shall remit to the board fifty (50) percent of all state wages earned by the inmate on a monthly basis until the debt is paid in full.

(c) If an incarcerated offender enters into a payment agreement and subsequently fails to make monthly payments, the board shall issue a Notice of Intercept to the Department of Corrections, which shall remit to the board fifty (50) percent of all state wages earned by the inmate on a monthly basis until the debt is paid in full.

(2) Offenders who have been released or who were not subject to incarceration may enter into a payment agreement.

(a) The minimum monthly payment shall be \$25.00.

(b) If a released offender refuses to enter into a payment agreement, the debt shall be referred to the Department of Revenue for collection as described in Section 3.

(3) If an offender, whether or not incarcerated, fails to make payments as required in the payment agreement and is intercepted or has a collection action initiated, the offender may only revive the monthly payment agreement upon a showing of good cause why the offender failed to make the previous required payments.

(a) Good cause shall be determined by the executive director of the Office of Claims and Appeals.

(b) The executive director in determining whether good cause exists to allow a monthly payment agreement to be revived shall consider:

1. Any extenuating circumstances articulated by the offender related to the offender's failure to make required payments;

2. Any changes in the offender's employment or wages;

3. Any modification of the offender's risk assessment or housing level by the correctional facility that could impact their ability to make payments on the debt; and

4. Any evidence of the offender's failure to receive notice of the debt owed.

Section 3. Forced Collection.

(1) If an offender who is not incarcerated fails to make monthly payments after establishment of a payment agreement, the debt shall be referred to the Department of Revenue for collection.

(2) Payments received shall be credited to the offender's account. The debt shall remain collectable until paid in full or the offender is determined to be deceased.

(a) If an offender dies while the debt is in collections or the offender is in default on a payment agreement, or otherwise is indebted to the board, the board may seek payment for the amount due from the estate of the offender.

(b) A subrogation lien in favor of the board may be filed in an offender's probate case or in a civil action if such has been filed against the offender by the claimant.

(c) The board may employ any legal means to collect the debt from an offender, including initiating a civil action against the offender.

LANOLA PARSONS, Chairperson
JOHN HARDESTY, Executive Director

APPROVED BY AGENCY: January 14, 2025

FILED WITH LRC: January 15, 2025 at 10:32 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 am on March 27, 2025, in Room 247 CE of the Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. This hearing will be conducted both in-person and via videoconferencing through Microsoft Teams. Individuals interested in attending the public hearing virtually may access the hearing at: https://teams.microsoft.com/l/meetupjoin/19%3ameeting_ZmM3NGRiODYtYjBmYi00ZWE4LTg1OWQtN2JjNjFKYzgzZjcw%40threadd.v2/0?context=%7b%22Tid%22%3a%22d77c7f4d-d767-461f-b625-0628792e9e2a%22%2c%22Oid%22%3a%22636ef07a-f33f-4378-b8ae-79c6f05a1438%22%7d. The Meeting ID is: 237 908 005 529. The Passcode is: 48N9bQ2U. For phone access, please dial +1 502-632-6289, 867966031# and enter the following Phone Conference ID: 867 966 031#. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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

VOLUME 51, NUMBER 8– February 1, 2025

through 11:59 PM EST on March 31, 2025. 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: Shelby Bevins-Sullivan, Staff Attorney, 500 Mero Street, 2 SC 1, Frankfort, Kentucky 40601. Phone: 502-782-3556. Fax: 502-573-4817. Email: sbevinssullivan@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shelby Bevins-Sullivan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides guidelines for recovering the amounts of awards paid to victims of criminally injurious conduct from the offenders who committed the criminal acts.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 49.470, which creates a debt payable by offenders to the Crime Victims Compensation Board for awards paid by the board to the offender's victims as a result of the offender's crimes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with KRS 12.080 which authorizes the Governor to prescribe general rules for the conduct of departments; KRS 49.010(4)(b), 49.020(7)(a), KRS 49.300(1), and KRS 49.370(2)(b), which authorize the promulgation of regulations to carry out the duties of the Crime Victims Compensation Board; and KRS 49.470, which creates a debt payable by offenders to the Crime Victims Compensation Board for awards paid by the board to the offender's victims as a result of the offender's crimes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulation will assist the Crime Victims Compensation Board, its staff, and offenders in understanding the collection procedures employed by the board to recoup funds paid to victims of criminally injurious conduct.

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

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

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

(c) How the amendment conforms to the content of the authorizing statutes: N/A.

(d) How the amendment will assist in the effective administration of the statutes: N/A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Public Protection Cabinet, the Office of Claims and Appeals, the Crime Victims Compensation Board, the Kentucky Department of Corrections, and any person who is identified as an offender and subject to collections procedures.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None known, beyond providing guidance to offenders and the Department of Corrections into the collections procedures employed by the Crime Victims Compensation Board. The board currently utilizes many of the procedures enumerated in this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no expected expenditures because of this administrative regulation. Current staff will implement the provisions once promulgated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Public Protection Cabinet, the Office of Claims and Appeals, and the Crime Victims

Compensation Board will have better oversight and control of collections procedures as they are clearly delineated; offenders will have more insight into the collections procedures and methods; and the Department of Corrections will have the ability to clearly understand the board's collections procedures.

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

(a) Initially: None. Current staff and agency funds will provide implementation.

(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: Current agency budgetary funding will be used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted 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. 34 U.S.C. § 10101, 34 U.S.C. § 20101 – 20111, 34 U.S.C. § 20121 – 20131, 34 U.S.C. § 20134 – 20145, 28 C.F.R. § 94.101, et seq., 66 Fed. Register 27158 (May 16, 2001), KRS 13B.005, et seq., and KRS 49.470.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Public Protection Cabinet, the Office of Claims and Appeals, and the Crime Victims Compensation Board.

(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 because the proposed regulation only establishes the procedure for collecting the debt from offenders.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): The proposed regulation should not affect any local governmental entities because it only establishes the procedure for collecting debts from offenders.

(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: There should not be any fiscal impact associated with promulgation of this proposed regulation. It simply establishes a procedure for collecting debts from offenders to reimburse the Crime Victims Compensation Board for awards it pays to claimants.

(b) Methodology and resources used to determine the fiscal impact: There were no methodologies or resources required.

(6) Explain:

VOLUME 51, NUMBER 8– February 1, 2025

(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 major economic impact from this regulation.

(b) The methodology and resources used to reach this conclusion: There were no methodologies or resources required.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of January 13, 2025

Call to Order and Roll Call

The January meeting of the Administrative Regulation Review Subcommittee was held on Monday, January 13, 2025, at 1:00 p.m. in Room 149 of the Capitol Annex. Senator Stephen West, 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 Mike Wilson and David Yates; and Representatives Randy Bridges, Deanna Frazier Gordon, and Mary Lou Marzian.

LRC Staff: Stacy Auterson, Laura Begin, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Anna Latek, Callie Lewis, and Carrie Nichols.

Guests: Travis Powell, Council on Postsecondary Education; Beau Barnes, Teachers' Retirement System; Jessica Beaubien, Nathan Goodrich, Victoria Hale, Kentucky Public Pension Authority; Dr. John Park, DVM, Michelle Shane, Board of Veterinary Examiners; Kelly Jenkins, Jeff Prather, Board of Nursing; Eddie Slone, John Wood, Board of Emergency Medical Services; Steven Fields, Jenny Gilbert, Department of Fish and Wildlife Resources; Leah Boggs, Nathan Goens, Department of Corrections; Nathan Day, Nathan Goens, Angela Parker, Department of State Police; Mike Bosse, Nathan Goens, Department of Criminal Justice Training; Jon Johnson, Godwin Onodu, Department of Vehicle Registration; Todd Allen, Robbie Fletcher, Department of Education; Greg Higgins, Anthony Hudgins, Charles Wheatley, Department for Employment Services; Jason Hernandez, Robin Maples, Chuck Stribling, Department of Workplace Standards; Jonathan Fuller, David Moore, Darryl Morgan, Department of Housing, Buildings and Construction; Richard Bartlett, Erica Brakefield, Julie Brooks, Jennifer Burt, Jessica Davenport, Jonathan Scott, Phyllis Sosa, Cabinet for Health and Family Services; and Michael Frazier, Kentucky Student Rights Association and Eastern Kentucky University: Student Government Association.

Administrative Regulations Reviewed by this Subcommittee:

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. Travis Powell, vice president and general counsel, represented the council. Michael Frazier, Kentucky Student Rights Coalition and Eastern Kentucky University Student Government Association, appeared in opposition to this administrative regulation.

In response to questions by Co-Chair West, Mr. Powell stated that Senate Bill 191 from the 2024 Regular Session of the General Assembly changed the postsecondary performance funding model and required review by the Postsecondary Education Working Group, which was tasked with defining "underrepresented students." The university model increased the low-income degree premium from three (3) percent to eight (8) percent; added an adult learner metric, which increased the weight per credit hour for students aged twenty-five (25) or older; increased the small school adjustment for both Kentucky State University and Morehead State University; and adjusted the out-of-state credit weighting from half to three-quarters of total credit hour rating versus in-state credit. There was a five (5) percent reduction of the credit hour production pool from thirty-five (35) to thirty (30) percent to account for the five (5) percent increase in the low-income degree premium. For academic year 2024 – 2025, the three (3) percent of additional funding for underrepresented students would be allocated at one and five-tenths (1.5) percent going to low-income students, while the remaining one and five-tenths (1.5) percent would go to first-generation college students. The Postsecondary Education Working Group recommended defining "underrepresented students" as first-generation college

students. That definition recommendation further prompted the need to adjust weightings. The additional three (3) percent funding after academic year 2024 – 2025 would go entirely to first-generation college students.

In response to a question by Co-Chair West, Mr. Frazier stated that 013 KAR 002:120 was deficient because this administrative regulation misapplied weighting. While weighting was explicitly required by statute for the KCTCS model, Senate Bill 191 was silent as to weighting regarding the university model. The General Assembly should introduce legislation this session to clarify the application of weighting provisions, and the council should provide updated fiscal information pertaining to the effects of the agency amendment. Mr. Powell stated that weighting had been used for the university model since the inception of this funding model in 2017. The council and the working group had been transparent in the development of this administrative regulation, and the public did not submit comments during the public comment period for either of these administrative regulations. The council needed to move forward with these administrative regulations in order to meet the next academic year's deadline, and waiting for new legislation to become effective would not be sufficient to meet that timeline.

Representative Frazier Gordon stated that the difference in funding between comprehensive and research universities and the structure of current funding models could lead to a substantial loss in funding for comprehensive universities. This topic would continue to be assessed legislatively to adequately fund student performance at all universities.

In response to a question by Senator Yates, Mr. Powell stated that the next three (3) year cycle for revisions to funding models would begin in January of 2026 in order to provide updated metrics and revisions to the funding model by the end of that year.

Co-Chair West stated that this administrative regulation would proceed to the committee of jurisdiction for further consideration.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 5, 6, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 1(17) to include the council's criteria to determine fields of study for a STEM+H bachelor's degree; and (3) to amend Sections 5 and 9 and incorporated material to revise funding model metrics in accordance with the Performance Funding Working Group recommendations. Without objection, and with agreement of the agency, these amendments were approved.

013 KAR 002:130. Comprehensive funding model for the allocation of state general fund appropriations to the Kentucky Community and Technical College System institutions.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 4, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 4 to revise funding model metrics in accordance with the Performance Funding Working Group recommendations. Without objection, and with agreement of the agency, these amendments were approved.

TEACHERS' RETIREMENT SYSTEM

102 KAR 001:195. Employer reports. Beau Barnes, deputy executive secretary and general counsel, represented the system.

102 KAR 001:340. Calculation of final average salary.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 4, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, these amendments were approved.

PUBLIC PENSIONS AUTHORITY

105 KAR 001:130. Hazardous position coverage. Jessica Beaubien, policy specialist; Nathan Goodrich, staff attorney supervisor; and Victoria Hale, general counsel, represented the authority.

VOLUME 51, NUMBER 8 – FEBRUARY 1, 2025

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 3 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, these amendments were approved.

105 KAR 001:445. Trustee elections.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 5, 8, and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, these amendments were approved.

BOARDS AND COMMISSIONS: Board of Veterinary Examiners

201 KAR 016:520. Approved veterinary medical programs for veterinarians; approved veterinary technology programs for veterinary technicians. Dr. John Park, DVM, chair, and Michelle Shane, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, these amendments were approved.

201 KAR 016:530. Examination requirements for veterinarians and veterinary technicians.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 3, and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, these amendments were approved.

201 KAR 016:590. Continuing education requirements, veterinarians and veterinary technicians.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 through 4 and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, these amendments were approved.

Board of Nursing

201 KAR 020:057. Scope and standards of practice of advanced practice registered nurses. Kelly Jenkins, executive director, and Jeff Prather, general counsel, represented the board.

In response to a question by Co-Chair West, Mr. Prather stated that the reference to an "online monitoring system" was to comply with current and potential future monitoring systems for prescription information.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3 and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, these amendments were approved.

INDEPENDENT ADMINISTRATIVE BODIES: Board of Emergency Medical Services

202 KAR 007:401. Paramedics. Eddie Slone, executive director, and John Wood, counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A; (2) to postpone the sunset date for critical care endorsements from January 1, 2026, to January 1, 2027; and (3) to establish the date that the board shall stop accepting endorsement applications as June 30, 2025. Without objection, and with agreement of the agency, these amendments were approved.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game

301 KAR 002:081. Transportation and holding of live native wildlife. Steven Fields, staff attorney, and Jenny Gilbert, legislative liaison, represented the department.

In response to questions by Co-Chair Lewis, Ms. Gilbert stated that hares and rabbits were anatomically distinct. It was difficult to distinguish domesticated European rabbits from wild European rabbits, which tended to carry numerous diseases. The department's veterinarian was tracking trends regarding the highly pathogenic avian influenza (HPAI). The department would provide this information to members of this subcommittee.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 2, 4, 5, 7, 9, and 13 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, these amendments were approved.

301 KAR 002:082. Transportation and holding of live exotic wildlife.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2, 3, 6, 10, and 12 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, these amendments were approved.

301 KAR 002:225. Dove, wood duck, teal, and other migratory game bird hunting.

A motion was made and seconded to approve the following amendments: to amend Section 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, these amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 006:410. Corrections policies and procedures: inmate life and issues. Leah Boggs, general counsel, and Nathan Goens, assistant general counsel, represented the office.

In response to questions by Co-Chair West, Ms. Boggs stated that the agency amendment withdrew the previously proposed policy changes and reverted the policy to 2018 standards. The department was continuing to review the Attorney General's opinion and would develop new policies to comply both with the opinion and with the federal Prison Rape Elimination Act (PREA), recognizing that, in accordance with the Attorney General's opinion, certain medical care, other than gender-affirming surgery, might be legally required if a health care provider determined the care to be necessary for a serious medical need.

In response to questions by Senator Yates, Ms. Boggs stated, in her reply to the matter of the policy prior to 2018, that there had never been a policy for gender reassignment surgery.

In response to questions by Co-Chair West, Ms. Boggs stated that gender reassignment surgery had not happened, did not happen, and would not happen. The department had never approved or provided gender reassignment surgery. Inmates who received prescriptions for hormone therapies from physicians received those medications. The costs for hormone therapy medications for inmates were covered under the department's contract with Diamond Pharmacy Services. This policy would continue as the contract covered all medications prescribed by licensed physicians to inmates within the Department of Corrections.

In response to questions by Co-Chair Lewis, Ms. Boggs stated that as of January 8, 2025, out of 12,842 inmates in department custody, 467 were receiving some form of hormone therapy, including treatment for post-partum depression, menopausal symptoms, and gender dysphoria. Sixty-seven (67) of those 467 inmates were receiving physician-directed treatment for gender dysphoria. Because Diamond Pharmacy Services was paid via contract, the department did not have available, an itemized list of the cost of individual medications. Ms. Boggs stated that she was

not aware of any departmental policy that prohibited employees from speaking directly with legislators, but there was a policy that if a legislator requested information from the department, the enquiry would be directed through the agency's legislative liaison.

In response to a question by Senator Yates, Ms. Boggs stated that the department would not overrule a physician's recommendation for reasonable and medically necessary treatment.

Co-Chair West stated that this administrative regulation would proceed to the committee of jurisdiction for further consideration.

A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference to: (1) comply with the drafting requirements of KRS Chapter 13A; (2) add a field for the previous effective date; (3) remove procedures for hormone affirming treatment and transgender-specific surgery; and (4) update policy edition dates. Without objection, and with agreement of the agency, these amendments were approved.

Department of Kentucky State Police: Driver Training

502 KAR 010:120E. Hazardous materials endorsement requirements. Nathan Day, CVE Captain; Nathan Goens, assistant general counsel; and Angela Parker, staff assistant, represented the department.

In response to a question by Co-Chair West, Ms. Parker stated that the fee would be increasing from thirty-four (34) dollars to \$57.25, due to an increase implemented by the Transportation Security Administration.

Department of Criminal Justice Training: General Training Provision

503 KAR 003:140. Telecommunications (Public Safety Dispatch) Academy trainee requirements; misconduct; penalties; discipline procedures. Mike Bosse, commissioner; Nathan Goens, assistant general counsel; and Leah Boggs, general counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 through 3, 5, 6, 8, 13, 17, 18, 22, 23, and 28 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Certification of Title

601 KAR 023:050. 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 KRS 186A.170(4). Jon Johnson, assistant general counsel, and Godwin Onodu, division director, represented the department.

EDUCATION AND LABOR CABINET: Kentucky Board of Education: Kentucky Department of Education: Office of Instruction

704 KAR 003:365. Complaint procedures for programs under the Elementary and Secondary Education Act of 1965. Todd Allen, deputy commissioner, and Robbie Fletcher, commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of Unemployment Insurance: Unemployment Insurance

787 KAR 001:010. Application for employer account; reports. Greg Higgins, executive director; Anthony Hudgins, deputy executive director; and Charles Wheatley, deputy general counsel, represented the office.

In response to questions by Co-Chair West, Mr. Hudgins stated that employer accounts were an entity that maintained a group of employers, allowing covered organizations to have a consolidated party responsible for acting as an employer of record and granting those organizations access to common unemployment insurance rates.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Section 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

787 KAR 001:370. Professional employer organizations.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 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.

Department of Workplace Standards: Occupational Safety and Health

803 KAR 002:110. Employer and employee representatives. Jason Hernandez, general counsel; Robin Maples, occupational safety and health standards specialist; and Chuck Stribling, deputy commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Section 2 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 Housing, Buildings and Construction: Electrical

815 KAR 035:060. Licensing of electrical contractors, master electricians, and electricians. Jonathan Fuller, commissioner, and Darryl Morgan, division director, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 through 3, 8, 11, and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Sanitation

902 KAR 010:120. Kentucky public swimming and bathing facility operations. Erica Brakefield, branch manager; Julie Brooks, regulation coordinator; and Jennifer Burt, branch manager, represented the department.

In response to a question by Co-Chair West, Ms. Brooks stated that the fee increase would only apply to public facilities, and the fees would be assessed per type of operation instead of a single per-facility fee. These new administrative regulations would allow the agency to delineate each type of facility in lieu of the general administrative regulation, which was repealed in 902 KAR 010:122.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph; Sections 1, 2, 4, 8, 9, 11, 12, 14, 16, 17, and 20; and incorporated material 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 010:122. Repeal of 902 KAR 010:121 and 902 KAR 010:190.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 010:123. Kentucky public swimming and bathing facilities construction requirements.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3, 5 through 7, 9, and 13 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

VOLUME 51, NUMBER 8 – FEBRUARY 1, 2025

902 KAR 010:125. Kentucky public swimming and bathing facility safety requirements.

A motion was made and seconded to approve the following amendment: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3, 5, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 010:127. Kentucky public beach requirements.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3, 7, 10, 11, 13, 14, 16, 19, and 20 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Trauma System

902 KAR 028:010. Definitions for 902 KAR Chapter 26. Richard Bartlett, Kentucky Hospital Association and Director of Kentucky Trauma Program, and Julie Brooks, regulation coordinator, represented the system.

In response to a question by Representative Frazier Gordon, Mr. Bartlett stated that an extension was necessary because of the low availability of certain certification courses, which would impede the ability to complete necessary training in time. Those found deficient could be granted a specific designation status and assessment from an outside agent to complete the training process.

902 KAR 028:020. Kentucky trauma system designation process.

902 KAR 028:030. Kentucky's trauma system level IV criteria.

A motion was made and seconded to approve the following amendment: to amend Section 1(1)(b)4. to reestablish that the medical director's participation in a Rural Trauma Team Development Course (RTTDC) is mandatory rather than permissive. Without objection, and with agreement of the agency, the amendment was approved.

902 KAR 028:040. Kentucky's Trauma Registry and Data Bank System.

Radon

902 KAR 095:041. Repeal of 902 KAR 095:040. Erica Brakefield, branch manager, and Julie Brooks, regulation coordinator, represented the department.

Department for Medicaid Services

907 KAR 001:028. Independent laboratory and radiological service coverage and reimbursement. Jonathan Scott, regulation coordinator, represented the department.

Department for Aging and Independent Living: Aging Services

910 KAR 001:210. Kentucky Long-term Care Ombudsman Program. Phyllis Sosa, assistant director, represented the department.

910 KAR 001:241. Repeal of 910 KAR 001:240.

Other Business: Co-Chair West welcomed Representative Mary Lou Marzian and Senator Mike Wilson as members of this subcommittee.

The following administrative regulations were deferred or removed from the January 13, 2025, subcommittee agenda:

BOARDS AND COMMISSIONS: Board of Optometric Examiners

201 KAR 005:010. Application for licensure; endorsement.

Board of Veterinary Examiners

201 KAR 016:510. Fees for veterinarians.

201 KAR 016:513. Fees for Allied Animal Health Professional (AAHP) permits.

201 KAR 016:515. Fees for veterinary facility registrations.

201 KAR 016:517. Fees for AAHP facility registrations.

201 KAR 016:730. Approved Allied Animal Health Professional (AAHP) programs; education requirements.

201 KAR 016:731. Examination requirements for AAHP providers.

201 KAR 016:732. Application requirements for AAHP permits - reinstatement.

201 KAR 016:735. Renewal requirements for AAHP permits – renewal notice – expiration.

201 KAR 016:737. Responsibilities for AAHP providers; limitations on practice.

201 KAR 016:762. Application requirements for veterinary facility registration; veterinarian managers; registered responsible parties.

201 KAR 016:765. Veterinary facilities – renewal notice – requirements for renewal and reinstatement.

201 KAR 016:767. Registered veterinary facilities – duties of registered responsible parties and veterinarian managers.

201 KAR 016:772. Application requirements for AAHP facility registration; AAHP managers; registered responsible parties.

201 KAR 016:775. AAHP facilities – renewal notice – requirements for renewal and reinstatement.

201 KAR 016:777. Registered AAHP facilities - duties of registered responsible parties and AAHP managers.

Board of Licensed Professional Counselors

201 KAR 036:050. Complaint management process.

ENERGY AND ENVIRONMENT CABINET: Department of Environmental Protection: Solid Waste Facilities

401 KAR 047:110. Registered permit-by-rule.

Standards for Solid Waste Facilities

401 KAR 048:320. Operating requirements for less than one (1) acre or expanded less than two (2) acre construction or demolition debris landfills.

Department for Natural Resources: Division of Mine Permits: Bond and Insurance Requirements

405 KAR 010:001. Definitions.

405 KAR 010:015. General bonding provisions.

EDUCATION AND LABOR CABINET: Kentucky Board of Education: Kentucky Department of Education

704 KAR 003:535. Full-time enrolled online, virtual, and remote learning programs.

PUBLIC PROTECTION CABINET: Department of Financial Institutions: Credit Unions

808 KAR 003:050. Conduct of credit unions.

VOLUME 51, NUMBER 8 – FEBRUARY 1, 2025

Check Cashing

808 KAR 009:010. Deferred deposit database compliance.

**CABINET FOR HEALTH AND FAMILY SERVICES: Department
for Public Health: Maternal and Child Health**

902 KAR 004:105. Kentucky Lifeline for Moms program
implementation.

**Department for Medicaid Services: Hospital Service Coverage
and Reimbursement**

907 KAR 010:015. Payments for outpatient hospital services.

**The subcommittee adjourned at 2:30 p.m. The next meeting of
this subcommittee was tentatively scheduled for February 10,
2025, 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.

**HOUSE STANDING COMMITTEE ON FAMILIES AND CHILDREN
Meeting of January 9, 2025**

The following administrative regulations were available for consideration and placed on the agenda of the House Standing Committee on Health Services for its meeting on January 9, 2025, having been referred to the Committee on December 4, 2024 & January 2, 2025, pursuant to KRS 13A.290(6):

December 4, 2024

201 KAR 002:370 Proposed
201 KAR 002:480 Proposed
201 KAR 008:563 Proposed
201 KAR 039:001 Proposed
201 KAR 039:030 Proposed
201 KAR 039:040 Proposed
201 KAR 039:050 Proposed
201 KAR 039:060 Proposed
201 KAR 039:070 Proposed
201 KAR 039:075 Proposed
201 KAR 039:090 Proposed
201 KAR 039:100 Proposed
201 KAR 039:120 Proposed
201 KAR 039:130 Proposed
202 KAR 007:201 Emergency
202 KAR 007:301 Emergency
202 KAR 007:330 Emergency
202 KAR 007:401 Emergency
202 KAR 007:560 Emergency
900 KAR 001:009 Proposed
902 KAR 045:012 Proposed
907 KAR 020:035 Proposed

January 2, 2025

201 KAR 002:030 Proposed
201 KAR 002:050 Proposed
201 KAR 002:210 Proposed
201 KAR 002:465 Proposed
201 KAR 005:005 Proposed
201 KAR 005:090 Proposed
201 KAR 008:610 Proposed
201 KAR 046:035 Proposed
201 KAR 046:040 Proposed
201 KAR 046:060 Proposed
201 KAR 046:100 Proposed
202 KAR 007:201 Proposed
202 KAR 007:301 Proposed
202 KAR 007:330 Proposed
202 KAR 007:560 Proposed
202 KAR 007:596 Proposed
902 KAR 002:020 Proposed
902 KAR 002:040 Proposed
902 KAR 030:200 Proposed

The following administrative regulations were deferred pursuant to KRS 13A.300:

January 2, 2025

907 KAR 001:044 Proposed
907 KAR 015:005 Proposed

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the 01/09/2025 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Unless otherwise noted, information contained in these indexes relates only to administrative regulations printed in this, the 51st year of the *Administrative Register of Kentucky*, from July 2025 through June 2026.

Locator Index - Effective Dates

H - 2

Lists all administrative regulations published or continuing through the KRS Chapter 13A review process during this *Register* year. It also lists the page number on which each regulation is published, the effective date of the regulation after it has completed the review process, and other actions that may affect the regulation.

NOTE: Regulations listed with a “50 Ky.R.” notation are regulations that were originally published in previous years’ issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the last *Register* year ended.

KRS Index

H - 11

A cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each regulation submitted for publication during this *Register* year.

Certifications Index

H - 20

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year.

Technical Amendment Index

H - 22

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

H - 23

A general index of administrative regulations published during this *Register* year, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Administrative regulations published in previous Register years may appear in this index if a regulation had not completed the KRS Chapter 13A review process by the beginning of *Register* year 49. The "Register number" or "Ky.R. number" is listed the first time a regulation is published during that Register year. Once the regulation has been published in another *Register* year, the new Ky.R. number will appear next to the page number entry. To view versions of regulations published in prior *Registers*, please visit our online [Administrative Registers of Kentucky](#).

SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- *** Withdrawn before being printed in Register
- IJC Interim Joint Committee
- (r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS

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

013 KAR 002:120E	50 Ky.R.	2349	4-30-2024
Expired			1-25-2025
013 KAR 002:130E	50 Ky.R.	2352	4-30-2024
Expired			1-25-2025
016 KAR 001:030E	51 Ky.R.	191	7-15-2024
Replaced		329	11-8-2024
016 KAR 002:030E	51 Ky.R.	195	7-15-2024
Replaced		333	11-8-2024
016 KAR 009:010E	51 Ky.R.	197	7-8-2024
As Amended		645	9-10-2024
Replaced		851	11-8-2024
016 KAR 009:030E	51 Ky.R.	10	5-31-2024
016 KAR 009:080E	51 Ky.R.	200	7-8-2024
Replaced		851	11-8-2024
016 KAR 009:100E	51 Ky.R.	204	7-8-2024
Replaced		853	11-8-2024
031 KAR 002:010E	50 Ky.R.	2147	4-15-2024
As Amended	51 Ky.R.	218	7-9-2024
Replaced		239	11-5-2024
031 KAR 003:041E	50 Ky.R.	2150	4-15-2024
As Amended	51 Ky.R.	219	7-9-2024
Replaced		240	11-5-2024
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
Replaced		657	12-31-2024
031 KAR 004:220E	50 Ky.R.	2154	4-15-2024
As Amended	51 Ky.R.	221	7-9-2024
Replaced		220	11-5-2024
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
Replaced		245	12-31-2024
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
Replaced		658	12-31-2024
201 KAR 002:416E	51 Ky.R.	1359	12-17-2024
201 KAR 017:120E	51 Ky.R.	1237	11-26-2024
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	12-19-2023
Am Comments		2002	3-5-2024
Replaced	51 Ky.R.	105	6-18-2024

Resubmitted	51 Ky.R.	1238	11-26-2024
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
502 KAR 010:120E	51 Ky.R.	1067	10-30-2024
601 KAR 012:120E	51 Ky.R.	1240	12-6-2024
803 KAR 002:110E	51 Ky.R.	847	9-30-2024
803 KAR 002:320E	51 Ky.R.	1244	11-19-2024
803 KAR 025:089E	50 Ky.R.	2360	5-14-2024
Replaced		2478	12-3-2024
807 KAR 005:015E	51 Ky.R.	14	5-31-2024
Am Comments		474	8-15-2024
As Amended		646	9-10-2024
902 KAR 045:001E	50 Ky.R.	2362	4-24-2024
Replaced	51 Ky.R.	1118	11-18-2024
902 KAR 045:012E	50 Ky.R.	2364	4-24-2024
902 KAR 045:021E	50 Ky.R.	2368	4-24-2024
Replaced	51 Ky.R.	1121	11-18-2024
902 KAR 045:031E	50 Ky.R.	2373	4-24-2024
Replaced	51 Ky.R.	912	11-18-2024
907 KAR 001:595E			
Amended	51 Ky.R.	1361	12-23-2024
907 KAR 001:835E			
Amended	51 Ky.R.	1365	12-23-2024
907 KAR 003:100E			
Amended	51 Ky.R.	1379	12-23-2024
907 KAR 003:210E			
Amended	51 Ky.R.	1382	12-23-2024
907 KAR 007:015E			
Amended	51 Ky.R.	1401	12-23-2024
907 KAR 012:020E			
Amended	51 Ky.R.	1406	12-23-2024
907 KAR 020:005E			
Amended	51 Ky.R.	1410	12-23-2024
915 KAR 001:010E	50 Ky.R.	2378	4-18-2024
Am Comments	51 Ky.R.	226	7-15-2024
Replaced	51 Ky.R.	922	11-18-2024
915 KAR 001:020E	50 Ky.R.	2383	4-18-2024
Am Comments	51 Ky.R.	230	7-15-2024
Replaced	51 Ky.R.	925	11-18-2024
922 KAR 001:350E	51 Ky.R.	207	7-1-2024
Replaced	51 Ky.R.	932	11-18-2024
922 KAR 002:090E	51 Ky.R.	22	5-20-2024

ORDINARY ADMINISTRATIVE REGULATIONS

011 KAR 004:080			
Amended	50 Ky.R.	2238	
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	
As Amended	51 Ky.R.	1416	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
013 KAR 002:130	50 Ky.R. 2461		031 KAR 005:026		
As Amended	51 Ky.R. 1417		Amended	50 Ky.R. 2250	
013 KAR 006:010	51 Ky.R. 596		As Amended	51 Ky.R. 244	
As Amended	1252		As Amended IJC	492	8-22-2024
013 KAR 006:020	51 Ky.R. 598		031 KAR 005:040	50 Ky.R. 2326	
As Amended	1253		As Amended	51 Ky.R. 245	12-31-2024
016 KAR 001:030			040 KAR 005:010		
Amended	51 Ky.R. 329	11-8-2024	Amended	51 Ky.R. 1187	
016 KAR 002:030			040 KAR 010:010	50 Ky.R. 2111	
Amended	51 Ky.R. 333	11-8-2024	As Amended	51 Ky.R. 246	
016 KAR 002:110	50 Ky.R. 2464		As Amended	494	12-31-2024
As Amended	51 Ky.R. 489	9-17-2024	040 KAR 012:010	51 Ky.R. 600	
016 KAR 002:140	50 Ky.R. 2466		101 KAR 001:325		
As Amended	51 Ky.R. 490		Amended	50 Ky.R. 1736	7-30-2024
016 KAR 002:160			101 KAR 001:335		
Amended	50 Ky.R. 1934		Amended	50 Ky.R. 2253	
Withdrawn by agency		9-23-2024	As Amended	51 Ky.R. 495	12-3-2024
Expired, w/d after certified To-Be-Amended		9-23-2024	101 KAR 001:345		
016 KAR 002:170	50 Ky.R. 2469		Amended	50 Ky.R. 2255	12-3-2024
As Amended	51 Ky.R. 491	9-17-2024	101 KAR 001:375		
016 KAR 002:200	50 Ky.R. 2471		Amended	50 Ky.R. 2257	
As Amended	51 Ky.R. 492	9-17-2024	As Amended	51 Ky.R. 496	12-3-2024
016 KAR 004:020			101 KAR 001:395		
Amended	50 Ky.R. 1557		Repealed	50 Ky.R. 2328	12-3-2024
As Amended	2004	7-2-2024	101 KAR 001:396(r)	50 Ky.R. 2328	12-3-2024
016 KAR 004:030			101 KAR 002:034		
Amended	50 Ky.R. 1937	7-16-2024	Amended	51 Ky.R. 1492	
016 KAR 007:010			101 KAR 002:086	51 Ky.R. 601	
Repealed	51 Ky.R. 170	10-15-2024	As Amended	1071	
016 KAR 007:011(r)	51 Ky.R. 170	10-15-2024	101 KAR 002:102		
016 KAR 009:010			Amended	51 Ky.R. 1498	
Amended	51 Ky.R. 335		101 KAR 002:210		
As Amended	851	11-8-2024	Amended	51 Ky.R. 709	
016 KAR 009:030			101 KAR 003:015		
Amended	51 Ky.R. 77		Amended	51 Ky.R. 1505	
As Amended	654	10-15-2024	101 KAR 003:045		
016 KAR 009:080			Amended	51 Ky.R. 1511	
Amended	51 Ky.R. 337		102 KAR 001:138	51 Ky.R. 430	11-8-2024
As Amended	851	11-8-2024	102 KAR 001:195		
016 KAR 009:100			Amended	51 Ky.R. 961	
Amended	51 Ky.R. 341		102 KAR 001:320		
As Amended	853	11-8-2024	Amended	51 Ky.R. 511	
017 KAR 001:030			As Amended	1071	12-10-2024
Amended	51 Ky.R. 1490		102 KAR 001:340		
017 KAR 004:030			Amended	51 Ky.R. 962	
Amended	51 Ky.R. 79		As Amended	1419	
As Amended	654	11-18-2024	102 KAR 001:350		
017 KAR 006:020	50 Ky.R. 984		Amended	51 Ky.R. 344	
Am Comments	1700		As Amended	855	11-8-2024
As Amended	51 Ky.R. 35		102 KAR 001:370	51 Ky.R. 431	
As Amended at IJC	655	8-28-2024	As Amended	855	11-8-2024
017 KAR 006:030	50 Ky.R. 986		102 KAR 001:380	51 Ky.R. 820	
Am Comments	1702		As Amended	1254	
As Amended	51 Ky.R. 37		103 KAR 005:200	51 Ky.R. 603	
As Amended at IJC	657	8-28-2024	Withdrawn	*	12-13-2024
030 KAR 002:011(r)	51 Ky.R. 1222		104 KAR 001:010		
030 KAR 007:011	50 Ky.R. 2110	10-1-2024	Amended	50 Ky.R. 78	
031 KAR 002:010			As Amended	51 Ky.R. 37	10-1-2024
Amended	50 Ky.R. 2247		104 KAR 001:040		
As Amended	51 Ky.R. 239	11-5-2024	Amended	50 Ky.R. 80	
031 KAR 003:041	50 Ky.R. 2319		As Amended	51 Ky.R. 38	10-1-2024
As Amended	51 Ky.R. 240	11-5-2024	104 KAR 001:050		
031 KAR 004:031	50 Ky.R. 2321		Amended	50 Ky.R. 82	
As Amended	51 Ky.R. 241		As Amended	51 Ky.R. 39	10-1-2024
As Amended	657	12-31-2024	104 KAR 001:080		
031 KAR 004:220	50 Ky.R. 2323		Amended	50 Ky.R. 84	
As Amended	51 Ky.R. 220	11-5-2024	As Amended	51 Ky.R. 40	10-1-2024
031 KAR 004:230	51 Ky.R. 818		104 KAR 001:100		
As Amended	1253		Amended	50 Ky.R. 86	10-1-2024

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
105 KAR 001:001			201 KAR 002:210		
Amended	50 Ky.R. 2259		Amended	51 Ky.R. 83	
As Amended	51 Ky.R. 247	11-5-2024	Am Comments	941	
105 KAR 001:120			As Amended	1259	
Amended	50 Ky.R. 2262		201 KAR 002:220		
As Amended	51 Ky.R. 249	11-5-2024	Amended	50 Ky.R. 2091	10-23-2024
105 KAR 001:130			201 KAR 002:370		
Amended	51 Ky.R. 964		Amended	51 Ky.R. 87	
As Amended	1420		As Amended	1080	
105 KAR 001:140			201 KAR 002:416	51 Ky.R. 1611	
Amended	51 Ky.R. 346		201 KAR 002:465	50 Ky.R. 2330	
As Amended	856		Am Comments	51 Ky.R. 502	
105 KAR 001:142	51 Ky.R. 432		As Amended	1262	
As Amended	864		201 KAR 002:470	51 Ky.R. 171	
105 KAR 001:190			As Amended	659	10-23-2024
Amended	50 Ky.R. 2265		201 KAR 002:480	51 Ky.R. 172	
As Amended	51 Ky.R. 251	11-5-2024	As Amended	1082	
105 KAR 001:215			201 KAR 005:005		
Amended	50 Ky.R. 1168		Amended	51 Ky.R. 711	
Am Comments	1704		As Amended	1263	
As Amended	1865	6-4-2024	201 KAR 005:010		
105 KAR 001:390			Amended	51 Ky.R. 712	
Amended	50 Ky.R. 1558		201 KAR 005:090		
As Amended	2004	7-2-2024	Amended	51 Ky.R. 714	
105 KAR 001:411			201 KAR 008:533		
Amended	50 Ky.R. 2276		Amended	50 Ky.R. 1739	
As Amended	51 Ky.R. 261		As Amended	2393	6-18-2024
As Amended at IJC	867	10-22-2024	201 KAR 008:563		
105 KAR 001:445			Amended	51 Ky.R. 525	
Amended	51 Ky.R. 967		As Amended	1084	
As Amended	1422		201 KAR 008:610	51 Ky.R. 607	
105 KAR 001:451			Am Comments	1150	
Amended	51 Ky.R. 356		201 KAR 009:270		
Withdrawn	*	10-15-2024	Amended	51 Ky.R. 1516	
Amended	1191		201 KAR 010:030		
105 KAR 001:455	50 Ky.R. 1614		Amended	50 Ky.R. 1744	7-30-2024
As Amended	2008	7-2-2024	201 KAR 010:040		
105 KAR 001:470	50 Ky.R. 1622		Amended	50 Ky.R. 1745	7-30-2024
As Amended	2015	7-2-2024	201 KAR 010:050		
106 KAR 001:131			Amended	50 Ky.R. 1748	7-30-2024
Amended	50 Ky.R. 1563		201 KAR 010:070		
As Amended	2017	7-2-2024	Amended	50 Ky.R. 1749	7-30-2024
200 KAR 005:021			201 KAR 010:080		
Amended	51 Ky.R. 82		Amended	50 Ky.R. 1750	7-30-2024
As Amended	658	12-31-2024	201 KAR 015:030		
200 KAR 014:011			Amended	51 Ky.R. 715	
Amended	51 Ky.R. 515		As Amended	1264	
As Amended	1074		201 KAR 015:050		
200 KAR 014:081			Amended	51 Ky.R. 717	
Amended	51 Ky.R. 518		As Amended	1265	
As Amended	1076		201 KAR 015:110		
200 KAR 014:091			Amended	51 Ky.R. 721	
Amended	51 Ky.R. 520		As Amended	1267	
As Amended	1078		201 KAR 015:120		
200 KAR 015:010			Amended	51 Ky.R. 725	
Amended	51 Ky.R. 522		As Amended	1270	
As Amended	1078		201 KAR 015:125		
201 KAR 001:190			Amended	51 Ky.R. 727	
Amended	1360		As Amended	1270	
As Amended	1869	6-4-2024	201 KAR 016:510		
201 KAR 001:200	50 Ky.R. 1625		Amended	51 Ky.R. 972	
As Amended	2020	7-2-2024	201 KAR 016:513	51 Ky.R. 1012	
201 KAR 002:015			201 KAR 016:515	51 Ky.R. 1014	
Amended	50 Ky.R. 2282	10-23-2024	201 KAR 016:517	51 Ky.R. 1016	
201 KAR 002:030			201 KAR 016:520		
Amended	50 Ky.R. 2284		Amended	51 Ky.R. 729	
As Amended	51 Ky.R. 1257		As Amended	1425	
201 KAR 002:050			201 KAR 016:530		
Amended	50 Ky.R. 2287		Amended	51 Ky.R. 731	
As Amended	1259		As Amended	1426	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
201 KAR 016:562			201 KAR 027:041	50 Ky.R. 2485	
Amended	51 Ky.R. 734		Am Comments	51 Ky.R. 507	
As Amended	1271		As Amended	661	12-31-2024
201 KAR 016:590			201 KAR 027:106	50 Ky.R. 2486	
Amended	51 Ky.R. 736		Am Comments	51 Ky.R. 509	
As Amended	1427		As Amended	661	12-31-2024
201 KAR 016:612	51 Ky.R. 824		201 KAR 028:240	50 Ky.R. 2488	
As Amended	1272		As Amended	51 Ky.R. 499	9-25-2024
201 KAR 016:614	51 Ky.R. 826		201 KAR 036:050		
As Amended	1273		Amended	51 Ky.R. 975	
210 KAR 016:730	51 Ky.R. 1018		201 KAR 036:100	50 Ky.R. 1798	6-18-2024
201 KAR 016:731	51 Ky.R. 1020		Amendment	51 Ky.R. 1305	
201 KAR 016:732	51 Ky.R. 1022		201 KAR 039:001		
201 KAR 016:735	51 Ky.R. 1024		Amended	51 Ky.R. 89	
201 KAR 016:373	51 Ky.R. 1026		As Amended	1095	
201 KAR 016:762	51 Ky.R. 1028		201 KAR 039:030		
201 KAR 016:765	51 Ky.R. 1031		Amended	51 Ky.R. 92	
201 KAR 016:767	51 Ky.R. 1033		Am Comments	944	
201 KAR 016:772	51 Ky.R. 1035		As Amended	1097	
201 KAR 016:775	51 Ky.R. 1037		201 KAR 039:040		
201 KAR 016:777	51 Ky.R. 1040		Amended	51 Ky.R. 94	
201 KAR 017:120	51 Ky.R. 1342		As Amended	1098	
201 KAR 018:010			201 KAR 039:050		
Amended	51 Ky.R. 361		Amended	51 Ky.R. 96	
As Amended	1088		As Amended	1098	
201 KAR 018:030			201 KAR 039:060		
Amended	51 Ky.R. 363		Amended	51 Ky.R. 98	
As Amended	1088		As Amended	1099	
201 KAR 018:115			201 KAR 039:070		
Amended	51 Ky.R. 530		Amended	51 Ky.R. 100	
As Amended	1089		Am Comments	946	
201 KAR 018:192			As Amended	1100	
Amended	51 Ky.R. 364		201 KAR 039:075	51 Ky.R. 175	
As Amended	1090		As Amended	1101	
201 KAR 018:196			201 KAR 039:090		
Amended	51 Ky.R. 368		Amended	51 Ky.R. 102	
As Amended	1093		Am Comments	948	
201 KAR 020:056			As Amended	1102	
Amended	51 Ky.R. 371		201 KAR 039:100		
As Amended	872	11-18-2024	Amended	51 Ky.R. 105	
201 KAR 020:057			As Amended	1104	
Amended	51 Ky.R. 532		201 KAR 039:120		
Am Comments	1296		Amended	51 Ky.R. 107	
As Amended	1429		As Amended	1104	
201 KAR 020:215			201 KAR 039:130	51 Ky.R. 177	
Amended	51 Ky.R. 374		As Amended	1105	
As Amended	874	11-18-2024	201 KAR 046:035		
Amended	1521		Amended	51 Ky.R. 739	
201 KAR 020:230			201 KAR 046:040		
Amended	51 Ky.R. 377		Amended	51 Ky.R. 741	
201 KAR 020:320			As Amended	1274	
Amended	50 Ky.R. 2092		201 KAR 046:060		
Am Comments	51 Ky.R. 325	11-18-2024	Amended	51 Ky.R. 744	
As Amended	497	9-25-2024	201 KAR 046:100		
201 KAR 20:360			Amended	51 Ky.R. 746	
Amended	50 Ky.R. 2095	7-30-2004	As Amended	1275	
201 KAR 020:370			202 KAR 002:020		
Amended	50 Ky.R. 1753	6-18-2024	Amended	51 Ky.R. 538	
201 KAR 020:390			202 KAR 006:090		
Amended	51 Ky.R. 379		Amended	50 Ky.R. 2098	
As Amended	876	11-18-2024	As Amended	51 Ky.R. 266	11-5-2024
201 KAR 020:506			202 KAR 007:201		
Amended	50 Ky.R. 1754	6-18-2024	Amended	51 Ky.R. 748	
201 KAR 023:160	50 Ky.R. 524		202 KAR 007:301		
201 KAR 027:006	50 Ky.R. 2481		Amended	51 Ky.R. 752	
Am Comments	51 Ky.R. 504		202 KAR 007:330		
As Amended	659	12-31-2024	Amended	51 Ky.R. 756	
201 KAR 027:023	50 Ky.R. 2482		202 KAR 007:401		
Am Comments	51 Ky.R. 505		Amended	51 Ky.R. 760	
As Amended	660	12-31-2024	As Amended	1433	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
202 KAR 007:410 Amended	51 Ky.R. 1524		301 KAR 005:020 Amended	50 Ky.R. 1368	
202 KAR 007:545 Amended	51 Ky.R. 765		As Amended	1886	6-4-2024
202 KAR 007:560 Amended	51 Ky.R. 768	12-20-2024	301 KAR 005:022 Amended	50 Ky.R. 2296	
As Amended	1277		As Amended	51 Ky.R. 271	11-5-2024
202 KAR 007:596 As Amended	51 Ky.R. 828		301 KAR 005:040 Amended	50 Ky.R. 2103	
301 KAR 001:001 Amended	50 Ky.R. 2289	11-5-2024	As Amended	51 Ky.R. 40	7-18-2024
301 KAR 001:140 Amended	50 Ky.R. 1756	6-6-2024	301 KAR 005:022 Amended	51 Ky.R. 1317	
301 KAR 001:146 Amended	50 Ky.R. 1758	6-6-2024	301 KAR 005:200 Amended	50 Ky.R. 1371	
301 KAR 001:150 Amended	50 Ky.R. 1761	7-18-2024	As Amended	1887	6-4-2024
301 KAR 001:152 Amended	50 Ky.R. 2292		301 KAR 005:210 As Amended	50 Ky.R. 2113	
As Amended	51 Ky.R. 268	11-5-2024	302 KAR 045:020 As Amended	51 Ky.R. 41	7-18-2024
301 KAR 001:155 Amended	50 Ky.R. 1568	6-6-2024	401 KAR 045:020 Amended	50 Ky.R. 1627	
301 KAR 001:201 Amended	50 Ky.R. 1768	6-6-2024	As Amended	2022	7-2-2024
Amended	51 Ky.R. 1528		401 KAR 045:010 Amended	50 Ky.R. 914	
301 KAR 001:410 Amended	51 Ky.R. 109	11-7-2024	As Amended	2023	6-6-2024
301 KAR 002:041 Amended	51 Ky.R. 1196		401 KAR 045:020 Amended	50 Ky.R. 916	
301 KAR 002:081 Amended	51 Ky.R. 977		As Amended	2024	6-6-2024
As Amended	1437		401 KAR 045:025 Amended	50 Ky.R. 919	
301 KAR 002:082 Amended	51 Ky.R. 983		As Amended	2025	6-6-2024
As Amended	1442		401 KAR 045:030 Amended	50 Ky.R. 921	
301 KAR 002:122 Amended	50 Ky.R. 2101	7-18-2024	As Amended	2026	6-6-2024
301 KAR 002:132 Amended	50 Ky.R. 1939		401 KAR 045:040 Amended	50 Ky.R. 926	
As Amended	2397	6-6-2024	As Amended	2030	6-6-2024
Amended	51 Ky.R. 1306		401 KAR 045:050 Amended	50 Ky.R. 929	
301 KAR 002:172 Amended	51 Ky.R. 1310		As Amended	2032	6-6-2024
301 KAR 002:178 Amended	50 Ky.R. 1768		401 KAR 045:080 Amended	50 Ky.R. 932	
301 KAR 002:225 Amended	51 Ky.R. 988		As Amended	2034	6-6-2024
As Amended	1445		401 KAR 045:100 Amended	50 Ky.R. 935	
301 KAR 002:300 Amended	51 Ky.R. 1314		As Amended	2035	6-6-2024
301 KAR 003:005 Amended	51 Ky.R. 772		401 KAR 045:105 Am Comments	50 Ky.R. 994	
As Amended	1281		As Amended	1721	
301 KAR 003:030 Amended	50 Ky.R. 1944	6-6-2024	401 KAR 045:140 Amended	2040	6-6-2024
As Amended	2400		401 KAR 045:160 Amended	50 Ky.R. 942	
301 KAR 003:130 As Amended	50 Ky.R. 1986	6-6-2024	As Amended	2043	6-6-2024
301 KAR 004:020 Repealed	50 Ky.R. 1437	6-4-2024	401 KAR 045:160 Amended	50 Ky.R. 944	
301 KAR 004:021(r) Repealed	50 Ky.R. 1437	6-4-2024	Am Comments	1725	
301 KAR 005:001 Amended	50 Ky.R. 1365		As Amended	2044	6-6-2024
As Amended	1885	6-4-2024	401 KAR 045:250 Amended	50 Ky.R. 948	
301 KAR 005:010 Amended	50 Ky.R. 1367		As Amended	2047	6-6-2024
As Amended	1885	6-4-2024	401 KAR 047:110 Amended	51 Ky.R. 773	
			Am Comments	1483	
			401 KAR 048:320 Amended	51 Ky.R. 777	
			401 KAR 050:038 Withdrawn	50 Ky.R. 2473	11-8-2024
			401 KAR 103:005 Am Comments	50 Ky.R. 1212	
			As Amended	1908	
			As Amended	2047	6-6-2024
			401 KAR 103:010 Am Comments	50 Ky.R. 1215	
			As Amended	1910	
			401 KAR 103:020 Am Comments	50 Ky.R. 1218	6-6-2024
				1914	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
As Amended	2050	6-6-2024	501 KAR 006:420	50 Ky.R. 2510	
401 KAR 103:030	50 Ky.R. 1221		As Amended	51 Ky.R. 883	
Am Comments	1917		501 KAR 006:430	50 Ky.R. 2512	
As Amended	2051	6-6-2024	Am Comments	51 Ky.R. 674	
405 KAR 010:001			As Amended	884	
Amended	51 Ky.R. 540		501 KAR 006:440	50 Ky.R. 2513	
Am Comments	1301		As Amended	51 Ky.R. 884	
405 KAR 010:015			501 KAR 006:450	50 Ky.R. 2515	
Amended	51 Ky.R. 543		As Amended	51 Ky.R. 885	
416 KAR 001:001	50 Ky.R. 1799	6-6-2024	501 KAR 006:460	50 Ky.R. 2516	
416 KAR 001:010			Am Comments	51 Ky.R. 675	
Amended	50 Ky.R. 1775	6-6-2024	As Amended	885	
416 KAR 001:020	50 Ky.R. 1801	6-6-2024	501 KAR 006:470	50 Ky.R. 2518	
500 KAR 001:010			Am Comments	51 Ky.R. 677	
Amended	51 Ky.R. 781		As Amended	886	
As Amended	1281		501 KAR 006:480	50 Ky.R. 2519	
500 KAR 001:021	51 Ky.R. 831		501 KAR 006:490	50 Ky.R. 2521	
As Amended	1283		As Amended	51 Ky.R. 886	
500 KAR 001:030			501 KAR 006:500	50 Ky.R. 2522	
Amended	51 Ky.R. 783		As Amended	51 Ky.R. 886	
As Amended	1285		501 KAR 006:510	50 Ky.R. 2526	
500 KAR 013:020			As Amended	51 Ky.R. 888	
Amended	50 Ky.R. 1185		501 KAR 006:520	50 Ky.R. 2527	
Am Comments	1729	7-30-2024	As Amended	51 Ky.R. 889	
501 KAR 001:080			501 KAR 006:530	50 Ky.R. 2530	
Amended	51 Ky.R. 113		Am Comments	51 Ky.R. 678	
501 KAR 002:060			As Amended	891	
Amended	50 Ky.R. 1946	9-3-2024	501 KAR 006:540	50 Ky.R. 2532	
501 KAR 003:010			501 KAR 007:010		
Amended	50 Ky.R. 1948	9-3-2024	Amended	50 Ky.R. 1962	9-3-2024
501 KAR 003:040			501 KAR 007:040		
Amended	50 Ky.R. 1950	9-3-2024	Amended	50 Ky.R. 1964	9-3-2024
501 KAR 003:060			501 KAR 007:080		
Amended	50 Ky.R. 1952	9-3-2024	Amended	50 Ky.R. 1966	9-3-2024
501 KAR 003:080			501 KAR 007:090		
Amended	50 Ky.R. 1954	9-3-2024	Amended	50 Ky.R. 1967	9-3-2024
501 KAR 003:090			501 KAR 013:010		
Amended	50 Ky.R. 1956	9-3-2024	Amended	50 Ky.R. 1969	
501 KAR 003:100			As Amended	51 Ky.R. 273	11-5-2024
Amended	50 Ky.R. 1958	9-3-2024	502 KAR 010:120		
501 KAR 003:140			Amended	51 Ky.R. 1201	
Amended	50 Ky.R. 1960	9-3-2024	502 KAR 012:010		
501 KAR 006:021(r)	50 Ky.R. 2490		Amended	51 Ky.R. 1204	
501 KAR 006:280	50 Ky.R. 2477		503 KAR 003:140	51 Ky.R. 1042	
501 KAR 006:300	50 Ky.R. 2491		As Amended	1448	
Am Comments	51 Ky.R. 672		600 KAR 004:010		
As Amended	878		Amended	51 Ky.R. 549	
501 KAR 006:310	50 Ky.R. 2493		601 KAR 009:220		
As Amended	51 Ky.R. 880		Amended	51 Ky.R. 114	
501 KAR 006:320	50 Ky.R. 2495		As Amended	662	11-8-2024
As Amended	51 Ky.R. 880		601 KAR 012:080	50 Ky.R. 1628	
501 KAR 006:330	50 Ky.R. 2496		As Amended	2053	
Withdrawn	*	9-23-2024	As Amended IJC	51 Ky.R. 42	6-4-2024
501 KAR 006:340	50 Ky.R. 2498		601 KAR 012:120	51 Ky.R. 1343	
As Amended	51 Ky.R. 881		601 KAR 023:040	50 Ky.R. 1988	
501 KAR 006:350	50 Ky.R. 2499		As Amended	51 Ky.R. 42	
501 KAR 006:360	50 Ky.R. 2501		As Amended at IJC	663	9-17-2024
As Amended	51 Ky.R. 881		601 KAR 023:050	51 Ky.R. 1047	
501 KAR 006:370	50 Ky.R. 2503		603 KAR 005:050		
As Amended	51 Ky.R. 882		Amended	51 Ky.R. 785	
501 KAR 006:380	50 Ky.R. 2504		603 KAR 005:066		
As Amended	51 Ky.R. 882		Amended	51 Ky.R. 787	
501 KAR 006:390	50 Ky.R. 2506		As Amended	1285	
As Amended	51 Ky.R. 882		603 KAR 005:350		
501 KAR 006:400	50 Ky.R. 2507		Amended	51 Ky.R. 789	
As Amended	51 Ky.R. 883		702 KAR 001:116		
501 KAR 006:410	50 Ky.R. 2509		Amended	51 Ky.R. 551	
As Amended	51 Ky.R. 1447		As Amended	1106	12-10-2024

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
702 KAR 003:320			787 KAR 001:370	51 Ky.R. 1048	
Amended	51 Ky.R. 116		As Amended	1454	
As Amended	664	10-15-2024	802 KAR 001:010		
702 KAR 004:090			Amended	51 Ky.R. 1534	
Amended	51 Ky.R. 554		802 KAR 002:010		
As Amended	1107	12-10-2024	Amended	51 Ky.R. 1537	
703 KAR 005:080			802 KAR 003:010		
Amended	51 Ky.R. 557	12-10-2024	Amended	51 Ky.R. 1541	
703 KAR 005:240			802 KAR 003:020		
Amended	51 Ky.R. 559	12-10-2024	Amended	51 Ky.R. 1544	
704 KAR 003:095			802 KAR 003:030	51 Ky.R. 1613	
Amended	50 Ky.R. 1572	6-4-2024	802 KAR 003:040	51 Ky.R. 1616	
704 KAR 003:303			802 KAR 003:050	51 Ky.R. 1618	
Repealed	51 Ky.R. 179	10-15-2024	802 KAR 003:060	51 Ky.R. 1620	
704 KAR 003:313(r)	51 Ky.R. 179	10-15-2024	803 KAR 002:110		
704 KAR 003:315	51 Ky.R. 1346		Amended	51 Ky.R. 996	
704 KAR 003:305			As Amended	1454	
Amended	51 Ky.R. 562		803 KAR 002:300		
As Amended	1110	12-10-2024	Amended	51 Ky.R. 1320	
704 KAR 003:365			803 KAR 002:320		
Amended	51 Ky.R. 991		Amended		
As Amended	1452		803 KAR 025:089	50 Ky.R. 2478	12-3-2024
704 KAR 003:535			804 KAR 004:212		
Amended	51 Ky.R. 567		Amended	51 Ky.R. 1547	
704 KAR 003:550	50 Ky.R. 2332		804 KAR 004:251		
As Amended	51 Ky.R. 275	8-20-2024	Amended	51 Ky.R. 1549	
704 KAR 007:140			804 KAR 004:400		
Amended	50 Ky.R. 2300		Amended	51 Ky.R. 1550	
As Amended	51 Ky.R. 276	8-20-2024	804 KAR 004:410		
704 KAR 008:130	51 Ky.R. 180	10-15-2024	Amended	51 Ky.R. 1552	
739 KAR 001:060	51 Ky.R. 436		804 KAR 004:415		
As Amended	891	11-8-2024	Amended	51 Ky.R. 1554	
739 KAR 001:070	51 Ky.R. 438		806 KAR 009:360		
As Amended	892	11-8-2024	Amended	51 Ky.R. 1207	
739 KAR 002:160	50 Ky.R. 2115		806 KAR 017:570		
As Amended	51 Ky.R. 43	10-1-2024	Amended	51 Ky.R. 120	
780 KAR 002:010			As Amended	892	
Repealed	50 Ky.R. 2333	8-20-2024	807 KAR 005:078		
780 KAR 002:031(r)	50 Ky.R. 2333	8-20-2024	Amended	50 Ky.R. 2118	
780 KAR 003:030			As Amended	51 Ky.R. 44	7-18-2024
Amended	50 Ky.R. 2302		808 KAR 003:050		
As Amended	51 Ky.R. 276	8-20-2024	Amended	51 Ky.R. 382	
780 KAR 003:035			Am Comments	951	
Amended	50 Ky.R. 2304		808 KAR 009:010		
As Amended	51 Ky.R. 277	8-20-2024	Amended	51 Ky.R. 793	
780 KAR 003:072			Am Comments	1486	
Amended	51 Ky.R. 570		808 KAR 010:260		
As Amended	1113	12-10-2024	Amended	50 Ky.R. 2316	
780 KAR 003:080			As Amended	51 Ky.R. 280	
Amended	51 Ky.R. 576		As Amended at IJC	667	9-17-2024
As Amended	1118	12-10-2024	808 KAR 015:050	51 Ky.R. 439	
780 KAR 003:100			As Amended	1287	
Amended	50 Ky.R. 2305		810 KAR 002:070		
As Amended	51 Ky.R. 278	8-20-2024	Amended	51 Ky.R. 1209	
780 KAR 003:120			810 KAR 004:030		
Amended	50 Ky.R. 2308	8-20-2024	Amended	51 Ky.R. 1214	
780 KAR 003:130			810 KAR 004:070		
Amended	50 Ky.R. 2310		Amended	50 Ky.R. 1374	
As Amended	51 Ky.R. 279	8-20-2024	As Amended	1890	6-4-2024
780 KAR 006:010			810 KAR 007:040		
Amended	50 Ky.R. 2312	8-20-2024	Amended	50 Ky.R. 2105	
780 KAR 006:020			As Amended	51 Ky.R. 48	10-1-2024
Amended	50 Ky.R. 2314	8-20-2024	815 KAR 007:120		
787 KAR 001:010			Amended	50 Ky.R. 1973	
Amended	50 Ky.R. 994		As Amended	51 Ky.R. 500	12-3-2024
As Amended	1453		815 KAR 007:125		
787 KAR 001:360			Amended	50 Ky.R. 1976	
Amended	51 Ky.R. 791		As Amended	51 Ky.R. 501	12-3-2024
As Amended	1287		815 KAR 035:060		
			Amended	51 Ky.R. 998	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
As Amended	1455		902 KAR 095:041(r)	51 Ky.R. 1052	
900 KAR 001:009			907 KAR 001:028		
Amended	51 Ky.R. 578		Amended	51 Ky.R. 1002	
900 KAR 007:030			907 KAR 001:039		
Amended	50 Ky.R. 1379	6-18-2024	Amended	51 Ky.R. 1555	
900 KAR 007:040			907 KAR 001:044		
Amended	50 Ky.R. 1382	6-18-2024	Amended	50 Ky.R. 1409	
902 KAR 002:020			Am Comments	1920	
Amended	51 Ky.R. 795		As Amended	916	
902 KAR 002:040			907 KAR 001:061		
Amended	51 Ky.R. 804		Amended	50 Ky.R. 1414	
As Amended	1288		As Amended	2053	7-2-2024
902 KAR 004:030			907 KAR 001:065		
Amended	51 Ky.R. 138		Amended	50 Ky.R. 1779	6-18-2024
As Amended	668	10-23-2024	907 KAR 001:479		
902 KAR 004:105	51 Ky.R. 1050		Amended	50 Ky.R. 1786	6-18-2024
Am Comments	1487		907 KAR 001:595		
902 KAR 004:130			Amended	51 Ky.R. 1558	
Recodified as 922 KAR 2:130		7-23-2024	907 KAR 001:835		
902 KAR 010:120			Amended	51 Ky.R. 1562	
Amended	51 Ky.R. 385		907 KAR 003:066		
Am Comments	1151		Amended	50 Ky.R. 1417	6-18-2024
As Amended	1457		907 KAR 003:100		
902 KAR 010:122(r)	51 Ky.R. 440		Amended	51 Ky.R. 1576	
As Amended	1468		907 KAR 003:210		
902 KAR 010:123	51 Ky.R. 441		Amended	51 Ky.R. 1579	
Am Comments	1163		907 KAR 007:015		
As Amended	1468		Amended	51 Ky.R. 1597	
902 KAR 010:125	51 Ky.R. 448		907 KAR 010:015		
Am Comments	1170		Amended	51 Ky.R. 581	
As Amended	1474		907 KAR 012:020		
902 KAR 010:127	51 Ky.R. 152		Amended	51 Ky.R. 1601	
Am Comments	1174		907 KAR 013:010		
As Amended	1476		Amended	50 Ky.R. 1793	6-18-2024
902 KAR 020:036			907 KAR 013:015		
Amended	50 Ky.R. 1576		Amended	50 Ky.R. 1795	6-18-2024
As Amended	51 Ky.R. 51	7-30-2024	907 KAR 015:005		
902 KAR 020:048			Amended	50 Ky.R. 1419	
Amended	50 Ky.R. 1385		Am Comments	1925	
Am Comments	2063	6-18-2024	As Amended	920	
902 KAR 020:086			907 KAR 015:100	50 Ky.R. 2335	
Amended	50 Ky.R. 1396		Withdrawn		6-5-2024
Am Comments	2074	6-18-2024	907 KAR 020:005		
902 KAR 028:010			Amended	51 Ky.R. 1605	
Amended	51 Ky.R. 806		907 KAR 020:035		
902 KAR 028:020			Amended	51 Ky.R. 584	
Amended	51 Ky.R. 809		908 KAR 001:410	50 Ky.R. 1441	
902 KAR 028:030			Am Comments	2086	7-30-2024
Amended	51 Ky.R. 812		Amended	51 Ky.R. 1328	
As Amended	1480		910 KAR 001:170		
902 KAR 0028:040			Amended	50 Ky.R. 1584	
Amended	51 Ky.R. 816		As Amended	2055	7-2-2024
902 KAR 030:200			910 KAR 001:210		
Amended	51 Ky.R. 398		Amended	51 Ky.R. 1004	
As Amended	1289		910 KAR 001:241 (r)	51 Ky.R. 1053	
902 KAR 045:001	50 Ky.R. 2535		910 KAR 001:270		
Am Comments	51 Ky.R. 68		Amended	50 Ky.R. 1978	
As Amended	909		Am Comments	51 Ky.R. 63	
As Amended at IJC	1118	11-18-2024	As Amended	281	8-28-2024
902 KAR 045:012	50 Ky.R. 2537		910 KAR 002:020		
Am Comments	51 Ky.R. 682		Recodified as 922 KAR 005:150		7-23-2024
As Amended	1119		910 KAR 002:030		
902 KAR 045:021	50 Ky.R. 2540		Recodified as 922 KAR 005:160		7-23-2024
Am Comments	51 Ky.R. 685		910 KAR 002:040		
As Amended	909		Recodified as 922 KAR 005:170		7-23-2024
As Amended at IJC	1121	11-18-2024	910 KAR 002:060		
902 KAR 045:031	50 Ky.R. 2545		Recodified as 922 KAR 005:180		7-23-2024
Am Comments	51 Ky.R. 690		915 KAR 001:001	50 Ky.R. 1805	
As Amended	912	11-18-2024	Am Comments	2413	
			As Amended	51 Ky.R. 287	8-28-2024

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
915 KAR 001:010	50 Ky.R. 2550		922 KAR 001:470		
Am Comments	51 Ky.R. 696		Amended	51 Ky.R. 590	
As Amended	922		As Amended	1132	
As Amended at IJC	1124	11-18-2024	922 KAR 001:490		
915 KAR 001:020	50 Ky.R. 2554		Amended	51 Ky.R. 415	
Am Comments	51 Ky.R. 700		Am Comments	1178	
As Amended	925	11-18-2024	922 KAR 001:495		
915 KAR 001:030	50 Ky.R. 1808		Amendment	50 Ky.R. 1599	
Am Comments	2416		Am Comments	2229	6-19-2024
As Amended	51 Ky.R. 288	8-28-2024	922 KAR 001:565		
915 KAR 001:040	50 Ky.R. 1815		Amended	50 Ky.R. 1603	
Am Comments	2423		Am Comments	2233	6-19-2024
As Amended	51 Ky.R. 294	8-28-2024	922 KAR 002:020		
915 KAR 001:050	50 Ky.R. 1821		Amended	51 Ky.R. 1336	
As Amended	51 Ky.R. 300	8-28-2024	922 KAR 002:090		
915 KAR 001:060	50 Ky.R. 1823		Amended	51 Ky.R. 149	
Am Comments	2430		922 KAR 002:120		
As Amended	51 Ky.R. 301	8-28-2024	Amended	51 Ky.R. 158	
915 KAR 001:070	50 Ky.R. 1829		As Amended	1140	
Am Comments	2437		922 KAR 2:130		
As Amended	51 Ky.R. 306	8-28-2024	Recodified from 902 KAR 004:130		7-23-2024
915 KAR 001:080	50 Ky.R. 1836		922 KAR 002:160		
Am Comments	2444		Amended	51 Ky.R. 420	11-18-2024
As Amended	51 Ky.R. 312	8-28-2024	922 KAR 005:070		
915 KAR 001:090	50 Ky.R. 1839		Amended	50 Ky.R. 1606	
Am Comments	2447		As Amended	2059	6-19-2024
As Amended	51 Ky.R. 314	8-28-2024	922 KAR 005:120		
915 KAR 001:100	50 Ky.R. 1842		Amended	50 Ky.R. 1610	
Am Comments	2450		As Amended	2406	6-19-2024
As Amended	51 Ky.R. 315	8-28-2024	Amendment	51 Ky.R. 593	
915 KAR 001:110	50 Ky.R. 1845		Am Comments	1184	
Am Comments	2453		922 KAR 005:150		
As Amended	51 Ky.R. 317	8-28-2024	Recodified from 910 KAR 002:020		7-23-2024
915 KAR 002:001	50 Ky.R. 2122	8-28-2024	922 KAR 005:160		
915 KAR 002:010	50 Ky.R. 2124		Recodified from 910 KAR 002:030		7-23-2024
Am Comments	51 Ky.R. 70		922 KAR 005:170		
As Amended	320	8-28-2024	Recodified from 910 KAR 002:040		7-23-2024
915 KAR 002:020	50 Ky.R. 2128	8-28-2024	922 KAR 005:180		
915 KAR 002:030	50 Ky.R. 2130		Recodified from 910 KAR 002:060		7-23-2024
Am Comments	51 Ky.R. 74				
As Amended	323	8-28-2024			
915 KAR 002:040	50 Ky.R. 2132				
As Amended	51 Ky.R. 324	8-28-2024			
920 KAR 001:090					
Amended	51 Ky.R. 1332				
921 KAR 001:400					
Amended	51 Ky.R. 1218				
921 KAR 002:015					
Amended	50 Ky.R. 1589				
As Amended	51 Ky.R. 58	7-30-2024			
921 KAR 003:030					
Amended	51 Ky.R. 588				
922 KAR 001:050					
Amended	51 Ky.R. 142				
Am Comments	954				
As Amended	1127				
922 KAR 001:060					
Amended	51 Ky.R. 146				
Am Comments	957				
As Amended	1130				
922 KAR 001:140					
Amended	50 Ky.R. 1595				
Am Comments	2223				
As Amended	2402	6-19-2024			
922 KAR 001:145	50 Ky.R. 1636				
Am Comments	2226				
As Amended	2404	6-19-2024			
922 KAR 001:350					
Amended	51 Ky.R. 405				
As Amended	932	11-18-2024			

SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- *** Withdrawn before being printed in Register
- IJC Interim Joint Committee
- (r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
2.015	922 KAR 001:350	36.042	703 KAR 005:240
12.020	603 KAR 005:350	38.030	202 KAR 007:330
12.355	202 KAR 007:201	39	202 KAR 007:330
	202 KAR 007:301	39A.050	202 KAR 007:330
	202 KAR 007:330	40.320	017 KAR 001:030
	202 KAR 007:401	40.360	017 KAR 004:030
	202 KAR 007:410	40.362	017 KAR 004:030
13A.110	804 KAR 004:410	40.364	017 KAR 004:030
13B	016 KAR 001:030	40.366	017 KAR 004:030
	016 KAR 002:030	42.014	200 KAR 014:091
	201 KAR 039:060	42.500	200 KAR 014:011
	301 KAR 002:082		200 KAR 014:081
	802 KAR 001:010		200 KAR 014:091
	902 KAR 010:120	42.505 – 42.545	200 KAR 014:091
	910 KAR 001:241	42.520	200 KAR 014:011
	922 KAR 002:020		200 KAR 014:081
	922 KAR 002:090	42.525	200 KAR 014:011
13B.030	040 KAR 005:010		200 KAR 014:081
13B.100	802 KAR 003:010	45.237 – 45.241	922 KAR 002:020
	802 KAR 003:060	45A.045	200 KAR 005:021
14.025	030 KAR 002:011	45A.425	702 KAR 004:090
14A.4-010	806 KAR 009:360	49	502 KAR 012:010
15.266	040 KAR 012:010	49.010	802 KAR 003:010
15.268	040 KAR 012:010		802 KAR 003:060
15.272	040 KAR 012:010	49.020	802 KAR 002:010
15.274	040 KAR 012:010		802 KAR 003:010
15.530 – 15.590	503 KAR 003:140		802 KAR 003:020
15A.160	502 KAR 012:010		802 KAR 003:060
16.132	502 KAR 012:010	49.040	802 KAR 002:010
16.505 – 16.652	105 KAR 001:140	49.090	802 KAR 002:010
16.645	105 KAR 001:142	49.120	802 KAR 002:010
17.165	907 KAR 001:835	49.220	802 KAR 001:010
	907 KAR 003:210	49.230	802 KAR 001:010
	910 KAR 001:241	49.240	802 KAR 001:010
	922 KAR 001:470	49.250	802 KAR 001:010
17.500-580	922 KAR 001:490	49.260 – 49.490	802 KAR 003:010
18A.020	101 KAR 002:102		802 KAR 003:030
	101 KAR 003:015		802 KAR 003:040
18A.030	101 KAR 002:034		802 KAR 003:050
	101 KAR 002:086		802 KAR 003:060
	101 KAR 002:102	49.490	802 KAR 003:020
	101 KAR 002:210		802 KAR 003:030
	101 KAR 003:015	61.315	500 KAR 001:010
18A.032	101 KAR 002:086		500 KAR 001:021
18A.095	101 KAR 002:102		500 KAR 001:030
	105 KAR 001:140	61.373	101 KAR 002:120
	900 KAR 001:009		101 KAR 003:015
	902 KAR 001:090	61.394	101 KAR 002:120
18A.105	105 KAR 001:140		101 KAR 003:015
18A.110	101 KAR 002:034	61.505	105 KAR 001:445
	101 KAR 002:086	61.505 – 61.705	105 KAR 001:140
	101 KAR 002:102	61.510	105 KAR 001:451
	101 KAR 003:015	61.543	105 KAR 001:451
	101 KAR 003:045	61.552	105 KAR 001:130
18A.140	101 KAR 002:102		105 KAR 001:451
	101 KAR 003:015	61.560	105 KAR 001:130
18A.145	101 KAR 002:102	61.580	105 KAR 001:130
	101 KAR 003:015	61.592	105 KAR 001:130
18A.155	101 KAR 003:045	61.598	105 KAR 001:142
18A.165	101 KAR 002:034	61.598	105 KAR 001:451
18A.190	017 KAR 001:030	61.5991	105 KAR 001:451
18A.195	101 KAR 002:102	61.645	105 KAR 001:142
	101 KAR 003:015		105 KAR 001:445
	101 KAR 003:045	61.675	105 KAR 001:451
18A.202	101 KAR 003:045		105 KAR 001:142
18A.225	101 KAR 002:210		105 KAR 001:451
18A.2254	101 KAR 002:210	61.685	105 KAR 001:451
	201 KAR 002:416	61.870 – 61.884	922 KAR 001:350
18A.990	101 KAR 002:120	61.876	922 KAR 001:470
	101 KAR 003:015	72.020	202 KAR 007:401
23A.010	922 KAR 002:020		202 KAR 007:410
27A.090	922 KAR 001:490		502 KAR 012:010

KRS SECTION	REGULATION	KRS SECTION	REGULATION
78.510 – 78.852	105 KAR 001:140		301 KAR 002:082
78.530	105 KAR 001:130		301 KAR 002:225
78.545	105 KAR 001:130	150.340	301 KAR 001:201
	105 KAR 001:142		301 KAR 002:225
78.5520	105 KAR 001:130	150.360	301 KAR 002:081
78.615	105 KAR 001:130	150.370	301 KAR 002:081
78.625	105 KAR 001:142	150.390	301 KAR 003:005
78.650	105 KAR 001:130	150.411	301 KAR 002:172
78.782	105 KAR 001:142	150.445	301 KAR 001:410
	105 KAR 001:445	150.450	301 KAR 005:022
83A.087	500 KAR 001:010	150.485	301 KAR 005:022
	500 KAR 001:021	150.520	301 KAR 005:022
87A.088	500 KAR 001:010	150.525	301 KAR 005:022
	500 KAR 001:021	150.600	301 KAR 005:022
103.200	200 KAR 015:010	150.603	301 KAR 002:225
103.2101	200 KAR 015:010		301 KAR 005:022
103.282	200 KAR 015:010	150.620	301 KAR 001:201
103.286	200 KAR 015:010		301 KAR 001:410
116.048	921 KAR 003:030	150.630	301 KAR 002:041
117.383	031 KAR 004:230	150.660	301 KAR 005:022
118.035	101 KAR 002:120	150.750	301 KAR 005:022
	101 KAR 003:015	150.990	301 KAR 001:201
118.105	030 KAR 002:011		301 KAR 001:410
131.130	103 KAR 005:200		301 KAR 002:041
132.191	103 KAR 005:200		301 KAR 002:081
132.420	103 KAR 005:200		301 KAR 002:082
148.0222	603 KAR 005:350		301 KAR 002:132
150.010	301 KAR 001:201		301 KAR 002:172
	301 KAR 001:410		301 KAR 002:300
	301 KAR 002:041	151	922 KAR 002:120
	301 KAR 002:081	156.010	704 KAR 003:365
	301 KAR 002:082	156.035	704 KAR 003:365
	301 KAR 002:132	156.070	702 KAR 004:090
	301 KAR 002:172		704 KAR 003:313
	301 KAR 002:300		704 KAR 003:535
	301 KAR 003:005		704 KAR 008:130
150.015	301 KAR 002:081	156.111	016 KAR 009:080
	301 KAR 002:082	156.160	702 KAR 004:090
150.025	301 KAR 005:022		704 KAR 003:305
150.070	301 KAR 001:410		704 KAR 003:313
150.092	301 KAR 002:300		704 KAR 003:315
150.170	301 KAR 001:201		704 KAR 003:535
	301 KAR 002:041		704 KAR 008:130
	301 KAR 002:132	156.808	780 KAR 003:072
	301 KAR 002:172		780 KAR 003:080
	301 KAR 002:300	157	922 KAR 002:090
	301 KAR 003:005	158.030	922 KAR 002:090
150.175	301 KAR 001:201		922 KAR 002:120
	301 KAR 001:410	158.070	704 KAR 003:315
	301 KAR 002:300		704 KAR 003:535
	301 KAR 003:005	158.140	704 KAR 003:305
150.177	301 KAR 002:172	158.141	704 KAR 003:305
150.180	301 KAR 002:041	158.1411	703 KAR 003:305
	301 KAR 002:132	158.1413	703 KAR 003:305
	301 KAR 002:172		704 KAR 003:535
	301 KAR 005:022	158.142	704 KAR 003:305
150.183	301 KAR 002:081	158.150	703 KAR 005:240
	301 KAR 002:082	158.4416	704 KAR 003:535
	301 KAR 005:022	158.622	704 KAR 003:305
150.186	301 KAR 002:082	158.645	703 KAR 003:305
150.190	301 KAR 002:081		704 KAR 003:313
150.195	301 KAR 002:081		704 KAR 008:130
	301 KAR 002:082	158.6451	703 KAR 003:305
150.235	301 KAR 001:410		703 KAR 005:240
	301 KAR 002:081		704 KAR 003:313
	301 KAR 002:082		704 KAR 003:535
150.240	301 KAR 005:022		704 KAR 008:130
150.275	301 KAR 005:022	158.6453	703 KAR 005:080
150.280	301 KAR 002:041		703 KAR 005:240
	301 KAR 005:022		704 KAR 003:313
150.290	301 KAR 005:022		704 KAR 008:130
150.320	301 KAR 002:081	158.6455	703 KAR 005:080
	301 KAR 002:082		703 KAR 005:240
150.330	301 KAR 002:081	159.030	704 KAR 003:315

KRS SECTION	REGULATION	KRS SECTION	REGULATION
159.040	704 KAR 003:315	164A.580	739 KAR 001:060
159.080	704 KAR 003:315		739 KAR 001:070
160.151	922 KAR 001:470	164A.590	739 KAR 001:060
160.160	702 KAR 004:090	164A.595	739 KAR 001:070
160.180	702 KAR 001:116	164A.600	739 KAR 001:070
160.290	704 KAR 003:313	174.020	603 KAR 005:350
	704 KAR 008:130	183	500 KAR 001:021
160.345	016 KAR 009:080	183.881	500 KAR 001:010
	704 KAR 003:535	186	601 KAR 009:220
160.380	016 KAR 001:030		922 KAR 002:120
	704 KAR 003:535	186.412	601 KAR 012:120
	922 KAR 001:470	186.4121	601 KAR 012:120
160.431	702 KAR 003:320	186.415	601 KAR 012:120
161.010 – 161.100	016 KAR 001:030	186.416	601 KAR 012:120
161.020	016 KAR 002:030	186.417	601 KAR 012:120
	016 KAR 007:010	186.419	601 KAR 012:120
	016 KAR 009:030	186.435	601 KAR 012:120
	702 KAR 003:320	186.442	601 KAR 012:120
161.027	016 KAR 009:080	186.450	601 KAR 012:120
161.028	016 KAR 002:030	186.480	601 KAR 012:120
	016 KAR 007:011	186.580	601 KAR 012:120
	016 KAR 009:010	186A.060	601 KAR 023:050
	016 KAR 009:030	186A.120	601 KAR 023:050
	016 KAR 009:080	186A.125	601 KAR 023:050
	016 KAR 009:100	186A.170	601 KAR 023:050
161.030	016 KAR 002:030	189.125	922 KAR 001:350
	016 KAR 007:011		922 KAR 002:120
	016 KAR 009:010	189.222	603 KAR 005:066
	016 KAR 009:030	189.281	603 KAR 005:350
	016 KAR 009:080	189.337	603 KAR 005:050
	016 KAR 009:100	189.390	603 KAR 005:350
161.048	016 KAR 009:010	189.515	603 KAR 005:350
	016 KAR 009:030	189.520	603 KAR 005:350
	016 KAR 009:080	189.910 – 189.950	202 KAR 007:560
	016 KAR 009:100	190	601 KAR 009:220
161.100	016 KAR 002:030	194A.005	900 KAR 001:009
161.102	016 KAR 001:030		920 KAR 001:090
161.120	016 KAR 001:030		922 KAR 001:350
161.1211	016 KAR 009:080		922 KAR 001:490
161.220	102 KAR 001:320	194A.030	920 KAR 001:090
	102 KAR 001:340	194A.050	902 KAR 004:030
	102 KAR 001:350	194A.060	922 KAR 001:350
	102 KAR 001:370		922 KAR 002:020
	102 KAR 001:380		922 KAR 002:160
161.440	102 KAR 001:138		922 KAR 005:120
	102 KAR 001:350	194A.061	910 KAR 001:241
161.507	102 KAR 001:350	194A.062	900 KAR 001:009
161.515	102 KAR 001:350	194A.380 – 194A.383	922 KAR 001:470
161.545	102 KAR 001:350	194A.505	907 KAR 020:035
161.5465	102 KAR 001:350	194A.540	201 KAR 020:215
161.547	102 KAR 001:350	194A.700 – 194A.729	910 KAR 001:241
161.548	102 KAR 001:350	198A.740 – 198A.750	202 KAR 002:020
161.549	102 KAR 001:350	199.011	922 KAR 001:350
161.560	102 KAR 001:195		922 KAR 001:490
161.580	102 KAR 001:138		922 KAR 002:090
161.633	102 KAR 001:380		922 KAR 002:120
161.634	102 KAR 001:380	199.430	922 KAR 001:350
161.635	102 KAR 001:370	199.462	922 KAR 001:490
	102 KAR 001:380	199.466	922 KAR 001:470
161.636	102 KAR 001:370	199.470	922 KAR 001:490
	102 KAR 001:380	199.500	922 KAR 001:060
161.643	102 KAR 001:195	199.502	922 KAR 001:060
161.700	102 KAR 001:320	199.555	101 KAR 003:045
	102 KAR 001:380		922 KAR 001:050
161.716	102 KAR 001:320		922 KAR 001:060
	102 KAR 001:380	199.557	922 KAR 001:060
162.010	702 KAR 004:090	199.802	922 KAR 001:350
164.7011	013 KAR 006:010	199.894	922 KAR 002:090
	013 KAR 006:020		922 KAR 002:120
164.7013	013 KAR 006:010		922 KAR 002:160
	013 KAR 006:020	199.895	922 KAR 002:090
164.7015	013 KAR 006:010	199.8951	922 KAR 002:120
164.7017	013 KAR 006:020	199.896	922 KAR 001:470
164.772	815 KAR 035:060		922 KAR 002:120

KRS SECTION	REGULATION	KRS SECTION	REGULATION
199.896 – 199.898	922 KAR 002:160		902 KAR 028:020
199.8962	922 KAR 002:090		902 KAR 028:030
199.898	922 KAR 002:120		902 KAR 028:040
199.8982	922 KAR 002:160	211.600	502 KAR 012:010
	922 KAR 001:470	211.684	922 KAR 001:470
	922 KAR 002:160		922 KAR 001:490
199.899	922 KAR 002:160	211.990	902 KAR 010:120
200.672	902 KAR 030:200		902 KAR 010:123
202A.011	907 KAR 003:210		902 KAR 010:127
202B.010	907 KAR 001:835	213.046	921 KAR 001:400
	922 KAR 001:050	214.010	922 KAR 002:090
205.201	910 KAR 001:210	214.036	922 KAR 002:090
205.520	907 KAR 001:028		922 KAR 002:160
	907 KAR 001:039	214.155	902 KAR 003:040
	907 KAR 007:015	214.625	902 KAR 002:020
	907 KAR 012:020	214.645	902 KAR 002:020
	907 KAR 020:005	214.990	902 KAR 002:020
	907 KAR 020:035	216.510	910 KAR 001:210
205.560	907 KAR 001:028	215.520	902 KAR 002:020
205.5605	907 KAR 001:835	216.2920	902 KAR 004:105
	907 KAR 003:100	216.2955	922 KAR 005:120
	907 KAR 003:210	216.300	910 KAR 001:241
205.5607	907 KAR 001:835	216.380	907 KAR 010:015
	907 KAR 003:210	216.535	910 KAR 001:210
205.619	907 KAR 020:035	216.540 – 216.543	910 KAR 001:210
205.635	907 KAR 001:835	216.595	910 KAR 001:241
205.637	907 KAR 010:015	216.789	910 KAR 001:241
205.6481 – 205.6497	907 KAR 020:005	216.793	910 KAR 001:241
205.710 – 205.802	921 KAR 001:400	216B.015	502 KAR 012:010
205.8451	907 KAR 001:595		802 KAR 003:010
	907 KAR 001:835		802 KAR 003:020
	907 KAR 003:210		802 KAR 003:030
205.8477	907 KAR 003:210		802 KAR 003:040
205.990	921 KAR 001:400		802 KAR 003:050
209	922 KAR 005:120		802 KAR 003:060
209.020	502 KAR 012:010		902 KAR 002:020
209.030	502 KAR 012:010		902 KAR 002:040
	907 KAR 001:835		922 KAR 005:120
	910 KAR 001:210	216B.020	202 KAR 007:545
	910 KAR 001:241	216B.400	502 KAR 012:010
209A.020	502 KAR 012:010		802 KAR 003:010
209A.100	502 KAR 012:010		802 KAR 003:020
209A.110	502 KAR 012:010		802 KAR 003:030
209A.130	502 KAR 012:010		802 KAR 003:040
211.015	902 KAR 010:120		802 KAR 003:050
	902 KAR 010:123		802 KAR 003:060
	902 KAR 010:125	216B.990	502 KAR 012:010
	902 KAR 010:127	217	922 KAR 002:120
211.090	902 KAR 004:030	217.015	201 KAR 002:210
	902 KAR 010:123	218A.010	016 KAR 001:030
	902 KAR 010:127		201 KAR 002:210
211.122	902 KAR 004:105	218A.171	201 KAR 020:057
211.180	902 KAR 004:030	218A.172	201 KAR 020:057
	902 KAR 010:122	218A.202	201 KAR 020:057
211.205	902 KAR 010:120	218A.205	201 KAR 005:005
	902 KAR 010:125		201 KAR 005:010
211.210	902 KAR 010:123		201 KAR 009:270
	902 KAR 010:127		201 KAR 020:056
211.220	902 KAR 010:123		201 KAR 020:057
	902 KAR 010:127		201 KAR 020:215
211.350 – 211.380	922 KAR 002:120	224.01-010	401 KAR 047:110
211.490	902 KAR 028:010		401 KAR 048:320
	902 KAR 028:020	224.10-100	401 KAR 047:110
	902 KAR 028:030		401 KAR 048:320
211.492	902 KAR 028:040	224.10-105	401 KAR 047:110
	902 KAR 028:010		401 KAR 048:320
	902 KAR 028:020	224.40-100	401 KAR 047:110
	902 KAR 028:030		401 KAR 048:320
211.494	902 KAR 028:040	224.40-110	401 KAR 047:110
	902 KAR 028:010		401 KAR 048:320
	902 KAR 028:020	224.40-120	401 KAR 047:110
	902 KAR 028:030		401 KAR 048:320
211.496	902 KAR 028:040	224.40-305	401 KAR 047:110
	902 KAR 028:010		401 KAR 048:320

KRS SECTION	REGULATION	KRS SECTION	REGULATION
224.40-310	401 KAR 047:110	230.310	810 KAR 004:030
	401 KAR 048:320	230.320	810 KAR 004:030
224.40-315	401 KAR 047:110	241.060	804 KAR 004:400
	401 KAR 048:320		804 KAR 004:410
224.40-320	401 KAR 047:110		804 KAR 004:415
	401 KAR 047:320	243.027	804 KAR 004:415
224.40-325	401 KAR 047:110	243.030	804 KAR 004:212
	401 KAR 048:320	243.090	804 KAR 004:400
224.40-330	401 KAR 047:110	243.260	804 KAR 004:251
	401 KAR 048:320	243.380	804 KAR 004:400
224.40-340	401 KAR 047:110		804 KAR 004:410
	401 KAR 048:320	243.390	804 KAR 004:400
224.40-605	401 KAR 047:110		804 KAR 004:410
	401 KAR 048:320	243.630	804 KAR 004:400
224.40-650	401 KAR 047:110	258.015	922 KAR 001:350
	401 KAR 048:320	258.035	922 KAR 001:350
224.43-010	401 KAR 048:320	258.043	201 KAR 016:762
224.43-020	401 KAR 047:110	258.065	301 KAR 002:081
	401 KAR 048:320		301 KAR 002:082
224.43-040	401 KAR 047:110		902 KAR 002:020
224.43-070	401 KAR 047:110	258.085	301 KAR 002:081
	401 KAR 048:320		301 KAR 002:082
224.43-310	401 KAR 047:110	258.990	902 KAR 002:020
	401 KAR 048:320	278.030	807 KAR 005:015E
224.43-315	401 KAR 047:110	278.040	807 KAR 005:015E
	401 KAR 048:320	278.5464	807 KAR 005:015E
224.43-330	401 KAR 047:110	281A.120	502 KAR 010:120
	401 KAR 048:320	281A.130	502 KAR 010:120
224.43-340	401 KAR 047:110	281A.150	502 KAR 010:120
	401 KAR 048:320	281A.160	502 KAR 010:120
224.43-345	401 KAR 047:110	281A.170	502 KAR 010:120
	401 KAR 048:320	286.3-146	808 KAR 015:050
224.43-350	401 KAR 047:110	286.6-095	808 KAR 003:050
	401 KAR 048:320	286.6-100	808 KAR 003:050
224.70-100	401 KAR 047:110	286.6-225	808 KAR 003:050
	401 KAR 048:320	286.6-585	808 KAR 003:050
224.70-110	401 KAR 047:110	286.6-715	808 KAR 003:050
	401 KAR 048:320	286.9-010	808 KAR 009:010
224.99-010	401 KAR 047:110	286.9-075	808 KAR 009:010
	401 KAR 048:320	286.9-100	808 KAR 009:010
224.99-020	401 KAR 047:110	286.9-140	808 KAR 009:010
	401 KAR 048:320	304.1-050	806 KAR 009:360
227A.010	815 KAR 035:060	304.2-290	806 KAR 009:360
227A.060	815 KAR 035:060	304.2-310	806 KAR 009:360
227A.100	815 KAR 035:060		806 KAR 017:570
229.011	201 KAR 027:006	304.2-320	806 KAR 017:570
	201 KAR 027:023	304.3-240	806 KAR 017:570
229.025	201 KAR 027:006	304.9-020	806 KAR 009:360
	201 KAR 027:023	304.9-053	201 KAR 002:416
	201 KAR 027:041		806 KAR 009:360
	201 KAR 027:106	304.9-054	201 KAR 002:416
229.031	201 KAR 027:006		806 KAR 009:360
	201 KAR 027:106	304.9-055	201 KAR 002:416
229.035	201 KAR 027:006		806 KAR 009:360
229.061	201 KAR 027:006	304.9-133	806 KAR 009:360
229.091	201 KAR 027:106	304.10-030	806 KAR 009:360
229.155	201 KAR 027:006	304.10-040	806 KAR 009:360
	201 KAR 027:106	304.12-020	806 KAR 017:570
229.171	201 KAR 027:006	304.14-120	201 KAR 002:416
	201 KAR 027:023		806 KAR 017:570
	201 KAR 027:041	304.14-500 – 3014.14-550	806 KAR 017:570
	201 KAR 027:106	304.14-640	907 KAR 020:035
229.190	201 KAR 027:006	301.14-642	907 KAR 020:035
	201 KAR 027:106	304.17-311	806 KAR 017:570
229.200	201 KAR 027:006	304.17-380	806 KAR 017:570
	201 KAR 027:023	304.17-383	806 KAR 017:570
	201 KAR 027:106	304.17A-005	806 KAR 009:360
229.991	201 KAR 027:006		806 KAR 017:570
230.215	810 KAR 002:070	304.17A-162	806 KAR 009:360
	810 KAR 004:030	304.17A-163	806 KAR 009:360
230.240	810 KAR 004:030	304.17A-165	806 KAR 009:360
230.260	810 KAR 002:070	304.17A-535	806 KAR 009:360
	810 KAR 004:030	301.17A-595	201 KAR 002:416
230.290	810 KAR 004:030	304.17A-607	806 KAR 009:360

KRS SECTION	REGULATION	KRS SECTION	REGULATION
304.17A-617	806 KAR 009:360		202 KAR 007:301
304.17A-633	806 KAR 009:360		202 KAR 007:330
304.17A-712	201 KAR 002:416	311A.120	202 KAR 007:201
304.17C-125	201 KAR 002:416		202 KAR 007:301
304.18-034	806 KAR 017:570		202 KAR 007:330
304.28-205	806 KAR 017:570		202 KAR 007:401
304.32-275	806 KAR 017:570	311A.120 – 311A.135	202 KAR 007:410
304.33-030	806 KAR 017:570	311A.130	202 KAR 007:301
304.38A-115	201 KAR 002:416	311A.135	202 KAR 007:401
304.39-110	603 KAR 005:350	311A.140	202 KAR 007:201
304.40-075	201 KAR 008:563		202 KAR 007:301
304.99-020	806 KAR 009:360		202 KAR 007:330
309.300	201 KAR 039:001	311A.142	202 KAR 007:401
309.301	201 KAR 039:001		202 KAR 007:410
	201 KAR 039:130	311A.145	202 KAR 007:201
309.304	201 KAR 039:001		202 KAR 007:301
	201 KAR 039:030		202 KAR 007:330
	201 KAR 039:050	311A.150	202 KAR 007:330
	201 KAR 039:075	311A.160	202 KAR 007:201
	201 KAR 039:090	311A.165	202 KAR 007:301
	201 KAR 039:100	311A.170	202 KAR 007:401
	201 KAR 039:120		202 KAR 007:410
309.306	201 KAR 039:040		202 KAR 007:596
309.312	201 KAR 039:030	311A.185	202 KAR 007:410
	201 KAR 039:040	311A.190	202 KAR 007:401
	201 KAR 039:050		202 KAR 007:410
	201 KAR 039:070		202 KAR 007:545
	201 KAR 039:075		202 KAR 007:560
309.314	201 KAR 039:040		202 KAR 007:596
	201 KAR 039:050	311A.195	202 KAR 007:330
309.316	201 KAR 039:100	311B.020	201 KAR 046:040
309.318	201 KAR 039:060	311B.050	201 KAR 046:040
	201 KAR 039:100		201 KAR 046:060
	201 KAR 039:120		201 KAR 046:100
309.460	201 KAR 008:610	311B.080	201 KAR 046:035
309.462	201 KAR 008:610	311B.100	201 KAR 046:040
309.464	201 KAR 008:610	311B.110	201 KAR 046:040
311.282	902 KAR 002:020		201 KAR 046:060
311.530 - 311.620	201 KAR 009:270	311B.120	201 KAR 046:040
311.571	902 KAR 002:020	311B.130	201 KAR 046:060
311.646	922 KAR 002:120	311B.180	201 KAR 046:040
311.720	922 KAR 001:350	311B.190	201 KAR 046:040
311.840	907 KAR 001:835	313.021	201 KAR 007:610
	922 KAR 001:350	313.030	201 KAR 008:563
	201 KAR 009:270	313.040	201 KAR 008:563
311.840 – 311.862	201 KAR 009:270	313.060	201 KAR 008:563
311.990	902 KAR 002:040	313.080	201 KAR 008:563
311 – 314	202 KAR 007:201	313.130	201 KAR 008:563
311A.010	202 KAR 007:301	313.254	201 KAR 008:563
	202 KAR 007:330	314.011	017 KAR 001:030
	202 KAR 007:596		201 KAR 020:056
	902 KAR 028:010		201 KAR 020:057
311A.020	202 KAR 007:330		201 KAR 020:215
	202 KAR 007:596		201 KAR 020:390
311A.025	202 KAR 007:201		502 KAR 012:010
	202 KAR 007:301		907 KAR 001:595
	202 KAR 007:330		907 KAR 001:835
	202 KAR 007:401		907 KAR 003:210
	202 KAR 007:410		922 KAR 001:350
	202 KAR 007:596		922 KAR 002:090
311A.030	202 KAR 007:201		922 KAR 002:120
	202 KAR 007:401		922 KAR 002:160
	202 KAR 007:545	314.025	201 KAR 020:390
	202 KAR 007:560	314.026	201 KAR 020:390
	202 KAR 007:596	314.027	201 KAR 020:390
311A.050 – 311A.090	202 KAR 007:201	314.039	201 KAR 020:057
	202 KAR 007:301	314.041	201 KAR 020:230
	202 KAR 007:330	314.042	201 KAR 020:056
	202 KAR 007:401		201 KAR 020:057
311A.050 – 311A.100	202 KAR 007:410		201 KAR 020:215
	202 KAR 007:201		907 KAR 001:835
311A.095	202 KAR 007:201		201 KAR 020:230
	202 KAR 007:301	314.051	201 KAR 020:230
	202 KAR 007:330	314.071	201 KAR 030:230
311A.100	202 KAR 007:201	314.073	201 KAR 020:215

KRS SECTION	REGULATION	KRS SECTION	REGULATION
314.091	201 KAR 020:230 201 KAR 020:056 201 KAR 020:057		201 KAR 016:772 201 KAR 016:775 902 KAR 002:020
314.103	201 KAR 020:056	321.187	201 KAR 016:612
314.109	201 KAR 020:056	321.190	201 KAR 016:510 201 KAR 016:590
314.161	201 KAR 020:056		201 KAR 016:612
314.193	201 KAR 020:057		201 KAR 016:510
314.195	201 KAR 020:057	321.193	201 KAR 016:520 201 KAR 016:530
314.475	201 KAR 020:056 201 KAR 020:057		201 KAR 016:510 201 KAR 016:515
314.991	201 KAR 020:215	321.201	201 KAR 016:517
314A.010	907 KAR 001:595	321.203	201 KAR 016:612 201 KAR 016:737
315.010	201 KAR 002:210 201 KAR 002:370 902 KAR 002:020		201 KAR 016:762 201 KAR 016:765 201 KAR 016:767
315.020	201 KAR 002:210 201 KAR 002:370 201 KAR 002:480		201 KAR 016:772 201 KAR 016:775 201 KAR 016:777
315.030	201 KAR 002:370		201 KAR 016:517
315.035	201 KAR 002:470		201 KAR 016:612 201 KAR 016:737
315.036	201 KAR 002:470		201 KAR 016:762 201 KAR 016:765
315.121	201 KAR 002:370	321.205	201 KAR 016:767 201 KAR 016:772
315.191	201 KAR 002:210		201 KAR 016:775 201 KAR 016:777
315.310	201 KAR 002:480		201 KAR 016:517 201 KAR 016:612
315.340	201 KAR 002:470		201 KAR 016:612 201 KAR 016:737
315.350	201 KAR 002:470		201 KAR 016:765 201 KAR 016:767
315.405	201 KAR 002:470		201 KAR 016:772 201 KAR 016:775
315.4104	201 KAR 002:470		201 KAR 016:777
316.010	201 KAR 015:110		201 KAR 016:562
316.030	201 KAR 015:050 201 KAR 015:110	321.207	201 KAR 016:612 201 KAR 016:612
316.125	201 KAR 015:030 201 KAR 015:110	321.208 321.211	201 KAR 016:510 201 KAR 016:590
316.127	201 KAR 015:110		201 KAR 016:612
316.130	201 KAR 015:030 201 KAR 015:110	321.221	201 KAR 016:510 201 KAR 016:590
316.132	201 KAR 015:030		201 KAR 016:612
316.140	201 KAR 015:030 201 KAR 015:120	321.235	201 KAR 016:510 201 KAR 016:513
316.165	201 KAR 015:125		201 KAR 016:515 201 KAR 016:517
316.260	201 KAR 015:110		201 KAR 016:562 201 KAR 016:590
318	922 KAR 002:120		201 KAR 016:612 201 KAR 016:730
319.010	907 KAR 001:835 907 KAR 003:210		201 KAR 016:731 201 KAR 016:732 201 KAR 016:735
319.046	907 KAR 001:835		201 KAR 016:737 201 KAR 016:765
319.053	907 KAR 001:835		201 KAR 016:767 201 KAR 016:772
319.056	907 KAR 001:835 907 KAR 003:210		201 KAR 016:775 201 KAR 016:777
319.064	907 KAR 001:835		201 KAR 016:612 201 KAR 016:762
319A.010	907 KAR 001:835 907 KAR 003:210		201 KAR 016:767 201 KAR 016:777
320.220	201 KAR 005:005 201 KAR 005:010		201 KAR 016:510 201 KAR 016:515
320.250	201 KAR 005:005 201 KAR 005:010		201 KAR 016:517 201 KAR 016:562
320.270	201 KAR 005:005 201 KAR 005:010	321.236	201 KAR 016:612 201 KAR 016:762
320.280	201 KAR 005:090		201 KAR 016:767
320.310	201 KAR 005:005		201 KAR 016:777
321.175	201 KAR 016:513 201 KAR 016:730 201 KAR 016:731 201 KAR 016:732 201 KAR 016:735 201 KAR 016:737 201 KAR 016:772 201 KAR 016:775	321.320 321.351 321.352 321.356 321.441	201 KAR 016:510 201 KAR 016:515 201 KAR 016:517 201 KAR 016:562 201 KAR 016:614 201 KAR 016:612 201 KAR 016:520 201 KAR 016:530 201 KAR 016:590
321.181	201 KAR 016:513 201 KAR 016:562 201 KAR 016:730 201 KAR 016:731 201 KAR 016:732 201 KAR 016:735 201 KAR 016:737	321.442 321.443 321.990	201 KAR 016:612 201 KAR 016:590 201 KAR 016:612 201 KAR 016:612 201 KAR 016:612 201 KAR 016:612 201 KAR 016:614

KRS SECTION	REGULATION	KRS SECTION	REGULATION
322.010	201 KAR 018:010	369.101 – 369.120	907 KAR 001:835
	201 KAR 018:030	403.160	921 KAR 001:400
322.040	201 KAR 018:010	403.190	102 KAR 001:320
	201 KAR 018:030		102 KAR 001:380
322.040 – 322.050	201 KAR 018:115	403.210 – 403.240	921 KAR 001:400
322.045	201 KAR 018:010	403.352	922 KAR 001:470
	201 KAR 018:030	403.707	502 KAR 012:010
322.120	201 KAR 018:010		802 KAR 003:020
	201 KAR 018:030	405.430	921 KAR 001:400
322.160	201 KAR 018:115	405.440	921 KAR 001:400
322.180	201 KAR 018:115	405.450	921 KAR 001:400
	201 KAR 018:192	405.991	921 KAR 001:400
	201 KAR 018:196	406.021	921 KAR 001:400
322.190	201 KAR 018:192	406.025	921 KAR 001:400
	201 KAR 018:196	421.570	502 KAR 012:010
322.220	201 KAR 018:115	424.170	702 KAR 004:090
322.290	201 KAR 018:192	439.310 – 439.440	501 KAR 001:080
	201 KAR 018:196	439.3401	910 KAR 001:210
327.010	907 KAR 001:835	446.010	500 KAR 001:021
333.020	902 KAR 002:020	446.400	202 KAR 007:401
333.090	907 KAR 001:028		202 KAR 007:410
333.130	902 KAR 002:020	454.220	921 KAR 001:400
334.010	907 KAR 001:039	510.010 – 510.040	502 KAR 012:010
334.030	101 KAR 002:120	524.140	502 KAR 012:010
334.040	907 KAR 001:039	527.070	922 KAR 002:120
334.200	907 KAR 001:039	527.100	922 KAR 001:350
334A.020	907 KAR 001:039	527.110	922 KAR 001:350
	907 KAR 001:835	529.010	502 KAR 012:010
	907 KAR 003:210	529.100	502 KAR 012:010
334A.188	201 KAR 017:120	530.020	502 KAR 012:010
335.100	907 KAR 001:835	530.064	502 KAR 012:010
335.300	907 KAR 001:835	531.310	502 KAR 012:010
	907 KAR 003:210	532.040 – 532.060	501 KAR 001:080
335.500	907 KAR 001:835	532.400	501 KAR 001:080
	907 KAR 003:210	600.020	502 KAR 012:010
335.540	201 KAR 036:050		922 KAR 001:350
335.545	201 KAR 036:050		922 KAR 001:470
335.560	201 KAR 036:100		922 KAR 001:490
335B.010	900 KAR 001:009		922 KAR 002:160
335B.020	900 KAR 001:009	600.030	502 KAR 012:010
336.242	787 KAR 001:370	605.090	922 KAR 001:350
336.248	787 KAR 001:010		922 KAR 001:490
	787 KAR 001:370	605.120	922 KAR 001:490
337	780 KAR 003:072		922 KAR 002:160
337.275	922 KAR 002:160	605.130	922 KAR 001:490
338.015	803 KAR 002:300	610.110	922 KAR 001:350
	803 KAR 002:320	620.020	201 KAR 020:215
338.031	803 KAR 002:320		922 KAR 002:160
338.111	803 KAR 002:110		922 KAR 002:090
339.230	815 KAR 035:060	620.030	907 KAR 001:835
341.070	787 KAR 001:010		907 KAR 003:210
341.115	787 KAR 001:370		922 KAR 001:350
341.190	787 KAR 001:010		922 KAR 002:090
341.243	787 KAR 001:010		922 KAR 002:120
341.250	787 KAR 001:010	620.050	922 KAR 001:350
341.262	787 KAR 001:010		922 KAR 001:470
341.360	907 KAR 020:005		922 KAR 001:490
341.413	787 KAR 001:360	620.050 – 620.120	922 KAR 001:470
344.010	920 KAR 001:090	620.051	922 KAR 001:470
344.015	920 KAR 001:090	620.140	922 KAR 001:350
344.020	920 KAR 001:090	620.360	922 KAR 001:350
344.030	101 KAR 003:015	620.363	922 KAR 001:350
350	405 KAR 010:001	625	922 KAR 001:050
350.020	405 KAR 010:015		922 KAR 001:060
350.060	405 KAR 010:015		922 KAR 001:490
350.062	405 KAR 010:015	655.601-603	603 KAR 005:050
350.064	405 KAR 010:015	2 C.F.R.	702 KAR 004:090
350.093	405 KAR 010:015	7 C.F.R.	405 KAR 010:001
350.095	405 KAR 010:015		920 KAR 001:090
350.100	405 KAR 010:015		921 KAR 003:030
350.151	405 KAR 010:015		922 KAR 002:160
350.465	405 KAR 010:015	12 C.F.R.	808 KAR 003:050
350.503	405 KAR 010:015	16 C.F.R.	201 KAR 015:110
367.828	201 KAR 002:416		603 KAR 005:350

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	922 KAR 001:350		902 KAR 010:123
	922 KAR 002:120	20 U.S.C.	704 KAR 003:365
17 C.F.R.	200 KAR 014:011		808 KAR 003:050
20 C.F.R.	922 KAR 002:160		920 KAR 001:090
23 C.F.R.	603 KAR 005:050	23 U.S.C.	600 KAR 004:010
	603 KAR 005:066	25 U.S.C.	922 KAR 002:160
26 C.F.R.	900 KAR 001:090	26 U.S.C.	102 KAR 001:320
28 C.F.R.	920 KAR 001:090		102 KAR 001:380
29 C.F.R.	101 KAR 002:120		105 KAR 001:140
	101 KAR 003:015		200 KAR 014:011
	202 KAR 007:596		200 KAR 015:200
	780 KAR 003:072		900 KAR 001:009
	803 KAR 002:300		908 KAR 001:410
	803 KAR 002:320	29 U.S.C.	101 KAR 002:034
	815 KAR 035:060		101 KAR 002:120
	902 KAR 010:123		101 KAR 003:015
30 C.F.R.	405 KAR 010:001		201 KAR 015:110
	405 KAR 010:015		780 KAR 003:072
34 C.F.R.	016 KAR 009:080		806 KAR 017:570
	016 KAR 009:100		907 KAR 001:835
	902 KAR 030:200		907 KAR 003:100
	907 KAR 001:835		920 KAR 001:090
	907 KAR 003:100		922 KAR 002:160
	922 KAR 002:160	30 U.S.C.	405 KAR 010:001
40 C.F.R.	405 KAR 010:001		405 KAR 010:015
41 C.F.R.	105 KAR 001:140	34 U.S.C.	502 KAR 012:010
42 C.F.R.	105 KAR 001:140		922 KAR 002:160
	201 KAR 002:210	38 U.S.C.	907 KAR 020:005
	806 KAR 017:570		907 KAR 020:035
	907 KAR 001:039		922 KAR 002:160
	907 KAR 001:082	42 U.S.C.	806 KAR 017:570
	907 KAR 001:595		907 KAR 001:028
	907 KAR 001:835		907 KAR 001:595
	907 KAR 003:100		907 KAR 001:835
	907 KAR 003:210		907 KAR 003:100
	907 KAR 007:015		907 KAR 003:210
	907 KAR 010:015		907 KAR 007:015
	907 KAR 012:020		907 KAR 010:015
	907 KAR 020:005		907 KAR 012:020
45 C.F.R.	922 KAR 001:350		907 KAR 020:005
	105 KAR 001:140		908 KAR 001:410
	502 KAR 012:010		910 KAR 001:210
	806 KAR 009:360		920 KAR 001:090
	806 KAR 017:570		921 KAR 001:400
	902 KAR 028:010		921 KAR 003:030
	907 KAR 001:835		922 KAR 001:060
	907 KAR 020:005		922 KAR 001:350
	910 KAR 001:210		922 KAR 001:470
	920 KAR 001:090		922 KAR 001:490
	921 KAR 001:400		922 KAR 002:020
	922 KAR 001:060		922 KAR 002:090
	922 KAR 001:350		922 KAR 002:160
	922 KAR 001:490	49 U.S.C.	922 KAR 005:120
	922 KAR 002:020		502 KAR 010:120
	922 KAR 002:090		600 KAR 004:010
	922 KAR 002:120	52 U.S.C.	921 KAR 003:030
	922 KAR 002:160	EO 2016-270	201 KAR 027:006
49 C.F.R.	502 KAR 010:120	2022 Ky. Acts Ch. 199	787 KAR 001:360
	600 KAR 004:010	Ky. Const. 172, 174	103 KAR 005:200
	922 KAR 002:120	Pub. L. 108-173	806 KAR 017:570
74 F.R. 18808	806 KAR 017:570	Pub. L. 109-171	920 KAR 001:090
5 U.S.C.	920 KAR 001:090	Pub. L. 110-246	920 KAR 001:090
7 U.S.C.	920 KAR 001:090	Pub. L. 110-325	920 KAR 001:090
	921 KAR 003:030	Pub. L. 111-5	200 KAR 015:010
	922 KAR 002:160	Pub. L. 114-10	806 KAR 017:570
8 U.S.C.	907 KAR 020:005	Pub. L. 114-94	600 KAR 004:010
	922 KAR 001:350	Pub. L. 116-127	806 KAR 017:570
10 U.S.C.	017 KAR 004:030	Pub. L. 117-328	806 KAR 017:570
	202 KAR 007:201	Pres. EO 13166	920 KAR 001:090
	202 KAR 007:301		
	202 KAR 007:330		
15 U.S.C.	200 KAR 014:011		
	600 KAR 004:010		
	902 KAR 010:120		

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
011 KAR 012:010	01-17-2025	Shall be Amended, Filing deadline 07-17-2026
011 KAR 012:020	01-17-2025	Shall be Amended, Filing deadline 07-17-2026
011 KAR 012:030	01-17-2025	Shall be Amended, Filing deadline 07-17-2026
011 KAR 012:040	01-17-2025	Shall be Amended, Filing deadline 07-17-2026
011 KAR 012:050	01-17-2025	Shall be Amended, Filing deadline 07-17-2026
011 KAR 012:070	01-17-2025	Shall be Amended, Filing deadline 07-17-2026
011 KAR 012:090	01-17-2025	Shall be Amended, Filing deadline 07-17-2026
011 KAR 017:010	10-01-2024	Remain in Effect without Amendment
011 KAR 017:040	10-01-2024	Remain in Effect without Amendment
011 KAR 017:050	10-01-2024	Remain in Effect without Amendment
011 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
011 KAR 017:110	10-01-2024	Remain in Effect without Amendment
011KAR 012:060	01-17-2025	Shall be Amended, Filing deadline 07-17-2026
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 002:160	12-01-2022	Expired 9-23-2024, KRS 13A.3104(3)(b)2.
016 KAR 008:040	10-02-2024	Remain in Effect without Amendment
031 KAR 006:020	10-04-2024	Shall be Amended; filing deadline 04-04-2026
040 KAR 002:145	07-23-2024	Remain in Effect without Amendment
040 KAR 002:345	12-02-2024	Remain in Effect without Amendment
103 KAR 018:070	07-27-2026	To be Amended, filing deadline 07-27-2026
103 KAR 028:150	12-06-2024	Remain in Effect without Amendment
103 KAR 044:060	12-12-2024	Shall be Amended; Filing deadline 06-12-2026
106 KAR 002:040	11-22-2024	Remain in Effect without Amendment
201 KAR 002:400	12-02-2024	Remain in Effect without Amendment
201 KAR 020:095	01-03-2025	Remain in Effect without Amendment
201 KAR 020:400	01-03-2025	Remain in Effect without Amendment
201 KAR 028:200	11-22-2024	Remain in Effect without Amendment
201 KAR 028:235	11-22-2024	Shall be Amended; Filing deadline 05-22-2026
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	Shall be Amended, filing deadline 01-29-2026
302 KAR 050:070	01-14-2025	Remain in Effect without Amendment
302 KAR 100:030	01-14-2025	Remain in Effect without Amendment
501 KAR 001:030	08-30-2024	Shall be Amended, filing deadline 02-28-2026
501 KAR 006:230	10-29-2024	Shall be Amended, filing deadline 04-29-2026
601 KAR 023:020	12-12-2024	Remain in Effect without Amendment
603 KAR 005:025	12-22-2024	Remain in Effect without Amendment

CERTIFICATION LETTER SUMMARIES

Regulation Number	Letter Filed Date	Action
704 KAR 003:540	08-08-2024	Remain in Effect without Amendment
704 KAR 008:070	12-06-2024	Remain in Effect without Amendment
780 KAR 003:072	11-25-2024	Shall be Amended, Am filed 08-13-2024
780 KAR 003:080	11-25-2024	Shall be Amended, Am filed 08-13-2024
803 KAR 001:100	11-21-2024	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 004:390	10-30-2024	Remain in Effect without Amendment
804 KAR 004:400	10-30-2024	Shall be Amended, filing deadline 04-30-2026
804 KAR 004:410	10-30-2024	Shall be Amended, filing deadline 04-30-2026
804 KAR 005:070	10-30-2024	Remain in Effect without Amendment
804 KAR 006:020	10-30-2024	Remain in Effect without Amendment
804 KAR 010:010	09-25-2024	Remain in Effect without Amendment
806 KAR 039:030	01-09-2025	Remain in Effect without Amendment
815 KAR 015:010	12-02-2024	Shall be Amended, filing deadline 06-2-2026
815 KAR 015:025	12-02-2024	Shall be Amended, filing deadline 06-2-2026
815 KAR 015:026	12-02-2024	Shall be Amended, filing deadline 06-2-2026
815 KAR 015:027	12-02-2024	Shall be Amended, filing deadline 06-2-2026
900 KAR 006:125	07-18-2024	Remain in Effect without Amendment
900 KAR 006:130	01-27-2025	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	Shall be Amended; filing deadline 01-23-2026
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	Shall be Amended; filing deadline 12-17-2025
910 KAR 003:020	10-08-2024	Remain in Effect without Amendment
921 KAR 003:090	12-12-2024	Remain in Effect without Amendment
922 KAR 001:430	12-09-2024	Remain in Effect without Amendment
922 KAR 001:480	12-09-2024	Remain in Effect without Amendment
922 KAR 001:550	12-09-2024	Remain in Effect without Amendment
922 KAR 005:040	12-09-2024	Remain in Effect without Amendment
922 KAR 005:090	12-09-2024	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 008:030	7-1-2024
806 KAR 039:030	11-12-2024	810 KAR 008:040	7-1-2024
808 KAR 015:030	12-9-2024	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 001:400	8-1-2024
809 KAR 010:001	7-1-2024	921 KAR 001:410	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		
810 KAR 002:030	7-1-2024		
810 KAR 002:040	7-1-2024		
810 KAR 002:050	7-1-2024		
810 KAR 002:060	7-1-2024		
810 KAR 002:070	7-1-2024		
810 KAR 002:080	7-1-2024		
810 KAR 003:001	7-1-2024		
810 KAR 003:010	7-1-2024		
810 KAR 003:020	7-1-2024		
810 KAR 003:030	7-1-2024		
810 KAR 003:040	7-1-2024		
810 KAR 003:050	7-1-2024		
810 KAR 004:001	7-1-2024		
810 KAR 004:010	7-1-2024		
810 KAR 004:020	7-1-2024		
810 KAR 004:030	7-1-2024		
810 KAR 004:040	7-1-2024		
810 KAR 004:050	7-1-2024		
810 KAR 004:060	7-1-2024		
810 KAR 004:070	7-1-2024		
810 KAR 004:080	7-1-2024		
810 KAR 004:090	7-1-2024		
810 KAR 004:100	7-1-2024		
810 KAR 005:0001	7-1-2024		
810 KAR 005:010	7-1-2024		
810 KAR 005:020	7-1-2024		
810 KAR 005:030	7-1-2024		
810 KAR 005:040	7-1-2024		
810 KAR 005:050	7-1-2024		
810 KAR 005:060	7-1-2024		
810 KAR 005:070	7-1-2024		
810 KAR 005:080	7-1-2024		
810 KAR 006:0001	7-1-2024		
810 KAR 006:010	7-1-2024		
810 KAR 006:020	7-1-2024		
810 KAR 006:030	7-1-2024		
810 KAR 007:010	7-1-2024		
810 KAR 007:020	7-1-2024		
810 KAR 007:030	7-1-2024		
810 KAR 007:050	7-1-2024		
810 KAR 007:060	7-1-2024		
810 KAR 007:070	7-1-2024		
810 KAR 008:010	7-1-2024		
810 KAR 008:020	7-1-2024		
810 KAR 008:025	7-1-2024		

SUBJECT INDEX

AGING AND INDEPENDENT LIVING

Aging Services
Long-term Care Ombudsman Program; 910 KAR 001:210
Repeal of 910 KAR 001:240; 910 KAR 001:241

ALCOHOLIC BEVERAGE CONTROL

Applications & forms
Incorporated by reference; 804 KAR 004:400
Product registration; 804 KAR 004:410
Licensing
Direct shipper; 804 KAR 004:415
In-state distilled spirits supplier; 804 KAR 004:212
Special temporary; 804 KAR 004:251

ATTORNEY GENERAL

Office of Administrative Hearings
Hearing officer required training; 040 KAR 005:010
Office of Regulatory Relief
Regulatory sandbox; application, reporting; 040 KAR 012:010

AUDIOLOGY

See also:
Speech-Language Pathology and Audiology (201 KAR Chapter 017)

BANKING

See *Financial Institutions (KAR Title 808)*

BEHAVIORAL HEALTH, DEVELOPMENTAL AND INTELLECTUAL DISABILITIES

Substance Use Disorder
Recovery housing; 908 KAR 001:410

BOARDS AND COMMISSIONS

See also *Occupations and Professions*
See listing below for other possible, specific subject headings:

Education Professional Standards (KAR Title 016)
Elections (KAR Titles 030 and 031)
Embalmers and Funeral Directors (201 KAR Chapter 015)
Emergency Medical Services (202 KAR Chapter 007)
Dentistry (201 KAR Chapter 008)
Interpreters for Deaf and Hard of Hearing (201 KAR Chapter 039)
Licensed Professional Counselors (201 KAR Chapter 036)
Medical Imaging and Radiation Therapy (201 KAR Chapter 046)
Medical Licensure (201 KAR Chapter 009)
Nursing (201 KAR Chapter 020)
Optometric Examiners (201 KAR Chapter 005)
Pharmacy (201 KAR Chapter 002)
Professional Counselors (210 KAR Chapter 036)
Professional Engineers and Land Surveyors (201 KAR Chapter 018)
Speech-Language Pathology and Audiology (201 KAR Chapter 017)
Tax Appeals (KAR Title 802)
Veterinary Examiners (201 KAR Chapter 016)

CHILD CARE

Assistance program, improper payments, claims and penalties; 922 KAR 002:020
Assistance program; 922 KAR 002:160
Centers:
Health and safety standards; 922 KAR 002:120
Licensure; 922 KAR 002:090

CHILD SUPPORT

Establishment, review; modification of child and medical support orders; 921 KAR 001:400

COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Capital construction projects:
Contracting for; 739 KAR 001:070
Management of; 739 KAR 001:060

COMMUNITY-BASED SERVICES

See also: *Child Care (922 KAR Chapter 002)*
Child Support (921 KAR Chapter 001)
Family Support (921 KAR Chapter 003)
Protection and Permanency (KAR Title 922)

CONSTRUCTION

See also *HOUSING, BUILDINGS AND CONSTRUCTION*

CRIMINAL JUSTICE TRAINING

See: *JUSTICE AND PUBLIC SAFETY (KAR Title 503)*

COUNSELORS, BOARD OF LICENSED PROFESSIONAL

Counseling compact; 201 KAR 036:100

DEAF AND HARD OF HEARING, INTERPRETERS FOR

Applications:
Full licensure; 201 KAR 039:030
Temporary licensure; 201 KAR 039:070
Temporary licensure extension; 201 KAR 039:070
Certification levels; 201 KAR 039:030
Complaint procedures; 201 KAR 039:100
Continuing education, requirements; 201 KAR 039:090
Definitions; 201 KAR 039:001
Ethics; 201 KAR 039:120

Licensure

Applications, qualification for full; 201 KAR 039:030
Fees; 201 KAR 039:040
Reinstatement, disciplinary action; 201 KAR 039:060
Renewal and reinstatement; 201 KAR 039:050
Temporary licensure and extensions; 201 KAR 039:070
Registration, nonresidents; 201 KAR 039:130
Supervision; 201 KAR 039:075

DENTISTRY

Community Health Workers; 201 KAR 008:610
Dental hygienist licensure; 201 KAR 008:563

DRIVER LICENSING

See *Transportation Cabinet (KAR Title 601)*

EDUCATION

See also:
Council on Postsecondary Education (KAR Title 013)
Education Professional Standards (KAR Title 016)
Kentucky Community and Technical College System (KAR Title 739)
Teachers' Retirement System (KAR Title 102)
Technical Education (KAR Title 780)

Academic Standards

Visual and performing arts; 704 KAR 008:130

Assessment and Accountability

Administrative procedures and guidelines; 703 KAR 005:240
Administration Code for Kentucky's Educational Assessment Program; 703 KAR 005:080

Facilities Management

Property disposal; 702 KAR 004:090

General Administration

Annual in-service training of district board members; 702 KAR 001:116

Office of Instruction

Complaint procedures for programs under the Elementary and Secondary Education Act of 1965; 704 KAR 003:365

High school graduation, minimum requirements; 704 KAR 003:305

Learning programs: full-time online, virtual, remote; 704 KAR 003:535

Nonpublic schools certification; 704 KAR 003:315

Repeal of 704 KAR 003:303; 704 KAR 003:313

School Administration and Finance

Finance officer certification requirements; 702 KAR 003:320

EDUCATION AND LABOR CABINET

SUBJECT INDEX

See also:

Workforce Development (KAR Title 787)
Workplace Standards (KAR Title 803)

EDUCATION PROFESSIONAL STANDARDS

Alternative Routes to Certification:

Institute for; 016 KAR 009:100
Professional and provisional certificate for:
College faculty; 016 KAR 009:030
Exceptional work experience; 016 KAR 009:010
University-based program; 016 KAR 009:080

General Administration

Procedures for educator certificate surrender, revocation,
suspension, reinstatement and reissuance, application denial;
016 KAR 001:030

Internship

Repeal of 016 KAR 007:010; 016 KAR 007:011

Teaching Certificates

Substitute teachers; 016 KAR 002:030

ELECTIONS

See also: *Secretary of State (KAR Title 30)*

Forms and Procedures

Post-election audits; 031 KAR 004:230

EMBALMERS AND FUNERAL DIRECTORS

Apprenticeship and supervision requirements; 201 KAR 015:050
Fees; 201 KAR 015:030
Funeral establishment criteria; 201 KAR 015:110
Requirements for applicants holding license in another state;
201 KAR 015:120
Surface transportation permit; 201 KAR 015:125

EMERGENCY MEDICAL SERVICES

Advanced emergency medical technician; 202 KAR 007:330
Advanced practice paramedics; 201 KAR 007:410
Ground vehicle staff; 202 KAR 007:560
Mobile integrated healthcare; licensure; 202 KAR 007:596
License classifications; 202 KAR 007:545
Paramedics; 202 KAR 007:401
Responders; 202 KAR 007:201
Technicians; 202 KAR 007:301

ENGINEERS AND LAND SURVEYORS

Classes of applicants; 201 KAR 018:010
In training certificates; 201 KAR 018:030
License reinstatement; 201 KAR 018:115
Professional engineers; 201 KAR 018:196
Professional land surveyors; 201 KAR 018:192

ENVIRONMENTAL PROTECTION

Solid Waste Facilities

Operating requirements for less than one (1) acre or expanded
less than two (2) acre construction or demolition debris
landfills; 401 KAR 047:320
Registered permit-by-rule; 401 KAR 047:110

FAMILY SUPPORT

Supplemental Nutrition Assistance Program
Application process; 921 KAR 003:030

FINANCE AND ADMINISTRATION

See also *Revenue (KAR Title 103)*

Purchasing

Policies and Procedures Manual; 200 KAR 005:021

State Investment Commission

Money market instruments guidelines; 200 KAR 014:091
Qualified investments; 200 KAR 014:011
Repurchase agreements; 200 KAR 014:081

FINANCIAL INSTITUTIONS

Check Cashing

Deferred deposit database compliance; 808 KAR 009:010

Credit Unions

Conduct of; 808 KAR 003:050

General

Out-of-state trust companies operating in Kentucky; 808 KAR
015:050

FISH AND WILDLIFE RESOURCES

Fishing

Nontraditional methods; 301 KAR 001:410
Traditional methods; 301 KAR 001:201

Game

Black bear, seasons and requirements; 301 KAR 002:300
Deer seasons, zones and requirements; 301 KAR 002:172
Dove, wood duck, teal and other migratory game birds; 301 KAR
002:225
Elk seasons, permits, zones and requirements; 301 KAR
002:132
Shooting areas, dog training areas, commercial/non-commercial
foxhound training enclosures, bobwhite shoot-to-train
seasons; 301 KAR 002:041

Wildlife:

Transportation, holding of live exotic; 301 KAR 002:082
Transportation, holding of live native; 301 KAR 002:081

Hunting and Fishing

Public use of newly acquired or newly managed lands; 301 KAR
003:005

Licensing

License, tag and permit fees; 301 KAR 005:022

HEALTH AND FAMILY SERVICES

See also:

Aging and Independent Living (KAR Title 910)
Behavioral Health, Developmental and Intellectual Disabilities
(KAR Title 908)
Community-Based Services (KAR Titles 921 and 922)
Family Support (KAR Title 921)
Protection and Permanency (KAR Title 922)
Public Health (KAR Title 902)
Maternal and Child Health (902 KAR Chapter 4)
Public Health Protection and Safety (902 KAR Chapter 95)

Cabinet Administration

Client civil rights complaint process; 920 KAR 001:090
Employee access to federal tax information; 900 KAR 001:009

HORSE RACING AND GAMING CORPORATION

Flat and Steeplechase Racing

Entries, subscriptions and declarations; 810 KAR 004:030

General

Thoroughbred and other flat racing associations; 810 KAR
002:070

HOUSING

Housing Corporation

Rural Housing Trust Fund; 202 KAR 002:020

HOUSING, BUILDINGS AND CONSTRUCTION

Electrical

Licensing of electrical contractors, master electricians, and
electricians; 815 KAR 035:060

INSURANCE

Agents, Consultants, Solicitors and Adjusters

Pharmacy benefit manager license; 806 KAR 009:360

Health Insurance Contracts

Medicare supplement policies, certificates; 806 KAR 017:570

JUSTICE AND PUBLIC SAFETY

See also *State Police (KAR Title 502)*

Peace Officer Death Benefits

Definitions for 500 KAR Chapter 1; 500 KAR 001:010
Filing, processing of death benefit claims; 500 KAR 001:021
Hearing requests; 500 KAR 001:030

Criminal Justice Training

Telecommunications Academy trainee requirements,

SUBJECT INDEX

misconduct, penalties, discipline procedures; 503 KAR 003:140

Parole Board

Policies and procedures; 501 KAR 001:080

MEDICAL IMAGING AND RADIATION THERAPY

Continuing education requirements; 201 KAR 046:060

Licenses: Medical imaging technologist, advanced imaging professional, radiographer, nuclear medicine technologist, and radiation therapist; 201 KAR 046:040

Practice standards, scopes of practice, and ethical standards; 201 KAR 046:035

Scholarship and Continuing Education Fund; 201 KAR 046:100

MEDICAL LICENSURE

Professional standards for prescribing, dispensing or administering buprenorphine-mono-product/buprenorphine-combined-with-Naloxone; 201 KAR 009:270

MEDICAID SERVICES

Certified Provider Requirements

Reimbursement for home/community-based waiver services version 2; 907 KAR 007:015

Supports for Community Living Waiver Services

Reimbursement; 907 KAR 012:020

Hospital Service Coverage and Reimbursement

Outpatient hospital services and payments; 907 KAR 010:015

Payments and Services

ABI long-term care waiver services and reimbursement; 907 KAR 003:210

ABI waiver services & reimbursement; 907 KAR 003:100

Medicaid Eligibility

Requirements not related to a modified adjusted gross income standard or former foster care individuals; 907 KAR 020:005

Spousal impoverishment and nursing facility requirements; 907 KAR 020:035

Services

Hearing program reimbursement provisions, requirements; 907 KAR 001:039

Independent laboratory service coverage and reimbursement; 907 KAR 001:028

Independent radiological service coverage and reimbursement; 907 KAR 001:028

Michelle P. waiver services & reimbursement; 907 KAR 001:835

Model Waiver II coverage, reimbursement policies and requirements; 907 KAR 001:595

NATURAL RESOURCES

Bond and Insurance Requirements

Definitions; 405 KAR 010:001

General bonding provisions; 405 KAR 010:015

NURSING

APRN:

Licensure and certification requirements; 201 KAR 020:056

Scope and standards of practice; 201 KAR 020:057

Continuing competency requirements; 201 KAR 020:215

Licensure and Certification:

APRN requirements; 201 KAR 020:056

Renewals; 201 KAR 020:230

Nursing Incentive Scholarship Fund; 201 KAR 020:390

OCCUPATIONS AND PROFESSIONS

See Boards and Commissions

See listings for specific subject headings

OCCUPATIONAL SAFETY AND HEALTH COMPLIANCE

Occupational Safety and Health Education and Training

Employer and employee representatives; 803 KAR 002:110

OPTOMETRIC EXAMINERS

Application for licensure, endorsement; 201 KAR 005:010

Fines and fees; 201 KAR 005:005

Renewal fees, annual; 201 KAR 005:090

PAROLE BOARD

See Justice and Public Safety (501 KAR Chapter 001)

PEACE OFFICER

See Justice and Public Safety (500 KAR Chapter 001)

PERSONNEL

Classified

2025 Plan Year Handbooks for Public Employee Health Insurance Program; 101 KAR 002:210

Compensation administrative regulations; 101 KAR 002:034

Internship interview preference; 101 KAR 002:086

Leave, general requirements; 101 KAR 002:102

Unclassified service

Compensation plan & pay incentives; 101 KAR 003:045

Leave requirements; 101 KAR 003:015

PHARMACY

License transfer; 201 KAR 002:030

Long-term care facility services; 201 KAR 002:370

Ownership; change of; 201 KAR 002:470

Records, drug regimen review, patient counseling and final product verification; 201 KAR 002:210

Reporting, annual cost of dispensing data; 201 KAR 002:416

Telework, electronic supervision for remote prescription processing; 201 KAR 002:480

POSTSECONDARY EDUCATION

Aviation Education Programs:

Equipment grants; 013 KAR 006:020

Training scholarships; 013 KAR 006:010

PROFESSIONAL COUNSELORS

Complaint management process; 201 KAR 036:050

PROTECTION AND PERMANENCY

Adult Services

Vulnerable adult maltreatment registry/appeals; 922 KAR 005:120

Child Welfare

Background checks for foster and adoptive parents and relative and fictive kin caregivers; 922 KAR 001:490

Central registry; 922 KAR 001:470

Federal Title IV-E adoption assistance; 922 KAR 001:060

Requirements for public child welfare agency foster parents, adoptive parents, respite care providers; 922 KAR 001:350

State funded adoption assistance; 922 KAR 001:050

PUBLIC HEALTH

Communicable diseases

Reportable disease surveillance; 902 KAR 002:020

Syndromic surveillance; 902 KAR 002:040

Kentucky Early Intervention System

Coverage and payment for services; 902 KAR 030:200

Maternal and Child Health

Newborn screening program; 902 KAR 004:030

Kentucky Lifeline for Moms Program; 902 KAR 004:105

Trauma System

Definitions for 902 KAR Chapter 28; 902 KAR 028:010

Designation process; 902 KAR 028:020

Level IV criteria; 902 KAR 028:030

Registry and data bank system; 902 KAR 028:040

Radon

Repeal of 902 KAR 095:040; 902 KAR 095:041

Sanitation

Construction requirements; 902 KAR 010:123

Public beach requirements; 902 KAR 010:127

Public swimming, bathing facility:

Operations; 902 KAR 010:120

Safety requirements; 902 KAR 010:125

Repeal of 902 KAR 010:121 and 190; 902 KAR 010:122

SUBJECT INDEX

PUBLIC PENSIONS AUTHORITY

General Rules

- Employer's administrative duties; 105 KAR 001:140
- Hazardous position coverage; 105 KAR 001:130
- Limitations and exclusions on creditable compensation in the last five years of fiscal service; 105 KAR 001:142
- Quasi-governmental employer reports on independent contractors and leased employees; 105 KAR 001:451
- Trustee elections; 105 KAR 001:445

PUBLIC SERVICE COMMISSION

Utilities

- Access; attachments - utility poles; facilities; 807 KAR 005:015E

REVENUE

Ad Valorem Tax; Administration

- Valuation of multi-unit rental housing; government restriction on; 103 KAR 005:200

SECRETARY OF STATE

Elections

- Repeal of 030 KAR 002:010; 030 KAR 002:011

SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

- Audiology and speech-language pathology interstate compact; 201 KAR 017:120

STATE POLICE

Driver Training

- Hazardous materials endorsement requirements; 502 KAR 010:120

Medical Examiner Protocols

- Sexual assault forensic-medical examination protocol; 502 KAR 012:010

TEACHERS' RETIREMENT SYSTEM

General Rules

- Annuity, disbursement from supplemental benefits; 102 KAR 001:370
- Crediting of interest for TRS 4 members; 102 KAR 001:138
- Employer reports; 102 KAR 001:195
- Final average salary, calculation of; 102 KAR 001:340
- Full actuarial cost purchase; 102 KAR 001:350
- Qualified domestic relations orders; 102 KAR 001:320
- Qualified domestic relations orders for TRS 4 members; 102 KAR 001:380

TAX APPEALS

Crime Victims Claims

- Additional award requests; 802 KAR 003:040
- Compensation, definitions; 802 KAR 003:010
- Compensation awards; 802 KAR 003:030
- Emergency awards; 802 KAR 003:050
- Offender debt collections; 802 KAR 003:060
- Payment schedules, sexual assault exams; 802 KAR 003:020

Negligence Claims

- Negligence claims before the Board; 802 KAR 002:010

Tax Appeals

- Tax appeal procedures; 802 KAR 001:010

TECHNICAL EDUCATION

Personnel System for Certified and Equivalent Employees

- Attendance, comp time, leave; 780 KAR 003:072
- Duration of school term, use of school days, extended employment; 780 KAR 003:080

TRANSPORTATION

Minority Affairs Office

- Disadvantaged business enterprises certification; 600 KAR 004:010

Vehicle Regulation

- Certificate of Title examination applications; 601 KAR 023:050

Driver Licensing

- Visual acuity testing, new or renewal applicants; 601 KAR

012:120

Motor Vehicle Tax

- Dealer plates; 601 KAR 009:220

Traffic

- Off-highway vehicles, safety and routes; 603 KAR 005:350
- Uniform traffic control devices; 603 KAR 005:050
- Weight (mass) limits for trucks; 603 KAR 005:066

VETERANS AFFAIRS

Veterans Centers

- Nurse loan repayment program; 017 KAR 001:030

Veterans Services

- Burial Honor Guard Program; 017 KAR 004:030

VETERINARY EXAMINERS

AAHP (Allied Animal Health Professional):

- Education requirements; programs; 201 KAR 016:730
- Examination requirements for providers; 201 KAR 016:731

Permits:

- Application, reinstatement; 201 KAR 016:732
- Expiration; 201 KAR 016:735
- Fees; 201 KAR 016:513
- Renewal notice; 201 KAR 016:735

Providers:

- Examination requirements; 201 KAR 016:731
- Limitations on practice; 201 KAR 016:737

AAHP facilities:

- Application requirements; 201 KAR 016:772
- Fees for registration; 201 KAR 016:517
- Registered; duties of; 201 KAR 016:777
- Reinstatement; 201 KAR 016:775
- Renewal notice; 201 KAR 016:775

Animal euthanasia specialist:

- Duties and responsibilities; 201 KAR 016:562

General:

- Fines; 201 KAR 016:614
- Violations; notices; 201 KAR 016:612

Veterinarian/Veterinary technician:

- Continuing education; 201 KAR 016:590
- Fees; 201 KAR 016:510
- Medical programs; 201 KAR 016:520

Veterinary facilities:

- Application requirements; 201 KAR 016:762
- Fees for registration; 201 KAR 016:515
- Registered; duties of; 201 KAR 016:767
- Reinstatement; 201 KAR 016:765
- Renewal; 201 KAR 016:765

WASTE MANAGEMENT

See *ENVIRONMENTAL PROTECTION*

WORKFORCE DEVELOPMENT

Unemployment Insurance

- Application for employer account, reports; 787 KAR 001:010
- Overpayment waivers; 787 KAR 001:360
- Professional Employer Organizations (PEOs); 787 KAR 001:370

WORKPLACE STANDARDS

See also: *Education and Labor Cabinet*

Occupational Safety and Health Compliance

- General agency information; 803 KAR 002:300
- Toxic and hazardous substances; 803 KAR 002:320